



The Chief Judge's 2017 Hearing on Civil Legal Services in New York

**September 18, 2017
Court of Appeals
20 Eagle Street
Albany, N.Y.**

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

Good afternoon, and thank you for this opportunity to testify on behalf of the New York City Bar Association. As you know from prior years' testimony, the City Bar is an enthusiastic and grateful supporter of the Judiciary's annual allocation of \$100 million of its budget to funding of civil legal services for low income New Yorkers who face threatened loss of essentials of life. We at the City Bar are also celebrating enthusiastically this year the passage in New York City of the path-breaking law known as 214-b, providing for free legal services to low income tenants facing eviction who cannot afford a lawyer. New York City's example is already inspiring discussions in other cities, and it suddenly no longer feels naïve to look forward to the day when Americans broadly consider the notion that a person can be evicted from his or her home by court order without a lawyer as unthinkable – just as allowing a person to be convicted and imprisoned without a lawyer is considered unthinkable today.

Even with all these substantial allocations of government funds, and even with all of the praiseworthy pro bono generosity of the private bar, we all know that the available resources remain far short of what is needed. It's inevitably necessary, and essential, to focus significant energies on promoting the most efficient possible mechanisms for identifying what help clients need, calibrating the scope of free legal services to be provided in light of the nature of particular clients' needs and the competing demands for limited free legal resources, and protecting clients against the grinding experience of repeated rejections of their requests for help. At the suggestion of the Permanent Commission, my testimony today will be directed to one component of the effort to make the delivery of services as efficient as practicable – the creation of "communities" of service providers who use technology and organizational planning to pursue more efficient provision of the best possible services to the largest number of people.

The communities and portals now in place or being developed for this purpose range from low-tech versions that have been around for years, to high-tech versions that will use increasingly sophisticated forms of artificial intelligence to promote more efficient allocations of resources and delivery of legal services. At the City Bar Justice Center, for example, our legal services hotline provides, with lots of human input and at significant resource cost, many of the benefits that more technologically sophisticated communitarian efforts can and will provide. Experienced attorney hotline counselors determine, through escalating sets of questions adapted to callers' particular

circumstances and personal characteristics, whether the caller is eligible for free legal services, whether the caller's problem can be handled through brief legal advice or referral to self-help resources or forms, and, if the matter requires more sophisticated assistance, which legal services organization is the most appropriate one to handle the matter – including referral to pro bono projects operated by the City Bar Justice Center. This form of centralized information processing and triage is more efficient than establishing the same infrastructure at a large collection of individual legal services providers. However, the volume in New York is too great for any one hotline system to currently handle all the calls.

On the more sophisticated end of the spectrum, the City Bar Justice Center will be sponsoring in the next few weeks the rollout, after nearly 18 months' planning, of a consumer internet portal – the New York City Consumer Health Finder – that we hope will exemplify what can be achieved when providers work with each other and use the most modern technology available. Working with a grant from New York Community Trust and with technology developed by a case management software company known as Legal Server, the consumer law practice groups at the City Bar Justice Center, CAMBA Legal Services, Mobilization for Justice, CLARO and Urban Justice Center have combined to develop and implement a common portal that operates like a decision tree to confirm clients' eligibility, determine their needs, categorize the kind of assistance to provide them and allocate them to the most appropriate source of further legal services through a so-called Automated Routing Tool. Like a hotline, this portal will feature tiers of questions to the clients, as to which their answers will cause the clients to be directed electronically to the appropriate next set of questions. The process should be easy to use, not too burdensome on the clients, efficient, and effective at getting clients what they need – sometimes access to resources, and sometimes access to lawyers at participating organizations or court-based pro bono lawyers. And the routing tool will be designed to take advantage of the participating providers' different locations and areas of expertise, while reducing the burden on low-income clients who so often have to weather rejection by multiple providers before they either find the right one or simply give up the effort.

While the NYC Consumer Help Finder shows promise to be particularly cutting-edge and productive, and possibly a model for other efforts, other examples of communitarian pooling of intake or resources among multiple legal services providers in the interest of greater efficiency abound – usually having the common denominator that the participants were brought together by the government, by a private sponsor or funder or by the imperatives of a disaster. On the government front, New York City's Office of the Civil Justice Coordinator devotes enormous resources, ingenuity and skill to the allocation of legal services funding and responsibilities to a wide range of providers, an important component of which includes calling for cooperation, splitting of work and development of synergies between them. Most prominently, the gargantuan challenge of developing the full legal services infrastructure for providing the new tenant representations funded by new law 214-b is being hammered out right now. Likewise, government funding of legal services for detained immigrants, combined with arrangements not supported by government funds for representation of detainees with criminal records, is providing substantial impetus for treating the challenge as one to be addressed collectively as well as individually, and making efficient use of the different resources, skills and orientations of multiple providers in a holistic way. As another example, until recently the provision of pro bono and other legal services to microentrepreneurs in New York City was primarily concentrated in a small number of organizations – principally the City Bar Justice Center, Volunteers of Legal Service, Think Big Start Small and the Legal Aid Society's CLO office – whose joint conduct largely has been limited

to knowing about and avoiding redundant overlap with each other's areas of geographic and substantive coverage. But a recent Small Business Administration grant to VOLS has fostered a new joint effort that includes Brooklyn Legal Services and the Urban Justice Center.

