



Remarks for the Chief Judge's Statewide 2019 Civil Legal Services Hearing

**September 23, 2019
Court of Appeals
20 Eagle Street
Albany, N.Y.**

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

As President of the New York City Bar Association, I am pleased to appear before you in support 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 the essentials of life. Not only was this a great idea, it has provided a strong foundation on which nonprofit legal services providers have been able to grow a stable team of legal professionals and embark on service improvements. We ask the Judiciary to evaluate the success of this programming and to consider increasing the allocation in the next budget year. The justice community looks to OCA for an increase in funding together with the ongoing dedicated pro bono service of New York lawyers and law graduates, and the continued efforts to find innovative community based solutions, to bring New York closer to access to justice for all low income persons in 2020.

The City Bar supports and applauds your ongoing efforts as Chief Judge to foster regional initiatives that respond to the needs that are identified through collaboration at the local level. In spring 2019, the City Bar was pleased to host the Civil Court Listening Session convened by New York City Civil Court Administrative Judge Anthony Cannataro and we know these important efforts have gone on throughout the state.

This statement addresses four matters: first, I will cover what the City Bar Justice Center, our 501c3 affiliate organization, has accomplished with the Judiciary Civil Legal Services (JCLS) funding; second, I will address disaster relief and what the civil justice community needs in terms of increased funding; third, I will speak to the value to the larger New York City community of steady court funding for nonprofits providing civil legal aid; and fourth, I will briefly address the landmark Right to Counsel Law which guarantees legal representation to low-income tenants facing eviction in New York City.

I. CITY BAR JUSTICE CENTER ACCOMPLISHMENTS WITH JCLS FUNDING

Through significant leveraging of funding and pro bono volunteer time, the City Bar Justice Center (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 large legal hotline. The Justice Center provides assistance to tens of thousands of other New Yorkers through its online resources and significant community outreach and education efforts. During the last two reporting periods, with the support of JCLS funding, the Legal Hotline has increased its staffing while pursuing efficiencies which has steadily increased its ability to assist more clients. The Legal Hotline now answers 90% of calls that it receives as of 2018-19 up from 60% answered two years ago. The Legal Hotline also is able to respond to an increasing number of online applications for assistance which permits the public to apply for help anytime of the day or night. 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. During the 2018-19 grant year, the Legal Hotline answered 100% of its online applications, in total helping over 21,000 people by answering legal questions and providing brief service on issues that relate to the basic needs of many NYC residents, such as landlord-tenant problems, custody and child support, consumer debt and employee rights.

The dozen projects of the Justice Center efficiently complement the brief services of the Legal Hotline. The Legal Hotline screens cases for the Consumer Bankruptcy Project (CBP), which in 2018 provided advice and counsel to 363 low income persons in 187 matters on their rights and options on consumer debt, including filing for bankruptcy, and assisted 62 individuals file for Chapter 7 bankruptcy relief. The same year, the Homeowner Stability Project, which helps low-income New York City homeowners at risk of losing their property, provided legal assistance to a total of 162 clients, including 27 senior citizen homeowners. It assisted 37 clients avoid foreclosure by obtaining loan modifications, bringing their mortgages current, satisfying their loans, selling their properties at a profit, getting their foreclosure actions dismissed, or refinancing their loans. Nine clients attained some other positive outcome, such as averting a default judgment or delaying foreclosure, and eight of those clients obtained interest-free government loans totaling \$300,107 to prevent foreclosure.

In aggregate, this past year the Justice Center helped clients obtain over \$10.3 million in benefits and monetary awards, including estate settlements; saved NY taxpayers an estimated \$2 million by assisting clients obtain or maintain housing, employment, and appropriate government benefits; helped clients divest themselves of over \$2.4 million in debt through consumer, bankruptcy and foreclosure prevention advocacy, and through avoidance of filing fees, estate taxes and tuition fees; and leveraged over \$15 million in pro bono legal services for the poor and economically distressed. Of particular note, during this grant year, the Justice Center:

- Developed, in collaboration with the NYS Access to Justice Program, the Civil Court Project in which staff attorneys from the Justice Center's Legal Hotline supervise pro bono attorneys providing legal assistance to visitors at the Help Centers in the New York and Kings County Civil Courts.
- Developed a CLE on diversity and inclusion in pro bono advocacy, which two Justice Center attorneys have presented to nearly 300 attorneys who volunteer with Justice Center projects, work with Justice Center pro bono partners, or are City Bar members.
- Secured \$750,182 in retroactive Veterans Disability benefits and \$27,536 in new,

ongoing, monthly VA benefits for disabled New York City veterans.

