

**Written Statements Submitted at the  
Fourth Department Hearing on October 6, 2011**

**Statements of Testifying Witnesses**

Karen and Bernard Dent (Clients of Western New York Law Center, accompanied by Joseph Kelemen)

Hon. Paula L. Feroletto (Administrative Judge, Eighth Judicial District; Co-Chair, Eighth Judicial District Pro Bono Committee)

Jack Hagen (Client of Legal Services for the Elderly, Disabled or Disadvantaged of Western New York, Inc., accompanied by William W. Berry)

Bryan D. Hetherington (President, Monroe County Bar Association)

Stephen L. Johnson (Member, Bond, Schoeneck & King, PLLC)

Hon. Deborah H. Karalunas (Supreme Court, Onondaga County)

Michelle Kilian (Client of Neighborhood Legal Services, Inc., accompanied by William J. Hawkes)

Makau W. Mutua (Dean and SUNY Distinguished Professor, University at Buffalo Law School)

Hon. E. Jeannette Ogden (Buffalo City Court; Acting Judge, County and Family Courts)

Arthur A. Russ, Jr. (President, Bar Association of Erie County; Of Counsel, Phillips Lytle LLP)

Gabrielle Threet (Client of Erie County Bar Association Volunteer Lawyers Project, accompanied by Robert M. Elardo)

Justin L. Vigdor (Chair, Telesca Center Capital Campaign; Past President, New York State Bar Association and Monroe County Bar Association; Senior Counsel, Boylan Code LLP)

# **Karen and Bernard Dent**

Clients of Western New York Law Center,  
accompanied by Joseph Kelemen

Good morning.

My name is Bernard Dent and I am pleased to have this opportunity to provide testimony describing the assistance I received as a client of the Western New York Law Center. Like many in New York I have had to deal with the loss of my job, having been laid off in 2009. Aside from temporary employment as a Census worker, the drop in our household income was a serious problem. As a result, the stress and the financial difficulties have been quite significant. Had it not been for the fact that my wife's teaching position allowed us to stay afloat, this story may not have had a happy ending.

While I sought new employment, my wife and I, who support three children and an elderly parent, began to see that it would be impossible to continue to keep up with all of our expenses. We were faced with the reality that our expenses, which includes consumer debts, would need to be prioritized and unfortunately that meant spending what little money we had on the essentials - food and transportation, over our mortgage payment, even though we realized that had the potential to cost us our home. Despite our best attempts at negotiating with the bank, our requests for an affordable restructuring or forbearance fell on deaf ears, and in the end we were offered a repayment plan that increased our monthly payment by \$750 and required a \$4,000 down payment. Compounding an already challenging situation, our mortgage servicer notified us that we were being charged a substantial amount in legal fees, even though the foreclosure action had yet to commence.

My mortgage servicer did not see a need to act in good faith and work with me to find a beneficial resolution for both parties. The average homeowner simply does not have the background and expertise to be able to provide the necessary defense of a foreclosure action. Furthermore, putting in the necessary hours to prevent a foreclosure while searching for employment is a tremendous challenge. Clearly, the average homeowner simply does not have the background and expertise to be able to provide the necessary defense of a foreclosure action. Thankfully I was able to enlist the services of the Law Center.

After I met with one of their attorneys, Amy, she began to communicate with the bank on my behalf, and the result was nothing short of incredible. Amy convinced the bank to offer me a loan modification that only slightly increased my payment. On top of that, she also convinced them to fundamentally restructure the mortgage itself to where the high adjustable interest rate, which could rise to 14%, was switched to a lower fixed rate. In addition, the legal fees were also reduced by over \$800 and the requirement of a down payment was dropped. Since signing the modification agreement, I have found new employment and have had the privilege of resuming my mortgage payments. The Law Center has literally saved my home and I have the confidence that in time I will have it paid off in full.

Bernard Dent

# **Hon. Paula L. Feroletto**

Administrative Judge, Eighth Judicial District; Co-Chair, Eighth  
Judicial District Pro Bono Committee

**HONORABLE PAULA L. FEROLETO**  
**ADMINISTRATIVE JUDGE OF THE 8TH JUDICIAL DISTRICT**

92 Franklin Street, 2<sup>nd</sup> Floor  
Buffalo, New York 14202  
(716) 845-9438

Administrative Judge 2009 - Present

8<sup>th</sup> Judicial District

Supervise 11 City courts, Family Courts, Surrogate's Courts, County Courts and Supreme Court for the 8 counties comprising the 8<sup>th</sup> Judicial District.

New York State Supreme Court Justice Elected 2005

8<sup>th</sup> Judicial District

Brown & Kelly, LLP

Partner and Associate Attorney

1983 - 2005

**Education**

State University of New York at Buffalo Law School 1982

*Juris Doctorate*

Georgetown University 1978

*Bachelor of Science*

**Memberships & Service**

National Association of Women Judge's and Supreme Court Judge's Association

Past President of the WNY Trial Lawyers Association

Women's Bar Association, having served on the Judiciary Committee

Women Lawyers of WNY

Member and former Officer of the Bar Association of Erie County

Served on the Board of the SUNY at Buffalo Law Alumni, as Director, Secretary and Vice President

Diversity Steering Committee for the 8<sup>th</sup> Judicial District

Pro Bono Committee for the 8<sup>th</sup> Judicial District

Gender and Racial Fairness Committee for the 8<sup>th</sup> Judicial District

Lawyers for Learning, Inc., Director and volunteer tutor

**Awards**

Minority Bar Association 2011 Legal Service Award

Women in the Law Award 2011 - Gender and Racial Fairness - 8<sup>th</sup> J.D.

UB Law Alumni Association - Judiciary Award - 2011

Judicial Award - 2010 from Volunteer Lawyers Project

Sandy Kulick Award - 2010

Commitment to Education Award 2009

Lawyer of the Year Award - 2006 from Women Lawyers of Western New York

Short Summary of Planned Testimony  
Task Force to Expand Access to Civil Legal Services in NY  
Fourth Judicial Department Hearing  
October 6, 2011

Hon. Paula L. Feroletto  
Administrative Judge  
Eighth Judicial District

I will be discussing the effect of pro se litigants on the efficient operation of the Courts and on the fair administration of justice in the Eighth Judicial District. I will also discuss how having a pro bono lawyer or a lawyer from one of the legal services programs appear for a litigant greatly improves efficiency and leads to fairer administration of justice. I will also discuss some of the specific initiatives that we have under taken in the Eighth Judicial District and their success. I will close by discussing the overwhelming need for increased resources to support legal services and pro bono programs.

Testimony  
Task Force to Expand Access to Civil Legal Services in NY  
Fourth Judicial Department Hearing  
October 6, 2011

Hon. Paula L. Feroletto  
Administrative Judge  
Eighth Judicial District

My name is Paula L. Feroletto and I am the Administrative Judge for the Eighth Judicial District. In addition, I serve as Co-Chair of the Eighth Judicial District Pro Bono Committee. Prior to being elected to serve as a Justice of the New York Supreme Court, I was a partner at Brown & Kelly where I served as the firm's Pro Bono Coordinator.

