



**The Chief Judge's 2018 Hearing on Civil Legal Services in New York**

**September 24, 2018  
Court of Appeals  
20 Eagle Street  
Albany, N.Y.**

**Statement of the New York City Bar Association  
By: Roger Juan Maldonado, President**

Good afternoon, and thank you for the opportunity to present this statement on behalf of the New York City Bar Association. As you know from prior years' presentations, the City Bar is an enthusiastic supporter of the work of the Permanent Commission on Access to Justice to close the justice gap and we applaud 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. This allocation of funding, alongside the dedicated pro bono service of New York lawyers, and the ongoing planning and evaluation and the emerging focus on community based solutions provides important momentum in New York towards access to justice for all low income persons.

So much has been accomplished in the past several years through the joint efforts of so many and we look forward to learning more about the initial pilots in Suffolk and Monroe Counties under the Permanent Commission's Justice for All Strategic Action Plan to provide effective assistance to all New Yorkers in need. The City Bar remains committed to your efforts as Chief Judge to develop regional initiatives that respond to the needs that are identified through collaboration at the local level. As these efforts move forward, please know that the City Bar is pleased to offer space and facilitation for meetings that the court and other New York City stakeholders decide to undertake during the next two years. The City Bar is also committed to reaching out to and creating dialogue with other community and religious institutions that may be able to help with community education to identify legal issues, suggest preventive measures to their members, and reduce the stress of facing a lawsuit and the loss of economic resources from low income and minority neighborhoods.

Today I will focus my remarks on three areas: first, I will give an update on the work of the City Bar Justice Center, our 501c3 affiliate organization which receives funding through a grant award from OCA's Judiciary Civil Legal Services funding; second, I will raise some continuing issues of concern facing consumer debt defendants in New York City's Civil Court; and finally I will mention the work of Court Square Legal Services and the City Bar Legal Referral Service, which provide access to justice for low and moderate income New Yorkers with certain kinds of cases.

## I. THE CITY BAR JUSTICE CENTER

Through significant leveraging of funding and pro bono volunteer time, the Justice Center annually delivers free legal assistance to more than 26,000 low-income New Yorkers from all five boroughs through limited and full scope legal representation, a focus on pro bono and a legal hotline. Tens of thousands of other New Yorkers are helped through the Justice Center's significant community outreach and education efforts. The City Bar Justice Center model is efficient and effective, resulting in the 9<sup>th</sup> highest number of cases handled last year in NYS.

During the twelve month period from 4/1/2017 through 3/31/2018, the Justice Center:

- Closed **13,416** cases, benefitting **26,295** people;
- Saved NY taxpayers an estimated **\$2 million** by assisting clients to obtain or maintain housing, employment, and appropriate government benefits;
- Helped clients obtain over **\$19.5 million** in benefits and monetary awards, including estate settlements;
- Helped clients divest themselves of over **\$3 million** in debt through consumer, bankruptcy and foreclosure prevention advocacy, and through avoidance of filing fees, estate taxes and tuition fees; and
- Leveraged about **\$15 million** in pro bono legal services for the poor.

During that twelve-month time period, with the support of Judiciary Civil Legal Services funding, the Legal Hotline answered **70% of the 22,235** calls that it received, up from 60% answered the year before. The Legal Hotline also responded to **1,371** online applications for assistance. Many of the callers to the Legal Hotline received preventive advice with a smaller number receiving brief services involving writing a letter or filling in court pleadings.

The Justice Center's heaviest caseloads were carried by its Immigrant Justice Project, Planning and Estates Law Project, Neighborhood Entrepreneur Law Project and Veterans Assistance Project. Additional projects, including the Legal Clinic for the Homeless, Homeowner Stability Project, Elderlaw Project and Consumer Bankruptcy Project each closed between approximately 150 and 250 cases. The projects all recruit, train and mentor pro bono attorneys who handle the bulk of the cases in the project using a range of methods from full representation to limited scope representation, to legal advice alone. The decision of which type of problem requires which approach is a decision made by our experienced experts in their field of law overseeing a nonlawyer project coordinator who does intake and administrative tasks.

The numbers of cases, however, do not do justice to the work accomplished. Some examples include:

- Secured over \$1,095,577 in retroactive Veterans Disability benefits and over \$39,361 in new, ongoing, monthly VA benefits for clients. In one case, obtained an increase in a Vietnam era veteran's disability rating from 40% to 100%, which provided him with an additional \$2,400 a month and \$400,000 in retroactive benefits dating back to 1992.
- Assisted 78 clients in filing for Chapter 7 bankruptcy relief, resulting in the discharge of over \$2.5 million and protecting an additional \$536,528 in assets, such as tax returns, savings and equity in residential homes, which would have been vulnerable to creditors had the clients not filed.

