

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 2016 Hearing on Civil Legal Services in New York**

**September 27, 2016  
Court of Appeals  
20 Eagle Street  
Albany, N.Y.**

**Testimony of the New York City Bar Association  
By: John S. Kiernan, President**

Thank you for this opportunity to testify on behalf of the New York City Bar Association in support of civil legal services for people who cannot afford to pay for a lawyer. Like prior City Bar presidents, let me begin by expressing the City Bar's gratitude and appreciation to the Chief Judge, and to the Permanent Commission on Access to Justice and its predecessor Task Force, for their leadership in recognizing the need to prioritize allocation of scarce public resources to provision of free civil legal services to people who otherwise face deprivation of essentials of life, often by court orders, without the legal assistance they need. We share your view of the importance of providing for support for legal services in the Judiciary Budget, and we recognize the sacrifices of other important priorities that have been made to provide this support.

My testimony will primarily be directed to two questions: 1. What effects are these allocations of public resources for legal services having on the lives of poor people? and 2. What is the best way to proceed with provision of free legal services when existing allocations of resources for civil legal services remain insufficient to fill the need, and in particular how well

do so-called unbundled legal services – provision of various forms of limited assistance short of full legal representations – serve existing needs?

Direct measurement of the impact of providing free civil legal services is so difficult and susceptible to confounding variables that almost all assessments of these impacts end up feeling like a combination of observers' intuitions, subjective feelings of clients and somewhat selective-seeming, manipulable and incompletely understood statistics. As just one example, the impressive inaugural report by the New York City Office of Civil Justice released a few weeks ago<sup>1</sup> collected some highly relevant-seeming information about effects, but expressly reserved for its next iteration a more fully disciplined evaluation of how much and how well its legal services programs work.

But even with all of the data shortcomings, the directional indications discernible from the limited data appear to be consistent, powerful and aligned with what intuitions would expect. The Office of Civil Justice reported results of a study suggesting that tenants facing the threat of eviction are four times likelier to avoid eviction if they have a lawyer than if they don't. While it would feel uncertain to extrapolate from that limited study to a firm prediction about the exact number of cases in which low-income tenants would avoid eviction if they all had lawyers, that 4x success rate seems in line with reasonable expectations.

The Office of Civil Justice also reported significant-sounding statistics relating to changes in eviction patterns linked temporally to the New York City's increased commitment to

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<sup>1</sup> NYC Office of Civil Justice 2016 Annual Report, *available at* [http://www1.nyc.gov/assets/hra/downloads/pdf/services/civiljustice/OCJ%202016%20Annual%20Report%20FINAL\\_08\\_29\\_2016.pdf](http://www1.nyc.gov/assets/hra/downloads/pdf/services/civiljustice/OCJ%202016%20Annual%20Report%20FINAL_08_29_2016.pdf)

the provision of legal services. From 2013-15, a period when the City has dramatically scaled up its resource allocations to legal representation of tenants facing eviction proceedings, marshals' evictions fell from more than 28,000 to about 22,000, or nearly 24 percent. At the same time, warrants of eviction – which often lead to departures from homes before a marshal shows up to force the tenant out immediately – fell by more than 21,000, from almost 133,000 to a little below 112,000. If you apply the finding of the Office of Civil Justice that each warrant of eviction applies on average to 3 people living in an apartment<sup>2</sup>, these results suggest an impact of 63,000 fewer people targeted by warrants of eviction in 2015 than in 2013 following two years of phased-in significant increases in legal services – a medium-sized city of people not ordered to leave their homes.

Providing a lawyer to a tenant facing eviction not only increases the likelihood that she will be able to remain in her home, thereby reducing displacement, disruption and homelessness, but also appears to be highly cost-effective. An independent study commissioned by the City Bar this year<sup>3</sup> concluded that even without regard to the profound humanitarian benefits of eviction protection that prevents homelessness, the cost of eviction prevention through provision of free legal services would be materially lower than the resulting savings in shelter costs (about \$44,000 per family sent to shelters, more than 20 times what it would cost to provide legal representation on average) and other direct expenses of homelessness. When the other

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<sup>2</sup> *Id.* at p. 1 (“The average anti-eviction legal services client is 43 years old and resides in a household of three.”).