I want to thank Judge Lippman and the Task Force for conducting these hearings, elevating the level of the Court's role in ensuring access to justice and raising awareness of the overwhelming need for civil legal services for low income people.

The staff attorneys and pro bono lawyers in the Eighth Judicial District dramatically improve access to justice and aid tremendously in the efficiency of our Courts' administration of justice.

Low income litigants are the most likely ones to appear pro se. When they do, proceedings generally slow down as they fumble through basic tasks like presenting their facts, making the right arguments, and staying on point. Things can get even more difficult if they are trying to admit evidence, examine a witness without leading, cross examine a witness or qualify an expert witness. Not only do many pro se litigants make the Court take much longer, they can make it more difficult for the administration of justice to be fair.

Having lawyers for low income litigants makes the Courts more efficient and levels the playing field leading to better and fairer administration of justice by the Courts. This is especially true in the high volume Courts.

We are lucky to have the cooperation of the local legal services and pro bono programs in general, but also specifically for some of our higher volume Courts.

For example, for more than 15 years, VLP and NLS have worked cooperatively with Buffalo City Court to operate the Attorney of the Morning Program. Through their efforts, every low income tenant that wants legal assistance when facing eviction at Buffalo City Court is represented. Not only does this program level the playing field for tenants and help achieve fairness in the proceedings, they also do a tremendous service for the Court as nearly 70% of the cases are settled in the hallway. Those that do need the Court's intervention, have the benefit of a trained pro bono lawyer or staff attorney to narrow the issues and focus the evidence and testimony so that the case can be expeditiously handled by the Court.

A similar effort takes place each year in the lead up to the City of Buffalo In Rem Tax Foreclosure sale. Attorneys for the Legal Aid Bureau of Buffalo, Legal Services for

the Elderly and the ECBA Volunteer Lawyers Project team together to represent low income and elderly home owners facing tax foreclosure. Every low income owner/occupier that wants legal help gets. The lawyers are able to settle and save homes for almost everyone that comes to them. Their efforts make the process manageable for the Erie County Court, instead of completely overwhelming the Court with hundreds of Orders to Show Cause brought by unrepresented litigants..

On a year round basis, the Western NY Law Center, Legal Services for the Elderly and the Legal Aid Bureau work together to represent every low income home owner that is facing a mortgage foreclosure settlement conference.

From 2007 until May of this year, the Eighth Judicial District benefitted from having an Eighth Judicial District Pro Bono Coordinator funded full time through the Office of Court Administration's Access to Justice Program, *ProBonoNY*. This coordinator worked with the Eighth Judicial District Pro Bono Committee, Co-Chaired by myself and Hugh Russ of Hodgson Russ, to improve access to justice for Western New Yorkers by getting more attorneys involved in pro bono work throughout the Eighth Judicial District.

This staffed position gave several legal services programs in the District the assistance and support needed to create organized pro bono programs and projects and recruit attorneys in their communities to get involved in ways that were not previously possible due to the ever present strain on man power and limited program resources.

For example, the Pro Bono Coordinator organized a group of attorneys and judges in Chautauqua County in 2008 to discuss the county's most pressing unmet client needs, current resources and a strategic plan for getting private attorneys involved in an organized pro bono program. At the time, I was a member of the Eighth Judicial District Pro Bono Committee with prior experience as a seated Judge in Chautauqua County, and I offered to be involved in efforts affecting the county. Together with the rest of the group, I assisted the Pro Bono Coordinator in organizing a free CLE program that year to start the conversation in the greater legal community about the county's great need for pro bono assistance, the importance of attorney participation in pro bono to the courts and in improving access to justice for the poor, ethical considerations in pro bono practice, and opportunities for new partnerships in pro bono in the region.

As a follow up to this program I organized a judicial letter campaign in December 2008, in which the bench, private bar and legal services' lawyers collaborated on a letter signed by all Chautauqua County judges which was sent to all Chautauqua County attorneys, expressing the need for participation in an organized pro bono effort in collaboration with Southern Tier Legal Services (a division of Legal Assistance of Western New York) and Legal Aid of Chautauqua Region. As a result, 33 attorneys sent in their questionnaires indicating a willingness to participate in pro bono in some fashion, covering all six delineated areas of unmet need.

To keep the momentum going from this tremendous response, the Pro Bono Coordinator worked with the Chautauqua group to organize another free CLE program covering the basics of matrimonial practice, this time requiring attorneys to take a case



in exchange for the free CLE. This training resulted in a total commitment to handle 20 cases over the course of a year.

Shortly thereafter, in January 2010, a monthly pro se divorce clinic was organized through collaboration between the local legal services agencies, courts and pro bono attorneys. The clinic is still in operation today, and approximately 110 clients have been assisted by obtaining a Judgment of Divorce or advice and legal counsel.

It is unlikely that any of this progress toward establishing an organized pro bono program in Chautauqua County would have been made without the facilitation, leadership and support of the Eighth Judicial District Pro Bono Committee and the Pro Bono Coordinator. While there clearly was a need, and members of the legal community were willing to collaborate in order to improve access to justice for low income residents of Chautauqua County, day to day demands and limited resources prevented the key stakeholders from prioritizing the creation of new programs and initiatives. The Pro Bono Coordinator was able to do the initial networking, collaborating and organizing necessary to build momentum toward a sustainable pro bono program.

In Erie County, where there was already a well established pro bono program for residents through the Erie County Bar Association Volunteer Lawyers Project, the staffed Pro Bono Coordinator position similarly allowed for the addition of new initiatives as well as the expansion of existing efforts to increase attorney participation in pro bono. This was particularly true for increasing attorney involvement in pro bono at Buffalo's 20 largest firms, several of whom had no prior relationship with VLP, as well as for reaching out to, recruiting and training newly admitted attorneys to get involved with pro bono early in their careers.

The Large Firm Subcommittee was formed by the Eighth Judicial District Pro Bono Committee in 2009 as a way to more comprehensively answer firms' questions about pro bono, assess firms' interests and effectively present "good fit" pro bono opportunities for their lawyers to engage in through the VLP. It also provided a forum for Buffalo's largest firms to compare pro bono policies, projects and opportunities and allow them to actively take part in initiatives to increase pro bono involvement in their firms. Formation of this subcommittee led to identifying pro bono opportunities that offer lawyers great experience with a fairly limited time commitment and also represent areas in which VLP has a need for greater pro bono participation, which led to greater large firm buy in and participation.

For the same reasons, these opportunities were also attractive to newly admitted attorneys. As a result of targeted recruitment strategies to these two groups, VLP's Attorney of the Morning program is more well staffed than it has been in years, and a significantly greater number of unemployment insurance claimants have received assistance in the past year and a half than had ever before.

