

The logo for the New York City Bar, featuring the text "NEW YORK CITY BAR" in a bold, serif font, centered between two horizontal blue bars.

**NEW YORK
CITY BAR**

**SENATE STANDING COMMITTEE ON JUDICIARY
SENATE STANDING COMMITTEE ON CHILDREN & FAMILIES
JOINT PUBLIC HEARING ON NEW YORK STATE FAMILY COURT**

NOVEMBER 1, 2023

TESTIMONY OF THE NEW YORK CITY BAR ASSOCIATION

Good morning Senators Brisport and Hoylman-Sigal, and to all members of the Judiciary and Children & Family Committees. Thank you for giving the New York City Bar Association the opportunity to testify today.

My name is Michael Weinstein. I currently serve the people of northern Manhattan, my life-long friends and neighbors, as part of the Neighborhood Defender Service of Harlem's family defense practice. Our work primarily involves Article 10 abuse and neglect proceedings, but we also work on orders of protection and custody matters, along with my present specialty, appeals and strategic litigation. I am the Co-Chair of the City Bar's Family Court and Family Law Committee.

I am present today because time and again, I have chosen to work with parents in family court over every other calling. Twice I have left other employ after very brief periods of time to return to the work that I love. Ten years, perhaps a thousand families represented, and hundreds of trials later, I now feel confident in my observations concerning the state of our great State's Family Courts. Beyond observing the various inefficiencies and room for improvement that the City Bar has reported, my colleagues at the City Bar committee that I co-chair, who come from all walks of family court life, jurists to budding attorneys, have all corroborated my own fears. The New York Family Courts are broken, resulting in unnecessarily delayed access to justice for the hundreds of families to whom I have dedicated my life, in service.

I will now turn it over to my colleague, Rene Kathawala, to introduce himself and to present this testimony on behalf of the City Bar, after which we are both happy to answer any questions you might have.

Good morning. My name is Rene Kathawala. I am the pro bono counsel for Orrick, Herrington & Sutcliffe LLP, an international law firm based in New York City. I have been representing low-income clients in New York State Family Courts for more than twenty-five (25)

About the Association

The mission of the New York City Bar Association, which was founded in 1870 and has over 23,000 members, is to equip and mobilize a diverse legal profession to practice with excellence, promote reform of the law, and uphold the rule of law and access to justice in support of a fair society and the public interest in our community, our nation, and throughout the world.

years, primarily working on child support, custody and visitation and orders of protection cases. I have handled many more than 300 petitions in the New York City Family Court during my career.

Based on my long-standing commitment to access to justice issues in the Family Court context, I have been appointed as Co-Chair of working groups of the City Bar focused on race equity in New York State courts, the Family Court response to COVID-19 and others; I've been a member of the City Bar's Pro Bono and Legal Services Committee and currently sit on the Council on Judicial Administration. I have been involved in the drafting and release of City Bar reports making significant recommendations about how the New York State Unified Court System could meaningfully reform the New York City Family Court. This testimony, which focuses on the Family Court in New York City, includes a series of links to prior City Bar reports that are relevant to the proceedings here, the top of which also endorses the recent Williams Commission report on New York City Family Court.

The New York City Family Court is emblematic of long-standing inequities and systemic discrimination. Family courts in New York City are dehumanizing and have a demeaning cattle-call culture. For example, litigants are summoned to appear at 9 am and often wait hours to get a mere 15 minutes of court time. Cases are adjourned for weeks or months at a time with the resolution of a case far in the distance. Court vacancies caused by judicial retirements or transfer of judges to the Civil or other courts result in Family Court parts being vacant for up to a year, during which time litigant cases are not processed. Mr. Weinstein and I have had countless clients say that they do not see any purpose in showing up in Family Court and enduring the disrespectful system that is the New York City Family Court.