- Filed 182 immigration-related applications on behalf of immigrants, including petitions for Asylum, U and T Visas, legal permanent residency, naturalization, and work authorizations. For, example, obtained a T-visa for a victim of labor trafficking, which included arranging for her cooperation with the Department of Labor’s Wage and Hour Division.
- Handled 223 public assistance matters for residents of homeless shelters, with pro bono attorneys working on 131 of them. In all, assisted 639 people, which resulted in clients receiving retroactive benefits totaling \$84,339 in lump sum amounts, \$10,386 in monthly amounts, and \$6,053 in charitable donations. Clients also avoided over \$24,848 in recoupments and other forms of financial penalty. In one case, a pro bono attorney secured \$2,796 from HRA to cover rent arrears for a formerly homeless disabled mother residing with two children in supportive housing.
- Assisted an elderly Caribbean couple, who had been living in their Brooklyn home for more than 40 years, fight foreclosure by applying for Mortgage Assistance Program funds to pay off tax and insurance arrears. In the process, discovered a huge water bill of over \$40,000 that had resulted from a leaky basement pipe. Pro bono counsel negotiated with the Department of Environmental Protection and provided financial counseling that included obtaining a property tax exemption and better homeowners insurance, allowing the couple to live within their fixed-income means.

Simply put, the Judiciary’s commitment to funding civil legal services has been and will continue to be a game changer for the City Bar Justice Center and the civil justice providers in New York. It translates into healthier and more stable communities, homes and families. We support the idea of crafting justice solutions that match the need in local communities, because based on the experimentation done by the City Bar Justice Center and the data available from other providers, we don’t think there is a silver bullet or one best way to close the justice gap. We applaud the ingenuity of the civil justice community and the approach of the Permanent Commission with support from OCA to harness all of these efforts into a coordinated strategic action plan.

## **II. CONTINUING NEEDS IN NYC CIVIL COURTS AND CONSUMER DEBT CASES**

### *Consumer Debt Cases Generally*

I’d like to focus the second part of my remarks on consumer debt cases, an area that demands our continued attention. Notably, consumer debt defense is of growing concern. In 2017, creditors filed 75,634 consumer credit actions in New York City Civil Court, a significant increase over the 46,855 consumer credit actions filed in 2016.<sup>1</sup>

For the Justice Center’s part, we continue to lead a collaboration with the Urban Justice Center, CAMBA, Mobilization for Justice (MFJ), and Fordham Law School’s Feerick Center for Social Justice on the NYC Consumer Help Finder, an online intake tool which allows 24/7 access from any web browser to low-income New Yorkers applying for legal help with a consumer issue.

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<sup>1</sup> Data referenced in Part II of this statement was provided by the New York City Civil Court.

The tool is up and operational and now we need to increase community awareness and make sure that low income consumers are using it. The collaborative is focusing on outreach in order to increase activity and use of the Help Finder as a unified online consumer intake portal.

In addition, starting this summer, the Justice Center is piloting a new limited scope pro bono project in New York and Kings County Civil Courts in the Help Centers in collaboration with the court. A Justice Center attorney accompanies trained pro bono attorneys four times a month to the courthouse to provide unbundled legal assistance to pro se litigants with consumer debt, name change, warranty of habitability and other legal problems. Because legal clinics providing brief services require less conflict screening, we have been able to recruit some corporate legal departments and large law firms to volunteer despite their usual concern about not appearing adverse to a bank or financial services client. We very much look forward to this collaboration and to reporting our findings over the course of the next year.

Drawing from the experiences of the members of our Civil Court Committee, I would like to address other ways that the challenges of consumer debt cases may be alleviated and how funding for full legal representation can make a difference in the lives of the untold numbers of low-income defendants facing these cases without lawyers or with only limited assistance. The economic and social consequences of insufficient civil legal services for consumer-debt related cases are significant, and should not be overlooked. Consumer debt litigation threatens low income New Yorker's limited wages and assets which, in turn, threatens their ability to secure the "essentials of life," such as housing, basic income, and personal safety.