The Eighth Judicial District Pro Bono Committee had hoped to build off of its success in Chautauqua County in facilitating pro bono programs in the other rural counties of the District. Unfortunately, ProBonoNY lost its funding this spring, and Pro Bono Coordinator positions across the state were dissolved as a result. Thus, it remains to be seen how legal services programs in those rural counties will manage to facilitate pro bono programs when they are faced with threats of budget cuts and an ever

growing client demand far greater than their capacity and hard working staffs can accommodate.

In Allegany County, with the opening of a new court facility with additional space we are working on a bench and bar program through the efforts of Judge Terrence Parker to provide attorney rooms with computer access with set hours for a clinic where attorneys will assist pro se litigants with completing forms for Family Court and Supreme Court matters.

In short, while the Judges and attorneys are very cooperative with working with pro bono litigants and providing services, a dedicated funding source would help to insure continuity in providing services.

Respectfully submitted by:  
Hon. Paula L. Feroletto  
Administrative Judge  
Eighth Judicial District

# **Jack Hagen**

Client of Legal Services for the Elderly, Disabled or Disadvantaged  
of Western New York, Inc.,  
accompanied by William W. Berry



# LEGAL SERVICES

FOR THE ELDERLY, DISABLED OR  
DISADVANTAGED OF W.N.Y., INC.

716-853-3087 • Fax: 716-856-5317

237 Main Street • Suite 1015 • Buffalo, New York 14203-2717

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by e-mail to [CivilLegalServices@nycourts.gov](mailto:CivilLegalServices@nycourts.gov)

To: Helaine M. Barnett, Chair  
Task Force to Expand Access to Civil Legal Services in New York  
From: Karen L. Nicolson, Esq.  
Re: Task Force Hearings in Buffalo on October 6, 2011  
Date: September 22, 2011

## Biography of Client Jack Hagen

John Hagen (1) grew up in Buffalo/Tonawanda, New York. He graduated from Canisius High School in Buffalo and Clarkson College in Potsdam, NY. He worked for several companies as an Industrial Engineer, IE Manager, Production Manager and Plant Manager before starting his own business. He was diagnosed with Chronic Myelogenous Leukemia (CML) in 1999 and underwent a Bone Marrow Transplant followed by high dose chemotherapy followed by Radiation Treatment and a Stem Cell Transplant in 2002. He was referred to Legal Services for the Elderly, Disabled or Disadvantages of Western New York, Inc. for the first time in 2006, by a relative who was a board member of the organization. He has been a client of Legal Services for the Elderly on three separate occasions.

## Summary of the Testimony of Jack Hagen

Jack Hagen was forced to leave his employment after undergoing a bone marrow transplant in May, 1999. He underwent a stem-cell transplant in 2002 and was taking 12 different drugs to protect him from chronic Graft Versus Host (G.V.H.) disease, a condition in which the white blood cells produced by the transplanted bone marrow attack every part of the body as foreign.

Mr. Hagen owned a home and lived in Niagara County and, therefore, received Medicaid from Niagara County. However, during his illness he temporarily resided with his mother, Mary Hagen, in Erie County because of his need for assistance from her, given his illness and debilitating symptoms. Despite his serious illness and consistent candor, the Niagara County Department of Social Services unconscionably harassed Mr. Hagen, threatening his "Medicaid eligibility," essentially his lifeline, and his freedom. After requesting an onerous amount of paperwork to "prove" that he still resided in the county, they discontinued his coverage. Not only did Niagara County cut off his Medical coverage, but they referred the case to the fraud unit and he was interviewed by the Sheriff's Department. All this occurred during the time of his illness and treatment.

Legal Services for the Elderly, Disabled or Disadvantaged of Western New York, Inc., represented Mr. Hagen at a fair hearing and had his Medicaid reinstated. At the hearing the hearing officer found that no facts were presented to contradict Mr. Hagen's evidence that he was a resident of Niagara County. He was, therefore, able to continue his life-saving treatment and medication. Mr. Hagen is very enthusiastic about testifying, despite his mobility issues and will make an engaging witness. He will be transported to the hearing by his attorney, William Berry. Mr. Berry will also appear with Mr. Hagen at the hearing and can answer questions by the panel, if necessary.

## Task Force to Expand Access to Civil Legal Services in New York

Good day. My name is Jack Hagen.

I was diagnosed with Chronic Myelogenous Leukemia (CML) in January 1999. The treatment that was recommended at Roswell Park Cancer Institute was for me to undergo a Bone Marrow Transplant (BMT). Since my siblings were all perfect donors I decided to go ahead with that procedure. I had to leave my job and apply for Disability Insurance. After 6 months, that procedure was deemed to have failed and I had progressed to Stage 4 of my illness. I was then treated with high dose chemotherapy for several months which worked and provided time for some recovery. The chemotherapy put me in remission but it was recommended that I have a second transplant since I had another sibling donor available. I underwent a Stem Cell Transplant (SCT) in December of 2002. It was successful and I was considered "in remission" five years later.

Initially, I paid for health insurance and prescription drug coverage through my employer's group plan with Independent Health. When my ability to keep my prescription coverage ended (due to cost) I received help from the Assistant Attorney General, located at Roswell Park, in getting me qualified for Medicaid in Niagara Falls, NY which was my permanent address at that time. I was living with my mother

temporarily after my two transplants. When the Niagara Falls Department of Social Services realized that I didn't physically live in Niagara Falls, they decided to terminate my Medicaid qualification even though I proved that the address in NF was my permanent residence.

I mentioned this problem to my lawyer Tom Keefe when he was preparing my will. It turned out that he was President of Legal Services for the Elderly, Disabled or Disadvantaged of WNY at that time.

He recommended LSED to help me with the situation. I soon met Bill Berry, a lawyer at Legal Services for the Elderly and we discussed my situation and asked for a Fair Hearing on my termination from Medicaid. At the hearing, when NFDSS was unable to provide any facts to contradict my residence in Niagara County, we won the case. I don't think I could have accomplished this result without the help of Mr. Berry and Legal Services for the Elderly because I was still dealing with the side effects of my procedures.

But the story didn't end there.

Several years later Niagara County Department of Social Services again decided to challenge my residence, and again cut off my Medicaid qualification. They implied that I was a fraud case and sent the Niagara County Sheriff's Department to interview me. When I met with the officer we discussed my case and he stated that the interview was

unfortunate and a waste of time because there are so many other cases which warrant fraud rulings and my case was not at all comparable to most such cases. As a result of that interview no fraud case was filed. But I was feeling somewhat harassed over time by Niagara County DSS and I thought that I could simplify my case by changing my permanent residence to Erie County.