<sup>3</sup> Stout, Risius & Ross, Inc., “The Financial Cost and Benefits of Establishing a Right to Counsel in Eviction Proceedings Under Intro 214-A,” (March 16, 2016), *available at* [http://www2.nycbar.org/pdf/report/uploads/SRR\\_Report\\_Financial\\_Cost\\_and\\_Benefits\\_of\\_Establishing\\_a\\_Right\\_to\\_Counsel\\_in\\_Eviction\\_Proceedings.pdf](http://www2.nycbar.org/pdf/report/uploads/SRR_Report_Financial_Cost_and_Benefits_of_Establishing_a_Right_to_Counsel_in_Eviction_Proceedings.pdf).

advantages of eviction prevention aside from direct shelter costs are factored in, the cost-effectiveness of eviction prevention becomes difficult to dispute. I have provided a link to the SRR report in my testimony and commend it as well as the Office of Civil Justice Report for the panel's consideration.

Let me turn, then, to the value of so-called unbundled or limited scope legal services – circumstances where, with the client's consent, the lawyer provides something less than the full legal services the client would obtain if there were sufficient resources to provide such full representation to everyone. The City Bar considers itself a leader in providing unbundled legal services through many of the City Bar Justice Center's existing projects, including its Elder Law, Consumer Bankruptcy, Federal Pro Se Legal Assistance, Immigrant Justice and Planning and Estates Law Projects, in addition to its Legal Hotline, the largest free general legal services hotline in New York City. The City Bar Justice Center and other organizations provide such limited or unbundled legal services along a broad spectrum. These services range from nearly complete representations, in which our lawyers or pro bono volunteers actually enter appearances as counsel for the clients pursuant to understandings that they will do so only for limited purposes, or ghostwrite pleadings, bankruptcy petitions or other submissions without going to court, to brief telephonic hotline advice and direction of callers to do-it-yourself forms and potentially helpful social services providers, and even to non-legal assistance like the assistance provided in the Courthouse Navigator pilot projects. Rules 1.2(c) and more specifically 6.5 of New York's Rules of Professional Conduct expressly authorize arrangements for delivery of this full range of limited legal services, so long as clients give informed consent.

The calibration of precisely what services to provide particular clients inherently involves a challenging balancing exercise. That balancing reflects providers' desire to provide full legal

services to everyone who needs them and cannot afford to pay for them, our recognition that insufficient resources exist to achieve that goal, and our determination to provide some valuable assistance to as many people who ask for help as possible. That can be a challenge. Every year, the Justice Center and about 1,150 volunteer attorneys working with it help about 25,000 New Yorkers, including almost 10,000 callers to the Legal Hotline, and close about 13,000 cases.

Realizing that we cannot give full legal representation to most of the people seeking our assistance, we view unbundling as a pragmatic, efficient and valuable mechanism for providing clients with the best tools possible to complete their legal case on their own. Our Legal Hotline attorneys continuously make judgments based on extensive experience about how to help callers effectively while retaining the nimbleness to identify particular representations that require more than brief advice and may even ultimately require extensive attorney involvement. For many callers, attorneys are able to provide significant (even though brief and limited) assistance in the form of describing the legal process they are experiencing, pointing them to relevant forms, and if necessary creating court papers for pro se litigants and assisting with filling out forms. When clients' problems seem to require more, the Justice Center seeks to provide them with a pro bono attorney through one of its full representation projects or to refer them to another legal services provider that handles that particular area of law.

We cannot claim that all recipients of brief or limited services from the City Bar Justice Center or other providers achieve the same outcomes they would have received with full representation. But the Justice Center's experience and the results of our client surveys indicate that clients believe (with good reason) they are far better off with the limited scope representations than with no help. Last year, a survey (with a less than fully informative return

rate of about 6%) of callers to the Legal Hotline indicated that those callers believed their interactions with the Justice Center had provided them with answers to their legal questions (74.2%), empowered them to deal with the problem better (51.6%), helped them keep the problem from getting worse (22.6%), relieved stress and/or anxiety (45.2%), explained the consequences of various courses of action (32.3%), and helped them understand the legal system better (25.8%). These limited and not completely clear or consistent statistics appear to suggest that callers generally felt helped by and better informed as a result of their hotline communications but could not say whether and to what extent those communications affected their ultimate outcomes.

There continues to be limited authoritative data about the results achieved from limited scope representations for people who cannot afford a lawyer. The Office of Civil Justice Report describes (pages 44-55) some relatively small and limited studies regarding the effects of unbundled representations on ultimate outcomes, on clients' experiences and on clients' perceptions about the process. While the evidence on these questions remains limited and equivocal, the studies generally provide ample basis for concluding – once again, in accordance with intuition – that limited scope representations probably do not collectively achieve as many favorable results for clients as full representation would achieve, that they still often alter the outcome from what the client would have experienced with no assistance at all, that they consistently provide significant assistance and self-empowerment to the client in addressing the challenges the client is facing, and that they overwhelmingly are viewed by clients (again, for good reason) as preferable to no assistance.