In the view of many who represent clients in Family Court, the management of the court system – the Office of Court Administration, or OCA – unacceptably tolerates a broken court that has not seen substantial improvements in decades. Professed progress simply is not evident to the many poor and working-class litigants who set foot in the New York City Family Courts. The overwhelming majority of the litigants in the Family courts in New York City are people of color. These litigants have no voice, and they are further silenced by a bureaucracy that does not see their plight as one worthy of a dignified process. The sad picture that emerges is, in effect, a second-class system of justice for people of color in the New York City Family Court. As found by Secretary Jeh Johnson in his 2020 Equal Justice report, this has been an enduring feature of the New York City Family Court for decades. Yet, OCA has failed to meaningfully and systematically engage the diverse group of stakeholders who operate in the New York City Family Courts to ensure they are able to provide significant and sustained input into potential reform of the system.

Key Recommendation. Given the limitations of time, we focus our testimony today on one recommendation made by the City Bar and other stakeholders. (Other recommendations appear in the City Bar reports linked below). As background, if you appear in virtually any state trial court or federal district court in the country, procedural rules exist that govern the conduct of the cases in these courts and ensure there is a credible and thoughtful process. One of the only courts that does not have procedural rules is the Family Court, statewide. This has a tremendous negative impact on litigants because procedure differs in most of the more than 100 Family Court parts of the New York City Family Courts alone. As just one example, a litigant can show up 5 minutes after their case's scheduled court hearing in one part and have the petition be dismissed

for failure to appear timely, and in another part, the same litigant in the same case type shows up 150 minutes late with no consequence.

Court leaders should **enact uniform procedural and part rules for both in-person and remote proceedings in Family Court**. Judicial discretion is not a sufficient justification for the absence of consistent, published part rules dictating discovery, trial procedure, and courtroom behavior. Clear rules will help ensure that all litigants and lawyers are treated fairly and equitably regardless of which courtroom their case is assigned to. It is unclear to us and many advocates why these rules have not been implemented. This is just one example of common-sense reforms that we have proposed and that require no additional court resources. But for whatever reason, this recommendation has been met with resistance. Hopefully hearings like this will cause a shift in court leadership thinking so that reforms to truly better the system can be implemented.

We close with one final thought and recommendation which, in our view, should not be all that controversial because it's really just about communication. It has proven difficult to come up with a meaningful and sustained way of talking about stakeholder recommendations with OCA and court leaders and/or assessing the progress of promised change. To that end, one of our recommendations is for the court system to provide clear, public-facing information regarding implementation efforts, monitoring, and how stakeholders can regularly provide input as part of the process.

Thank you for your attention; we are happy to answer any questions.

Prior City Bar Resources

July 2023, Progress Report and Recommendations: Creating Lasting Reform in the Wake of Secretary Jeh Johnson's Equal Justice Report
https://s3.amazonaws.com/documents.nycbar.org/files/20221084CityBarReportWorkingGroupRacialEquityNYSCourts_FINAL.pdf
(Recommendations start at page 11, and begin by concurring in the findings and recommendations of the [Williams Commission report on NYC Family Court](#).)

February 4, 2022, Report from Multi-Committee Working Group on the Impact of COVID-19 on the New York City Family Court: Recommendations on Improving Access to Justice for All Litigants,
<https://www.nycbar.org/member-and-career-services/committees/reports-listing/reports/detail/nyc-family-court-covid-19-impact>.

June 15, 2021, Letter from Working Group on Racial Equity in New York State Courts to the Franklin H. Williams Judicial Commission Regarding their May 19, 2021, Meeting with New York City Family Court Stakeholders, <https://www.nycbar.org/member-and-career-services/committees/reports-listing/reports/detail/racial-equity-in-courts-williams-commission-meeting>.

April 9, 2021, Report from Domestic Violence Committee: Recommendations for New York City Virtual Family Court Proceedings, With Particular Focus on Matters Involving Litigants

Who Are Survivors of Abuse, <https://www.nycbar.org/member-and-career-services/committees/reports-listing/reports/detail/comments-on-virtual-trial-rules-domestic-violence-cases>.

December 15, 2020, Report from Multi-Committee Working Group on The Family Court Judicial Appointment and Assignment Process, <https://www.nycbar.org/member-and-career-services/committees/reports-listing/reports/detail/the-family-court-judicial-appointment-and-assignment-process>.

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