In 2010, while dealing with skin cancers on my head, I decided to change my residence to Erie County and transfer my situation to Erie County Department of Social Services. That turned out to be another set of problems since Niagara County and Erie County do things differently. I again called on Bill Berry at Legal Services for the Elderly to help resolve the problems. In this case I am almost certain that I would not have been able to resolve the problems without Mr. Berry's help. He intervened and communicated with the Erie County representative to resolve the issues and had my Medicaid coverage continued without interruption. His expertise and research were things that I do not have and could not have done alone.

My initial need for Medicaid was to actually pay for part of my drug costs. Those costs were extremely high after my two blood transplants. I could not have come close to paying for those drugs which were prescribed to help protect me from Graft vs. Host disease which is the cause of death for most of the people who die after transplantation.



The situation became less costly but still very expensive when Medicare Part D was enacted in 2006. Being qualified for Medicaid enables me to receive Extra Help from Part D which, once again, greatly reduced my total drug costs.

I believe that without the help of Bill Berry and Legal Services for the Elderly, I would have been put in the precarious position of having to decide which drugs to take and which to forego. That is a choice that could risk my life. It was a very good day for me when I learned about Legal Services for the Elderly and Disabled. I am totally supportive of their work and greatly appreciate everything they have done for me.

Thank you for asking to hear my story and I'm happy to answer any questions that you have.

Jack Hagen

# **Bryan D. Hetherington**

President, Monroe County Bar Association

**Bryan Hetherington**  
**President, Monroe County Bar Association**

**Short Bio**

Chief Counsel, Empire Justice Center, a statewide not for profit law firm that provides direct legal representation to clients, advocates on their behalf on policy matters, and provides training and support to the legal services providers throughout New York. As Chief Counsel, Bryan is responsible for managing the legal work of Empire Justice. Bryan works in the Rochester office.

Most of his career has involved complex litigation and other non-litigation advocacy with regard to social services programs, education, housing and civil rights.

Bryan came to Rochester in 1980 to serve as Litigation Director of Monroe County Legal Assistance Center. He remained in that position until 1996 when he founded the Public Interest Law Office of Rochester. He became Chief Counsel of Empire Justice Center in 2004.

He serves on the boards of a number of not-for-profit health, affordable housing and community organizations. He served on the Advisory Committee to the State Commissioner of Social Services for 19 years. He is past chair of the Greater Rochester Health Foundation and is President- of the Monroe County Bar Association.

He is a graduate of LaSalle College and the Cornell Law School.

**Summary of testimony**

I will be testifying about how the co-location of civil legal services providers, with the Bar Association, in the Telesca Center for Justice has:

- provided better services to prospective clients and clients whose cases are accepted,
- saved money for the providers that can be used for additional staff,
- made it possible to compete successfully for additional funding, and
- promoted pro bono recruitment.

In my testimony I will also discuss how the Telesca Center was created.

**Testimony of Bryan Hetherington  
President, Monroe County Bar Association**

Before the Chief Judge's  
Task Force to Expand Access to Civil Legal Services in New York  
October 6, 2011  
at Buffalo, New York

Chief Judge Lippman, Presiding Justice Scudder, Justice Pfau, President Hassett, Chair Barnett and Members of the Task Force, it is an honor to appear before you today to discuss how the Monroe County Bar Association worked with our excellent providers of civil legal services to create the Michael A. Telesca Center for Justice, in which the Bar Association and the four civil legal services providers:

- Empire Justice Center
- The Legal Society of Rochester,
- Monroe County Legal Assistance Center of LawNY, and
- Volunteer Legal Services Project,

are co-located.

This effort has:

- provided better services to individuals seeking and receiving legal services;
- saved the providers significant costs through below market rents, as well as shared space and services, which allowed them to employ more staff and thus, represent more clients;
- promoted pro bono participation by private attorneys in our community; and
- allowed the legal services providers to obtain additional funding to expand services because of their ability to collectively provide services in the full range of areas of law,

using attorneys who concentrate their practices in the areas, and are thus, very highly skilled and efficient.

Justin Vigdor, who so ably led the effort to bring about the co-location and to raise the funds needed to make it economically possible, will be testifying before the Task Force in Albany. He will provide more information about the history of the project and how the Partnership for Equal Justice, which he headed, raised over \$2.4 million to pay for the partners' moving expenses, pay for the cost of build out so that the partners could have below-market rents (\$10 per square foot for the first 15 years of a 30 year lease), and create an endowment at the Foundation of the Monroe County Bar for the support of the partners.

The four legal services providers now co-located at the Telesca Center for Justice each provide services to low income people in different areas of the law. Before the co-location prospective clients in need of legal services often were not aware of the types of cases that each program handled. They would call multiple providers, sometimes all four as well as the Bar Association, trying to get the help they needed. Each time the prospective client would tell their often long and involved story to a receptionist who would then tell the person on the phone to try to seek help from another provider. Now, the receptionists for all four providers are located in a shared reception area on the 8th floor of the Telesca Center. All of the telephone systems are connected and the receptionists are trained to answer the telephones for all the providers.

A prospective client who calls the wrong provider is not given some other number to call, but instead is told that the organization she called does not handle that type of case. She then is asked if she would like to be connected to the intake staff at the organization that does

provide the services that can help her. If none of the providers is able to help, the prospective client is told that none of the providers can help her- so that she does not waste her time calling all the other providers. Prior to the co-location each organization had its own receptionist. Now a team of two and a half receptionists is able to serve all four providers.

It is not just prospective clients who receive better services. The co-location has allowed the providers to give higher quality services to clients whose legal problems are such that they need help from attorneys at more than one provider. For example, while the Legal Aid Society represents families facing eviction in City Court, it is Monroe County Legal Assistance Center which represents families whose public assistance benefits are wrongly reduced or terminated. When a family is faced with an eviction proceeding because of the wrongful termination of public assistance benefits, staff from the Legal Aid Society and MCLAC can work together as a team to solve the client's problem. Since they are in the same building, and on the same telephone system, communications with the client and each other are much easier. As the former Executive Director of the New York IOLA program said, "you are like a large law firm with multiple departments."

And those legal services are received in far more dignified office space than the providers were able to afford before co-location. It is hard to have confidence in your attorneys when they are in rundown office space with falling light fixtures, or lack of heat, or an elevator that constantly breaks down.

The civil legal services programs can provide more services to their clients because of the co-location. They benefit from below-market rents, the fact that they can use the Bar Association's conference rooms and continuing legal education Center for their meetings, and

through the lower costs of shared services, like the joint reception. Because the rent costs are fixed for 15 years and subject to only small increases for the next 15 years, the savings increase every year. The savings on the below-market rent alone are substantial. For example, this year Empire Justice Center, one of the partners, will save the cost of an entry-level attorney because of its below-market rental rate. The office administrators of the Bar Association and the partners meet monthly to explore opportunities for joint purchasing and contracting to reduce their costs. The Directors also meet monthly to explore collaboration opportunities.