In operating our Legal Hotline, we have continued to expand the degree to which our services to callers amount to something more than just brief oral legal advice, reflecting a perception of their need for greater individualized assistance and our belief that limited scope

representation is effective and helpful. Over the past year, the Justice Center has handled about 3,000 cases of this type, including uncontested divorce actions involving custody or child support issues. Representation in these cases can include not only providing legal answers over the phone and sending callers know-your-rights information but also reviewing and helping to process a caller's faxed documents, drafting simple advocacy letters and legal answers, making phone calls, negotiating with opposing parties, and setting up in-person appointments with callers to help work through more complicated legal issues.

Examples of such representation include:

- Ghostwriting a successful motion to dismiss a landlord's petition for eviction of a disabled senior citizen from his apartment in Queens.
- Drafting Article 78 petitions to correct several clients' names and dates on birth certificates, clearing the way for their receipt of previously denied benefits.
- Helping a mother with a severe learning disability and her school-age children obtain extensive apartment repairs by coordinating inspections and access with the landlord.
- Assisting a low-income woman in obtaining guardianship of her developmentally-delayed sister by helping her draft an Article 17a petition in the Queens Surrogate Court when the client could not navigate the court-generated DIY form on her own, and by obtaining the medical evidence needed to establish the ward's disability.
- Helping a low-income mother file an answer to her husband's divorce petition that had omitted reference to the couple's two minor children born during the marriage.
- Assisting a senior citizen through successful direct advocacy with a furniture store to renegotiate a payment plan that she didn't understand and couldn't afford.

The City Bar Justice Center is continuously working on improving its delivery of unbundled legal services. Last year, the Justice Center launched an online intake application that gives applicants with a web browser another way to access the Legal Hotline’s services at any time. The Justice Center is also leading a collaboration of legal services organizations to create a unified online consumer intake portal for low-income New Yorkers. Our Veterans Assistance Project and Consumer Bankruptcy Project have produced legal educational videos for clients on specific areas of law. We continue to identify new ways to leverage the pro bono volunteer efforts of New York’s vibrant legal community, including through our Monday Night Law program in which pro bono attorneys provide one-on-one consultations with clients at City Bar clinics every Monday night.

As mentioned last year, we are aware that not all judges have embraced the notion of attorneys' undertaking only part of a full representation, and we still talk to judges who have “never heard of” unbundled or limited scope services. Volunteer attorneys sometimes express concern that a court may require them to stay on for an entire case even when their retainer spells out the limited nature of the representation. These issues have arisen in other states, too; discussions about providing limited scope representation as a way to increase access to justice are occurring between bench and bar all over the country.<sup>4</sup> We believe it is important for the Court to continue to educate our judges that this is an essential part of bridging the justice gap,

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<sup>4</sup> See, e.g., *Are You Ready? New Limited-Scope Representation Rules Take Effect in 2015*, State Bar of Wisconsin “Inside Track” newsletter, available at: <http://www.wisbar.org/NewsPublications/InsideTrack/Pages/Article.aspx?Volume=6&Issue=21&ArticleID=23685> (discussing new rules taking effect January 1, 2015 to provide more guidance to lawyers with respect to limited scope representation, especially in court cases, and noting that 42 states now allow attorneys to offer unbundled legal services); Grueskin, C., *New Rules Give Lawyers More Flexibility To Take On Cases*, Bismarck Tribune (June 7, 2016), available at: [http://bismarcktribune.com/news/local/crime-and-courts/new-rules-give-lawyers-more-flexibility-to-take-on-cases/article\\_379da74d-a2a7-5fe6-bfa3-8caa9f9bc5dd.html](http://bismarcktribune.com/news/local/crime-and-courts/new-rules-give-lawyers-more-flexibility-to-take-on-cases/article_379da74d-a2a7-5fe6-bfa3-8caa9f9bc5dd.html).



and that the ethics rules expressly recognize attorneys' entitlement to enter and adhere to retainer agreements limiting the scope of their pro bono services. Fewer attorneys will volunteer for needed limited scope representation if they think they cannot end their representations as provided in their limited scope retainer letters.

Thank you for the opportunity to testify, and a particular thank you to the Permanent Commission for its pathbreaking contributions to improving access to justice in this state.