We should start with three basic propositions. First, the vast majority of consumer defendants are handling their cases without legal representation (although, as discussed later in my remarks, they may be receiving assistance in court by a volunteer attorney or court navigator). In 2017, only 3.5% of defendants in consumer credit actions filed attorney answers, closely approximating the 3.8% attorney answer rate for 2016. Second, default judgments are all-too-common in consumer debt cases. In the approximately 47,000 consumer cases filed in 2016, nearly 19,000 cases – 40% - ended in default judgments.<sup>2</sup>

Third, civil court judgments give creditors incredible power: a judgment creditor has the power for 20 years to garnish wages, levy bank accounts, and restrict a low income New Yorker's access to money that the individual needs to pay the rent, buy food, or remain financially independent from an abuser. Creditors rarely win judgments after trial; during the last decade, most judgments have been obtained because of the defendant's failure to answer the lawsuit or after a defaulted settlement agreement. The settlements that are executed in civil court allow a creditor to enter a judgment, without notice, for the full law suit amount plus interest and fees – after ONE missed or late payment. The settlements are protracted over years whereby the consumer defendant agrees to pay a monthly sum of money until the full balance is paid. For low income New Yorkers without reliable income, it is almost inevitable that at least one payment will be missed or late.

The Justice Center Hotline and other legal services offices receive a substantial number of intake calls from people who are dealing with the enforcement of judgments that are won because of a defaulted settlement agreement. High consumer filings coupled with the lack of adequate

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<sup>2</sup> Data indicates that the default rate is lower in 2017 – around 26% of the 75,634 cases filed; however, since the data was provided in early May 2018, we do not believe that all 2017 cases (and default judgments) were fully accounted for. Notably, the 40% default rate for 2016 matches the 40% default rate for 2015.

judicial resources results in a culture in the courts to push settlement in every case. This dissuades litigants from raising legal defenses or asserting the right to go to trial.

In addition to threatening an individual's ability to access funds needed to purchase and support the essentials of life, consumer debt litigation itself often involves debt arising from the consumer's purchase of items related to life's essentials. For example, automobile loans are often one of the largest purchases households will make, after the purchase of a home. Due to the size of the purchase, the sale must often be financed. For prospective buyers with poor credit, the options for financing are often limited, and prospective buyers are often left to rely on the auto dealer to provide financing for the purchase of a vehicle. When the only credit available to secure this necessary purchase is through the dealer, consumers can be forced into deceptive and predatory loans with extraordinarily high interest rates, hidden fees, and unnecessary "add-ons." The finance charge on these loans is often above the New York civil usury rate of 16% and typically at a rate of 24.9%, which is just below the criminal usury rate of 25%.

Due to the nature of an automobile purchase, the deficiency lawsuits filed in the civil and district courts are relatively high-dollar compared to most consumer debt cases. Furthermore, the cases can involve technical legal defenses (that may be unfamiliar to the judges) and be highly fact-specific if there has been fraudulent activity on the part of the dealer. As a result, the cases demand a lot of time and resources for an attorney, but without an attorney the cases are very difficult to defend. As an example, one subprime auto lender – Credit Acceptance – filed 2,714 cases in civil or district courts in New York last year according to the eCourts system.

There is a strong bias (in society, in courts and in the media) against consumer debt defendants who are viewed as "deadbeats" or as individuals who are trying to "get out of" paying their debts. As a result, in court, the question of whether or not a person "owes the debt" prevails over all other questions of law including issues of due process, evidentiary rules, and the sufficiency of creditors' legal claims. All of this results in a system where unrepresented defendants are presumed "guilty", pushed to settle, and often not given the opportunity to raise legitimate defenses.

Moreover, although the problem of "sewer service" is not as widespread as a decade ago, it still exists. In those cases where defendants are fortunate to secure legal assistance and want to file a motion to vacate a default judgment based on lack of personal jurisdiction - often where a judgment has been bought and sold several times - defendants continue to have difficulty accessing their court files before filing the motion.<sup>3</sup> Many debt buyer judgment creditors oppose motions to vacate by alleging valid service but without attaching the affidavit of service, which can cause the case to be extended for weeks, sometimes months. During that time, the consumer defendant's garnished wages or levied funds are being held by the judgment creditor.

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<sup>3</sup> See *Implementation of Advisory Notice 17 and Chief Clerk's Memorandum 203, March 18, 2016 Letter from City Bar to Judges Fisher, Boddie, Cannataro, Douglas, Esposito, and Straniere*, <https://www2.nycbar.org/pdf/report/uploads/20073063-CaseFileAccessVacatingDefaultJudgmentsImplementationCivilCourtFINAL3.18.16.pdf>