The co-location of the Bar Association with the volunteer legal services project (VLSP) helps promote the recruitment of volunteer attorneys and the placement of cases. When an attorney comes in to join the Association the staff take or send that attorney down the elevator to VLSP to sign up as a volunteer. We consciously placed the VLSP offices next to the Rubin Continuing Legal Education Center. This allows the VLSP staff to, for example, pop into a trust and estates CLE program when they need to recruit additional volunteers to do wills for individuals with AIDS. An attorney coming to a CLE event has a visual reminder as she or he steps off the elevator that it has been a while since they last volunteered for a case. The attorney need only walk through the VLSP door to sign up for a new one. A listing of available cases is right inside. Finally the co-location assists in the training of pro bono volunteers. The legal services attorneys, who are the subject matter experts in legal fields like foreclosure prevention or SSI eligibility, are already in the building and the training sessions can be held right in the CLE Center.

The co-location has also expanded access to civil legal services in Monroe County by making it easier for the civil legal services providers to collaborate with each other to secure

additional funding, for which they would not be competitive applying on their own. A fair amount of grant funding is focused on providing legal services to some defined population like seniors, veterans, or families affected by a particular disease. The Coordination of Service Report that the providers file annually with the IOLA fund identified half a dozen of these new collaborative grants. In these collaborations the clients benefit from have the most expert attorneys with their type of problem handling their cases rather than an attorney who is trying to do cases in every area of the law. And because they are being handled by experienced attorneys, they are also handled more efficiently.

Three of our legal services providers jointly raise over \$225,000 a year, primarily from our attorneys and law firms, through the annual Campaign for Justice, which is heavily supported by the Association. Our Foundation is exploring the creation of a planned giving program to build on the endowment funds established during the Partnership for Equal Justice campaign.

While the Monroe County Bar Association, and its Foundation, have been pleased to do what we can to expand access to civil legal services, we are painfully aware of how far away we are from the goal set forth by the Chief Judge that every individual faced with a legal proceeding involving the basic necessities of life would have access to an attorney. We have one of the best pro bono programs in the nation, with over 1,500 volunteer attorneys. We have civil legal services providers who have aggressively sought private and foundation funding as well as government grants and contracts to expand access to justice. They have achieved the efficiencies I described earlier. Yet despite all of this hard work to expand access, every day the receptionists must tell many individuals that there is no attorney at any of the programs in



the entire Telesca Center that can help them with their important legal problem. We know this is not how things should be in a county whose Constitution lists “to establish justice” as the second purpose of document in its Preamble.

As attorneys we know that in an adversary system of justice all parties need to be represented by someone who understands the law, as well as the rules of evidence and procedure, if we expect a judge or jury to reach a just result. We are tremendously grateful to the task force for the extraordinary work that you have done to date and pledge to you our cooperation as you move forward in your efforts to expand access to civil justice in New York State.

# **Stephen L. Johnson**

Member, Bond, Schoeneck & King, PLLC

Good morning. My name is Steve Johnson. I am a member the law firm of Bond, Schoeneck & King, where my practice is focused on real estate matters. On a pro bono basis, I am serving as legal counsel to what has become known in Syracuse as the "One Roof Committee." This committee is made up of the following:

1. The President of the Onondaga County Bar Association;
2. The Coordinator for the Onondaga County Bar Association's Volunteer Lawyers Project;
3. A representative of the Syracuse University College of Law's clinical programs;
4. A representative of the Federal Court Bar Association for the Northern District of New York; and
5. The executive directors for the legal services providers in Syracuse, Onondaga County, and Central New York – the Hiscock Legal Aid Society, Legal Services of Central New York, and the Legal Aid Society of Mid-New York.

The offices of Legal Services of Central New York and Legal Aid Society of Mid-New York are now located in the same building. All of the remaining organizations are scattered around the City of Syracuse. Literally, for decades some leaders of the private bar have had a vision of all of these organizations being located under "one roof." But it took the remarkable success of the Telesca Center, and, most recently, the focus of this Task Force on the benefits of collaboration and sharing costs, to galvanize the "One Roof Committee."

1. The Board of Directors for each organization has passed a resolution supporting the concept of "One Roof;"
2. A space design firm has conducted an analysis of the space needs for each organization and the potential for shared spaces;
3. With one exception, the leases expire in 2014. Therefore, all of these organizations will be poised to go under "one roof" on January 1, 2015, and that is our target date. The one exception is significant, however: the current lease of one organization expires on September 30, 2019. This presents a significant, but in our view not insurmountable, problem.
4. The Committee currently is working on a request for proposal for presentation to the owners of commercial property in Syracuse. (I should note here that the combined organizations would have approximately 117 employees and would require approximately 35,000 square feet of space. This should make us very attractive to owners of commercial property in the Syracuse market.)
5. Once the request for proposal is issued, and proposals are received, we will confront what we believe to be the primary obstacle to the "one roof" concept, and that is the "Justin Vigdor factor," i.e., raising the money to cover the moving costs for each organization and the build-out costs for the "one roof" building. Justin and his son Rob have been most accommodating, and have met with us to share their fund-raising strategies. We are cautiously optimistic that the lawyers and community leaders of Onondaga County will meet the challenge.

Thank you for providing us with this opportunity to report on the efforts of Syracuse, Onondaga County, and Central New York.

**Hon. Deborah H. Karalunas**

Supreme Court, Onondaga County

Good afternoon Chief Judge Lippman, Chief Administrative Judge Pfau, Justice Scudder, and Mr. Hassett. Thank you for inviting me to give testimony today on the topic of access to civil legal justice.

As you may know, for 20 years I practiced law with Bond, Schoeneck & King, a large upstate law firm. During that time, primarily through clinics organized by the Onondaga County Bar Association and the Central New York Women's Bar Association, I devoted many hours representing the poor in civil legal matters. For the most part, those were the "good years." Families were more stable, unemployment was low, foreclosure actions were sparse, and the economy was stronger.

I also am very active in an urban Syracuse church whose mission is to serve and assist members of our community who live in poverty, are undereducated, or face unique physical or mental health challenges. I believe in the goodness of people and the strength and power of community. I believe in helping people help themselves.

In 2002 I was elected Supreme Court Justice in the Fifth Judicial District. The Fifth Judicial District encompasses Onondaga, Oneida, Oswego, Jefferson, Lewis and Herkimer counties. For my first two years on the bench I was assigned to the Matrimonial Part. In that Part, I dealt with issues of divorce, child custody and equitable distribution. From my recollection, fewer than five percent of the litigants who appeared before me in contested matrimonial actions were unrepresented. In contrast, a significant proportion of the litigants in uncontested divorces appeared *pro se*. In January 2005, I was assigned to the General Civil Part. I continue in that Part although I also now serve as the Commercial Division Judge for Onondaga County. My cases include business disputes, a variety of tort claims, and foreclosure and consumer debt actions. Generally, the parties who appear before me are

represented by counsel. Exceptions include persons seeking *ex parte* applications for name changes, petitioners seeking early access to structured settlement awards, and defendants in foreclosure and consumer debt actions. In the latter categories, the *pro se* litigants generally do not dispute the validity of the underlying loans/debts; they simply are unable to make the required payments.