The Judiciary's commitment to stable funding for civil legal services has been and will continue to be vital for the Justice Center and the civil justice providers in New York. This commitment translates into healthier and more stable communities, homes and families, it reduces the presence of unrepresented parties in court or keeps cases out of court altogether, and it helps to access and obtain federal benefits. We continue to advocate for justice solutions that match the need in local communities, because based on the data and experimentation done by the Justice Center and other providers, there is no 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. Now we ask OCA to consider an increase in funding given the success of the program and the increased operating costs that providers have with rent, salary and benefit increases. Moreover, an increase in funding will allow providers to continue playing a vital role in our collective pursuit of fully closing the justice gap for low-income New Yorkers.

II. JCLS FUNDING HELPS MEET EMERGING NEEDS IN DISASTERS

The Justice Center provides pro bono legal clinics when disaster strikes. From 9/11 to Superstorm Sandy, the Justice Center has trained volunteers and rapidly set up legal clinics after a disaster to assess legal needs and get people access to services and safety net benefits. Our free legal hotline helps to get clients in need to the right location for help and is particularly useful during the immediate aftermath, while the ABA Young Lawyers Division gets its FEMA contracted disaster hotline set up in far flung locations. When Hurricane Maria hit Puerto Rico and families fled to relatives in New York City, the JCLS funding helped support the Justice Center in recruiting and training 175 pro bono attorneys on FEMA appeals and holding four pro bono clinics to help Hurricane Maria victims who had relocated to NYC. Many of these families had disabled children and other disabled family members who could not function with the conditions on the island. Our volunteers were able to help clients prepare appeals on the same evening that we held a clinic regarding FEMA benefits, and our staff completed the filing of the appeal if the client needed to collect more evidence and return at a later clinic. We also helped to link the displaced clients with available local resources.

In order to continue to deploy staff resources in the event of future disasters and to continue to innovate, New York's civil legal services programs, including the Justice Center, need increased funding that at least keeps up with costs of living. Programs that are stretched thin financially cannot innovate effectively and cannot be expected to spring into action when a disaster strikes. As costs increase and funding stays flat, the unfortunate but inevitable outcome will be an inability to afford to fill staff lines as people leave. This means programs may have to shrink.

Funding for JCLS has been flat for several budget cycles. Civil providers have worked hard to improve their use of technology, installing upgraded case management and document management systems as well as online applications, client texting capabilities and other efficiencies. An increase in JCLS funding will help providers to continue this important work. It is imperative that New York's judiciary continue to take the lead and make this work sustainable.

III. A STABLE CIVIL JUSTICE COMMUNITY IS CRUCIAL

The New York civil justice community is at an interesting inflection point with the adoption of right to counsel initiatives at the New York City Council in the immigration removal defense and housing eviction contexts. While the parameters of this local funding are worked out and the programs are rolled out, it is crucial that JCLS funding continue as a stable source of funding for the civil providers. Just this year, the City Bar Fund has worked with IOLA and the Robin Hood Foundation to help develop a supervision, management and leadership skills training program for new legal services housing supervisors in collaboration with New York Law School. Rapid expansion brings its own possible problems in terms of training and supervision, so at this time it is doubly important that stable funding continue through the Office of Court Administration. But continuation of funding in this context does require an increase; otherwise the civil programs will have to meet cost increases from other funding sources, which will divert from the mission at hand.

The Judiciary's commitment to legal services funding has helped to change hearts and minds when it comes to supporting legal services providers and maintaining a court system that is fair, just and efficient. A stable stream of funding has given people a real voice in the justice system, facilitated more efficient resolutions of conflicts, decreased the number of unrepresented parties, and leveled the playing field for low-income persons. We support and applaud the Chief Judge's continuing commitment to this initiative. Although the justice gap is shrinking, it is still significant, and the City Bar stands ready to continue its partnership with the Judiciary to fully close the gap.