### *Broken Lease Cases*

Lastly, I want to raise the issue of rental arrears or “broken lease” cases. In recent years, landlords have increasingly sued former tenants in civil court for monetary damages for claims over broken leases, use and occupancy, unpaid rent, and attorneys’ fees and costs. As with other consumer cases, these cases can entail service defects and default judgments, and are handled by the same or similar high-volume debt collection firms. What is more, the rental arrears cases are often preceded by landlord/tenant litigation that often seeks a judgment for alleged damages that already have been awarded in the previous housing case or for claims or damages to which the landlord is not legally entitled. The City Bar proposed solutions to this problem last year, including: (i) instituting a court rule requiring plaintiffs in rental arrears actions to file with the summons and complaint an attorney affirmation stating the index number of all Landlord-Tenant proceedings related to the rental arrears action; (ii) treating rental arrears actions as consumer credit transactions so that they are heard in the Consumer Part; and (iii) in connection with the conclusion of a case in L&T Court, taking measures to inform tenants that it may be possible for the landlord to sue them again in civil court for money the landlord believes it is owed.<sup>4</sup> We will continue to request dialogue and solutions on this issue, but legal representation continues to be an important component of protecting low-income tenants’ rights in these cases.

### *Proposed Solutions*

Studies show that being represented by counsel in debt collection lawsuits dramatically improves outcomes for consumers, including increasing the likelihood that the case will be dismissed. This can have enormous positive consequences for the defendant’s ability to secure and maintain the essentials of life. The consumer defendants who are most vulnerable to the ill effects of debt collection law suits are the working poor who earn limited wages that are threatened by potential judgments. Immigrants who are unfamiliar with the civil court judicial system (and the consumer credit system generally) are also particularly vulnerable as are survivors of intimate partner violence, many of whom experience economic abuse at the hands of their abusers.

The programs providing assistance to consumer debtors through volunteer attorneys and court navigators housed in courthouses, such as those operated by NYLAG and CLARO, are doing important and laudable work, but cannot fully address the justice gap in these cases. We need to continue developing collaborative programs that accomplish three primary purposes, all related to reducing the number of default judgments entered and/or enforced in consumer debt cases: (i) engaging in community outreach to educate consumers about (a) the need to appear in court upon receipt of either a summons or enforcement action and (b) available resources to assist them in appropriately responding to the summons; (ii) creating a cadre of legal services/pro bono attorneys who are well-trained in vacating defaults and defending big money cases, such as the car loan and broken lease cases; and (iii) educating the judges who hear these cases on the need to understand and enforce the defenses that consumers have to these actions and the consequences of allowing settlements to accelerate the entire amount owed based on only one missed payment. In our view, given the continuing need and the impact on people’s lives, consumer debt defense is one of the most under-resourced legal services practice areas in New York City and New York State. We

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<sup>4</sup> *Proposals for Handling Rental Arrears Actions, May 16, 2017 Letter from City Bar to Hon. Fern A. Fisher*, [https://s3.amazonaws.com/documents.nycbar.org/files/2017139-Rent\\_Arrears\\_Letter\\_CIVCOURT\\_JUDADMIN\\_HOUSINGCOURT\\_5.16.17.pdf](https://s3.amazonaws.com/documents.nycbar.org/files/2017139-Rent_Arrears_Letter_CIVCOURT_JUDADMIN_HOUSINGCOURT_5.16.17.pdf)

further urge judicial and court staff education on issues related to consumer debt generally, cultural competence, implicit bias, inclusion, and the impacts of poverty.

### **III. LEGAL REFERRAL SERVICE AND COURT SQUARE LEGAL SERVICES**

Finally, I wish to mention the City Bar's efforts to increase access to civil attorneys willing to handle cases on a contingency fee or for statutory attorneys' fees. Briefly, our Legal Referral Service continues to answer nearly 60,000 requests per year from New Yorkers who don't know where to turn or even if they have a legal claim. Poor people with a personal injury or other meritorious tort claim can be matched with panel attorneys; some other areas of the law will provide attorneys' fees for the counsel.

In addition, the City Bar and participating law firms helped to design and seed Court Square Legal Services several years ago to create a model law firm to provide affordable legal services. After some initial bumps in the road, I am happy to report that project is viable and has created a sliding fee scale so that services it offers are affordable to those with moderate income.

### **IV. CONCLUSION**

We are proud to continue our collaboration with the court system and other stakeholders to address and, ultimately, close the justice gap faced by individuals who cannot afford legal representation in cases threatening the essentials of life. Complex problems require myriad solutions and I think we've learned that there is no silver bullet here. The City Bar stands ready to assist as we all strive to fully understand the scope of the problem and the best available solutions.

September 24, 2018

Roger Juan Maldonado  
President<sup>5</sup>

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<sup>5</sup> I am grateful to staff of the City Bar Justice Center and to Shanna Tallarico, chair of the City Bar's Civil Court of the City of New York Committee, for their contributions to this statement.