New York's current economic condition is poor. Indeed, the budgets in the executive and judicial branches of government, and in many governmental and non-profit agencies, have been slashed. Nonetheless, the legislature has imposed many unfunded mandates on the courts, and increasingly we are being used to resolve pressing social issues. The judiciary is asked to do more with less. So, too, are the three organizations in Central New York that represent the poor in civil legal matters. These organizations, Hiscock Legal Aid Society, Legal Aid Society of Mid-New York and Legal Services of Central New York, are staffed with quality lawyers who provide quality legal services. These organizations, along with Onondaga County Bar Association's Volunteer Lawyer's Project, work tirelessly to ensure justice for the people they serve. Traditionally, these organizations were funded by federal, state, county and local governments, various grants, United Way, IOLA and private contributions. More recently, however, some of these funding sources have been cut. For example, I understand that in the last year the State pulled most, if not all, of its funding for the Hiscock Legal Aid Society.

While I support access to legal services in civil matters involving the "essentials" or "necessities" of life, I have grave concerns about increasing the role of the courts in funding and administering programs to meet that challenge.



The judiciary is a separate and co-equal branch of government. Generally, the role of the judiciary is to protect private interests and the role of the legislature is to safeguard broad public interests. In other words, the judiciary is empowered to determine the rights and obligations of parties in discreet cases and controversies; the legislature is empowered to make policy decisions and to allocate limited public dollars consistent with those policy decisions. *Of Money and Judicial Independence: Can Inherent Powers Protect State Courts in Tough Fiscal Times?*, 92 Ky. L.J. 979, 1044 (2003-2004). By taking on responsibility to fund and administer civil legal services, the judiciary assumes the policy making role of the legislative branch and the managerial role of the executive branch. Moreover, when the judiciary pays for a lawyer to represent one of two sides in a dispute, our role as a neutral arbitrator is severely compromised.

With that said, the Task Force to Expand Access to Civil Legal Services in New York has asked for “outside the box” ideas to better insure that we meet the legal needs of the poor in matters concerning the “necessities of life.”

The legislature and/or the executive branch can and should do more. Recognizing that many matters can be kept out of court if civil legal assistance is provided before a legal problem escalates into a court case, among the many options available to the legislature and/or executive branch are:

- 1) establishing “Know Your Rights” community legal education programs;
- 2) establishing programs and other means to provide preventative legal assistance;
- 3) mandating some form of pre-action ADR;
- 4) authorizing “fee-shifting” in various actions; and

- 5) providing a reliable, dedicated source of funding, independent of the judiciary, targeting legal assistance for matters concerning the “necessities of life.”

I believe the judiciary also can and should do more to insure access to justice in civil cases. Among the many options are:

- 1) simplifying forms, rules and procedures in family, landlord-tenant and foreclosure cases;
- 2) dedicating staff to assist *pro se* litigants in understanding and completing forms and procedures;
- 3) waiving/reducing attorney registration fees for attorneys who devote 60+ hours bi-annually to *pro bono* service in areas involving the “necessities of life;”
- 4) mandating that all practicing attorneys bi-annually provide a fixed number of *pro bono* hours of service in areas involving the “necessities of life;”
- 5) working with local bar associations, law schools, and legal aid organizations to train *pro bono* lawyers;
- 6) expanding the program that allows “retired” lawyers to practice law; and
- 7) allowing judges and their law clerks to engage in *pro bono* work outside of court.

In these hard economic times, we have unemployed and underemployed lawyers who, with adequate training, can address and meet the needs of many litigants in areas involving the “necessities of life.” While the burden of addressing these needs should not fall solely on the shoulders of the legal profession -- a profession that consistently has stepped up to and beyond the plate – I have focused my comments here today on what I know best: the strength, integrity and compassion of the many men and women who serve as lawyers and judges in our great State.

Thank you again for the opportunity to be heard.

Hon. Deborah H. Karalunas  
Supreme Court Justice  
Fifth Judicial District  
Syracuse, New York

# **Michelle Kilian**

Client of Neighborhood Legal Services, Inc.,  
accompanied by William J. Hawkes

New York State Office of Court Administration

Fourth Judicial Department  
Hearing on:

**Access to Legal Services**

October 6, 2011  
11:00 a.m. to 2:00 p.m.

Ceremonial Courtroom  
Old County Hall  
92 Franklin Street  
Buffalo, New York 14202

Testimony of Michelle Kilian

My name is Michelle Kilian, I am 29 years old and I am the mother of a beautiful 2 1/2 year old daughter named Eva.

In April 2010 while my now ex-husband was away for the weekend for a military training, I packed up my belongings, myself and my one year old daughter Eva and sought refuge at the Haven House (a local DV homeless shelter) because I was a victim of Domestic Violence.

I had no money, no safety plan and I was in panic and worried about the life I would be able to provide for my daughter now that I left my abuser. All I took from my marital home were material possessions, my child and a damaged self esteem.

Once at the shelter, they instructed me to apply for public assistance and Food Stamps. I went and applied. After 30 days I received my public assistance grant of \$90 a month for me and my daughter. I also received \$45 a month in food stamps for the both of us. My stay at the shelter was challenging and scary and I was always concerned about our personal safety. I wanted to get out and try to make a go of it on my own and after being at the shelter for two and a half months I finally found permanent housing in Cheektowaga.

I vigorously continued my job search because I did not want to be reliant on the public assistance system. I had never been on public assistance before, and

although I was grateful for the assistance when I needed it, I really wanted to get off public assistance and work. After months of searching, the temporary agency finally found me a placement at Neighborhood Legal Services.

My income from employment quickly affected my Public Assistance grant and my case was closed due to excess income in about two months after I started working. Although it felt like a success to get out of shelter and off of public assistance, once off of public assistance, I faced many economic challenges that made it difficult to make a successful transition from welfare to work. That's what I would like to talk to you about today.

Without the assistance of Neighborhood Legal Services, it is likely that I would have been unable to maintain my housing, utilities and day care (and thus my employment) and would have then been forced back onto public assistance. I truly feel that God has placed me in this position at NLS for a reason. Because if I weren't at NLS, I would never have gotten the legal advice that I needed to get off and stay off public assistance.

I was in a tenuous financial position once my rent came off voucher. I fell behind on my rent. I did not know that DSS helped with rent arrears. NLS informed that DSS has a legal obligation to help prevent the eviction. NLS represented me at court and was able to stop the eviction. NLS was able to help me get the rent arrears from DSS and the eviction was avoided. I was able to stay in my home.