Apart from the Consumer portal, the Immigrant Justice Corps (IJC) founded by Second Circuit Chief Judge Robert A. Katzmann and funded by private foundations, the New York Community Trust and the New York City Council, is a good example of a collaborative approach to increasing legal representation. IJC utilizes centralized substantive knowledge, new lawyer training and the allocation of law fellows to particular projects at participating organizations. The goal is to have law fellows focus on more complicated immigration legal services and to have IJC paralegals (called community fellows) sited at community organizations handle simpler immigration matters supervised by attorneys at the IJC. This links social services with legal services in a "one stop" fashion that their largest funders have considered an important component of the communitarian approach to addressing poverty.

Private pro bono has also made enormous strides in recent years to evolve from a collection of individual projects by individual lawyers, in-house counsel and firms to a more collective "community" effort. Legal services organizations trying to enlist pro bono support have seen the advantages of helping firms to benefit from work product developed by other firms. ProBono.Net, essentially a crowd-sourced resource to which numerous contributors provide substantive content for other pro bono providers to use, is an impressive application of technology to improving volunteer lawyers' capacity to provide free legal services, for which there is no correlative in the commercial bar. And the Association of Pro Bono Counsel coordinates efforts by volunteer lawyers at firms all over the country to improve efficiency, enhance communications and avoid duplication of effort.

Disasters have stimulated similar coordination of efforts, simply because the sprawl of need is so vast and the demands for organization among well-intentioned volunteers create imperatives to join forces. We saw the coordination of efforts among legal services and pro bono providers in response to 9/11, Superstorm Sandy, and the President's travel ban this past January, and we are most recently seeing it in response to Hurricane Harvey. It has been fascinating to watch the coalescing of volunteer efforts into a generally unified effort that provides assistance to Houstonians – a process not without organizational challenges and false starts, but remarkably well coordinated overall considering the scale of the challenge.

Another major source of organized collective service has been the ongoing effort, visible on many fronts, to engage non-lawyers along with lawyers in addressing issues for clients without resources. Sometimes the collective action has been of the "one stop" variety, combining legal services with social services that seem essential to providing fully effective assistance. Other times, the collective action has also included non-lawyers assisting lawyers who supervise them in the delivery of legal or paralegal services. Legal Hand, for example, is a program run by the Center for Court Innovation, a public-private partnership between the court system and the Fund for the City of New York. It features lawyers supervising non-lawyers who are out in the community to provide a wide range of assistance and support, including access to forms and do-it-yourself materials, referring matters to the supervising lawyers when the assistance becomes sufficiently legal in nature that lawyers need to get involved. This represents yet another way of leveraging limited legal resources for the most efficient possible delivery of assistance to those who need it.

Virtually no data yet available answers the question whether the various forms of community-supported portals for delivery of legal services from multiple sources actually enhance the efficiency of the delivery of free legal services. But intuition suggests that if well managed, they certainly should. That intuition presents the question why such coordination is not more universal for maximizing the efficiency of delivery of legal services, and why these portal structures seem to develop only when supported by external governmental or private funding or by the imperatives of a disaster. Two practical constraints seem to be in play. First, to the extent a pooling of resources and capabilities carries the prospect that individual legal services providers may consequently end up with more clients and more matters, that is almost never something they need or can readily absorb. Essentially every legal services provider is already turning away clients or providing clients more limited services than it would like because the demand for free civil legal services so greatly exceeds the supply. As a practical matter, arrangements like the consumer portal's Automatic Routing Tool will work only if the entities to which the matters are referred are generally able to take on these matters. For individual enterprises, this means as a practical matter that embracing synergies that generate more matters for them may have appeal only to the extent that those synergies at least equally offer the potential of letting them lay off matters to other enterprises better suited to handle such matters.

The second major impediment to more communitarianism in delivery of legal services is that making the relevant portals work requires a lot of careful attention to logistics and technical detail. Most legal services staff are not naturally equipped for, resourced for or disposed toward this kind of work, particularly when providers consistently think of resources directed to managing themselves as a reallocation away from the compelling and stretched alternative use of serving needy clients, who are consequently being turned away. These logistical arrangements don't come naturally; it has taken nearly 18 months of work to get the consumer portal to its current state of near-readiness for rollout, for example, and another entity's resourceful efforts to erect a similar portal for veteran-related matters essentially fizzled following a loss of momentum in setting it up effectively and working through its bugs.

Earmarked external funding tends to negate these problems and provide the necessary impetus to perform the hard logistical work necessary to make these portals work. Once in place, they really do seem capable of providing many of the benefits they are designed to achieve. Increasing technological capacity, expanded roles of artificial intelligence and the increasing capacity of poor clients to access this technology over the internet (which constituted its own nearly disqualifying impediment to internet-based portals as recently as a decade ago) seem certain to lead to expansion of these kinds of offerings. Technology offers major opportunities for more efficient allocation of invariably limited services in the legal services arena as much as in many other arenas, or maybe even more so because of the economic impediments that have delayed these developments so far. We encourage and recommend that external support funds continue to be earmarked in ways that incentivize programs to be innovative and to create collaborative projects that use technology as a way to improve the delivery of legal services to low income clients and to help further close the justice gap.

Many thanks.