IV. UNIVERSAL ACCESS AND RIGHT TO COUNSEL FOR LOW-INCOME TENANTS FACING EVICTION IN NYC HOUSING COURT

I was asked to say a few words about the Right to Counsel in New York City Housing Court.¹ Simply put, it is a game-changer. Central to the law is an acknowledgement of the importance of counsel in allowing tenants to fully assert their rights and defenses. It's about due process and all that flows from that fundamental precept. Tenants have a greater sense that they are being treated with dignity and respect. The behavior of judges and opposing counsel is changing as the expectation changes that the litigation will require hearing from both sides in an equal manner. Many more important legal issues are being flagged and litigated - tenant attorneys are successfully raising issues that never could have been raised by pro se tenants.

Our Task Force on Civil Right to Counsel has been actively discussing, both with the Office of Court Administration and the Mayor's Office of Criminal Justice, the physical conditions of the Housing Court. This is an important issue that we need to keep talking about. The physical conditions of the court could fairly be viewed as reflecting a lack of respect for the lives, homes and communities of low-income tenants, who are mostly people of color. Notably, there is a lack of space for confidential attorney/client communications in most of the boroughs (Queens is the exception). There have been promises made that the courts in the Bronx and Brooklyn (the worst

¹ New York City is the first jurisdiction in the country to ensure legal representation for all low-income tenants in eviction proceedings. As such, we are setting an example for the nation, and all eyes are on us. The Right to Counsel Law is currently in the second year of a five year roll out. Civil legal services are an essential component of meeting the expansion of the law.

of them) will be moved to new facilities, but this has gone on for years and it is unclear when we will see real change.

The need to connect tenants with their lawyers earlier in the process is also a very important issue to keep in mind. The measures adopted by the Housing Stability and Tenant Protection Act of 2019 (HSTPA) that passed in June will help. The time frame for many of the required pre-litigation predicate notices has been expanded, as has the time to answer a petition. Adjournments are now easier to obtain and for longer periods as a result of the reforms to the RPAPL. Our Task Force has been discussing whether to propose expanding the time to answer, and the changes in HSTPA are a good start - for nonpayments the time to answer has been increased to 10 days from 5, and for holdovers, the time to answer has been extended from between 5-12 to between 10-17 days. This change in the law is commendable, but this is still not enough time to get counsel and prepare an answer with counsel, as opposed to filing a pro se answer. We are studying suggestions that the time frames be even longer, mirroring other civil litigation.

It is so important to build a robust pipeline of lawyers who can provide the highest quality representation. The law schools have been taking up the challenge to some degree, with more clinical, externship and other experiential learning opportunities. As discussed earlier, we helped NYLS launch the Housing Justice Leadership Institute to train supervisors of housing rights work in supervisory, leadership and management skills, and there have been several presentations at career fairs, conferences, etc. to recruit, but more still needs to be done. Also, there is a need for more expansive and well-thought-out training for the lawyers who are doing the direct representation. This may be an area of funding that the Permanent Commission can explore further.

Finally, the courts should be encouraged to consider more efficient and effective data collection to assist the right to counsel efforts. There is much room for improvement in the courts' use of data collection to ascertain such information as case outcomes and length of case. Also, we need to do a better job of understanding and conveying how tenants experience the current system. For example, in one court, tenants who have the right to counsel are "required" by the clerks to file their answer before they are directed to the room where they can meet with legal services lawyers. That is plainly counter-productive to the aims of the law.

V. CONCLUSION

We are proud to continue our collaboration with the court system and other stakeholders to address and, ultimately, close the civil justice gap faced by individuals who cannot afford legal representation in cases threatening the essentials of life. We thank the Court and the Chief Judge for their incredible leadership in addressing the complex problems of access to justice.

Respectfully,

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² I am grateful to staff of the City Bar Justice Center, to Andrew Scherer and Alison King, co-chairs of the City Bar's Task Force on Civil Right to Counsel, and to Sara Wagner, chair of the City Bar's Housing Court Committee, for their contributions to this statement.