My next financial crisis occurred when I fell behind on my utilities. Although I was working, the gas bills in Buffalo in the winter are really high and I could not afford to pay the entire bill each month. I fell behind on my utilities and received a shut off notice from the gas and electric company. I did not know DSS could help with utility arrears and shut-offs. Neighborhood Legal Services advised me about the availability of HEAP and emergency HEAP. I applied for both of these benefits and was found eligible. The shut off was ultimately avoided and I was able to stay in my apartment with my daughter.

I was barely staying afloat financially and my child's father was not helping us financially at all. He never paid any child support. Previously, I had been advised by a private attorney that I was not eligible for child support from my ex-husband because I was a public assistance recipient at the time of the divorce. NLS advised me that that was not correct and a family law attorney from Neighborhood Legal Services advised me of my legal right to obtain child support. She helped me fill out the necessary paperwork in order to get the support that I needed. I was granted a support award and am now getting money from my child's father.

My third economic crisis occurred when I received a notice threatening to discontinue my child care benefits because I was no longer receiving public assistance. DSS sent me the notice stating that because I was no longer

participating in a DSS work program, I was no longer eligible for child care benefits. I was not participating in DSS work program because I was employed at the time. I told my worker that I was employed and I provided documentation regarding my employment. Nonetheless, DSS tried to discontinue my child care benefits. NLS informed me that this was an illegal discontinuance. They contacted DSS on my behalf, advocated that the discontinuance be withdrawn and as a result, I continued to receive my child care without interruption so that I could maintain my employment.

Recently, I received another notice from DSS threatening to discontinue my child care benefits again....this time due to excess income from employment. Without a subsidy from DSS, my child care costs would have been prohibitive and would have forced me to quit my job at NLS in order to care for my child. The day care center would have charged me \$800 a month. My net pay every two weeks is \$699.00. After paying for child care, I would only have about \$564.00 to pay for the cost of living, rent, food, diapers, and utilities. I could not have paid day care and worked. I would have had to make a choice. NLS advocated on my behalf. They contact DSS and told that the discontinuance was illegal and that they had not evaluated me for transitional childcare. DSS withdrew their notice and issued a new one agreeing to provide me with the Transitional Child Care benefits that I am legally entitled to. Although I pay a parent share of \$318.00 each month, I am able to keep my job.

While I was preparing for this hearing and the testimony I was going to offer before you, I took some time and re-read my "story". Reading this testimony made me both very sad and angry. I become more emotional than I had expected. I didn't realize all the hardship that I went through until I sat down and reflected on it all.

Now, with some hindsight, I wonder how I managed to go through all of this, with my daughter, an abusive husband always lurking in the background, DSS trying to thwart me at every turn.... and yet somehow I was able to stay strong emotionally for myself and for my little girl.

DSS put me through a lot, a lot more than I ever thought I could tolerate. A lot more than they should have. I realize now how strong I am and that is a good thing for me to know.

But I wonder how other people can do it... those people who don't have Neighborhood Legal Services to help them and guide them through every illegal denial and discontinuance.

I thank God every day that I work where I do. I made it because of NLS.

What happens to the woman out there who weren't as blessed as I am? I wonder what they are going through now. Were any of them able to get off and stay off public assistance like I did...?

# **Makau W. Mutua**

Dean and SUNY Distinguished Professor, University at  
Buffalo Law School



**DEAN MAKAU MUTUA**  
**University at Buffalo Law School**  
**Access to Civil Legal Services**

- First of all let me thank Chief Judge Jonathan Lippman for convening these important hearings. Together with Judge Feroletto, a pillar of the Western New York community, he has underscored the importance that civil legal services play in a democracy.
- At UB Law, we educate lawyers with a social conscience – women and men who are ready on the first day to serve our diverse publics
- At the University at Buffalo Law School--our faculty, students, and staff--are involved in many initiatives and activities that provide “access to justice.” We are proud of these efforts. At the same time, we can do more--and I am confident that we will—because the rule of law is the foundation of our society. Let me just highlight a few of our current efforts:
  - Our Clinical Legal Education program allows students to study law while providing needed, free legal services to individuals and organizations in western New York. Each clinical faculty member at UB has been teaching for over a decade, and together with students they serve needy clients each semester.
  - The Women, Children & Social Justice Clinic places students in supervised community placements and projects. These include placements in governmental agencies, legal service agencies, law enforcement agencies, social service agencies, and community outreach programs throughout Western New York. In addition, the Domestic Violence Task Force has traditionally assisted with the on-site legal assistance program at Haven House, the largest local shelter for female victims of domestic violence and their children.
  - The William and Mary Foster Elder Law Clinic provides services through a working agreement with the law firm Legal Services for the Elderly, Disabled, or Disadvantaged of Western New York. The clinic handles individual cases. Clinic student attorneys are responsible for all aspects of such cases, including client counseling, informal advocacy, and negotiation.
  - We also have other clinical programs which serve low-income individuals and groups more systemically:
    - The Affordable Housing Clinic works with local organizations to create desperately needed housing for elderly, disabled and homeless people.
    - The Community Economic Development Clinic assists community development corporations and other non-profits with legal transactions, with particular emphases on child care policy and helping low-income families build assets.

- The Environmental Policy Clinic focuses on environmental policy issues that have direct impact upon the Western New York community – especially the proliferation of hazardous waste and solid waste landfills and formerly used and heavily polluted defense sites located within the New York State Department of Environmental Conservation's Region 9 (comprised of Niagara, Erie, Wyoming, Chautauqua, Cattaraugus and Allegany Counties).
- The Mediation Clinic works on cases referred by local courts or other mediation agencies, and enrolled students help resolve disputes in family law, small claims, and the community.
- Our students also serve many organizations and individuals seeking justice through our extensive Externship and Judicial Clerkship program. Some recent examples of externship placements include: Empire Justice Center (Rochester), Legal Aid of Buffalo, Monroe County Public Defender, the NYS Attorney General's Office, and the US Attorney's Offices.
- Through both fundraising (BPILP and our fundraising program generally), as well as money from our general budget, the Law School provides a number of fellowships and grants--typically at least 25--for our students to pursue public interest work in the summer. This funding allows students to take unpaid internships at public interest law organizations throughout Western New York and the world.
- Finally, the Law School publicizes pro bono opportunities in a number of ways. It publicizes pro bono opportunities through e-mail, postings, and information tables in the Law School lobby and panel presentations. For example, Law Students in Action Project, an Equal Justice Works program, holds informational sessions and tables in the lobby to promote its pro bono opportunities. Volunteer Lawyers Project (VLP), a program of the Erie County Bar Association, places postings for assistance. Students also engage in pro bono work at Neighborhood Legal Services, and other legal services agencies.

# **Hon. E. Jeannette Ogden**

Buffalo City Court; Acting Judge, County and Family Courts



## JUDGE E. JEANNETTE OGDEN

Judge E. Jeannette Ogden was appointed to the Buffalo City Court by Mayor Anthony Masiello in June of 1995. Mayor Masiello cited Judge Ogden's broad based experience in the law as the basis for her appointment. In November of 1995, Judge Ogden was elected to serve a ten (10) year term on the Buffalo City Court and reelected to serve another (10) year term in 2005. In January 2001, Judge Ogden was appointed as an Acting County Court Judge. The appointment was expanded to Acting Family Court Judge in January, 2003. Judge Ogden's appointment to the Erie County Family Court gives her the distinction of being the first African American Woman to serve on the Family Court in Western New York. Judge Ogden has also presided in all of the "problem solving courts" in the City of Buffalo, She has developed a reputation as a "no nonsense" judge as a result of her firm but fair handling of thousands of cases.

Prior to her judicial appointment, Judge Ogden worked as a Trial Lawyer for CIGNA Insurance Companies defending corporations, school districts, hospitals and municipalities, while at the same time operating her own private general law practice. She is also a former Prosecutor with the Erie County District Attorney's Office and a former Assistant Erie County Attorney, where, she litigated personal injury cases on behalf of Erie County and served as legal counsel to the Erie County Medical Center, Erie Community College and Erie County Purchasing Department.

Judge Ogden is a graduate of Buffalo Public Schools. She earned a degree in Criminal Justice from Buffalo State College and periodically returns there to teach. She received her Juris Doctorate Degree from the University of New York at Buffalo Law School where she presently instructs courses in Trial Technique and Mental Health Issues in Criminal Law.

Her professional affiliations include memberships on the New York State Advisory Committee on Judicial Ethics; Vice Chairperson of the Gender and Racial Fairness Committee for N.Y. Courts in the 8<sup>th</sup> Judicial District; the Character & Fitness Committee of the NYS Supreme Court Appellate Division 4<sup>th</sup> Dept.; the Erie Community College Criminal Justice Advisory Committee; the Phi Alpha Delta Law Fraternity, International; the Women's Bar Association of WNY; the American, New York State and Erie County Bar Associations, Vice President of the New York State Association of Women Judges and a Past President of the University of Buffalo Law Alumni Association, the Erie County Bar Foundation, Inc., the Women Lawyers of WNY and the Minority Bar Association of WNY.

Hard work and community service have always been important values to Judge Ogden. Her community memberships include The Black Leadership Forum, The Erie County Chapter of Links, Inc., the Women's Group, the Business and Professional Women's Association, the NAACP, the League of Women Voters, the Metropolitan Alliance of Black School Educators, the Board of Directors of the United Way of Buffalo and Erie County and the City of Buffalo Ethic's Nominating Committee.

Judge Ogden presently serves as a mentor to students in high school, college and law school and regularly appears as a speaker for civic and community organizations, public schools and churches. Her message and her motto is to "lift as you climb."

Judge Ogden is the recipient of many awards and acknowledgments for her long standing community involvement. Judge Ogden attributes all of her accomplishments to the support of a loving family and a strong belief in God.

Email: [CivilLegalServices@nycourts.gov](mailto:CivilLegalServices@nycourts.gov)

Helaine M. Barnett, Chair

Task Force to Expand Access to Civil Legal Services in New York

Dear Ms. Barnett:

My name is Judge E. Jeannette Ogden. I have served as a Judge on the City Court of Buffalo, New York, for the past sixteen (16) years. Buffalo City Court is a major gateway to the criminal justice system and the primary forum in the Buffalo area where individuals are afforded an opportunity to resolve civil disputes. Buffalo is the sixth (6<sup>th</sup>) poorest city in the nation and as such, there are many poor and low income persons for whom the lack of civil legal assistance can be a major factor in keeping a family in a state of turmoil and financial crisis.

In Buffalo City Court, I preside over cases involving evictions and other landlord and tenant disputes, housing ordinance violations, consumer debt/collection issues and small claims. Many of the litigants are poor and low income individuals. For these individuals, access to a lawyer can be the difference between having or not having a place to live, maintaining a credit rating that enables them to purchase essential items and otherwise contribute to the economy or destroying their credit and causing them to become a burden on society.

I am also an Acting Erie County Family Court Judge and have served in that capacity for the past eight (8) years. My Family Court responsibilities include the prosecution, protection and placement of children and the resolution of custody and visitation disputes. At least a third of the Family Court docket involves self represented, poor, low and moderate income litigants.

I presided exclusively over cases involving domestic violence for approximately five and a half

(5 ½ ) years in Buffalo City, Erie County Criminal and Erie County Family Courts. In this capacity, I regularly encountered the collateral consequences experienced by victims of family violence who did not have meaningful access to civil recourse.

In addition to my judicial responsibilities, I am a member of the Board of Directors of the United Way of Buffalo and Erie County. This agency brings people, organizations and resources together to improve community wellbeing. My position here exposes me to the injustices that occur as the economic crisis in our community deepens and people who have lost their jobs, health benefits, disability assistance and homes from foreclosure suffer without vitally needed civil legal services.

It is against this background that I am here today. I firmly believe that fundamental individual rights are at stake whenever a person enters a courtroom. Therefore, access to justice for all is a basic obligation of our society. As a Judge, I have an obligation to advocate for equal access to justice for all. However, you cannot have equal access to justice for all when you don't have equal access to an attorney.

For poor, low and moderate income people, access to justice is critical. Their lives intersect with the law and legal systems in the most fundamental areas of life, including housing, income support and debt collection. Access to an attorney can mean the difference between being put out or staying your home, suffering from domestic violence or finding refuge, staying in jail or reuniting with your family.

I would like to emphasize the need to improve the availability and the quality of civil legal services to poor, low and moderate income individuals in Western New York as well as the challenge that self represented litigants pose to the court system and the concept of justice.

I can state from personal experience that there are few things worse than when a Family Court Judge refers a person to the Assigned Counsel Program which provides legal representation to indigent people in a Family Court proceeding and the person returns to court and says, "They can't help me because I earn five dollars (\$5.00) more than their guidelines permit."

or

Hearing a case where a Grandparent has petitioned the Court for guardianship and/or visitation of a grandchild because the child's parent can no longer adequately care for the child. The Family Court has a Grandparent Advocacy Program that offers free legal assistance to eligible grandparents seeking custody of their grandchildren but does not offer the same legal services if the Grandparent is seeking guardianship and/or visitation, solely because of a lack of resources available to the program operators.

The Grandparent may not be in a position to take custody of the child because of financial reasons and/or housing restraints. Many times the Grandparent cannot afford the cost of an attorney but appears pro se in an effort to prevent the child from being placed in the child welfare system. The absence of an attorney can result in the child becoming a ward of the state thereby requiring taxpayers to provide for the child's financial support, with little to no emotional support for the child.

Then there are the instances in custodial cases where one parent qualifies for free legal representation and the other parent does not. The non-qualifying parent is usually working a minimum wage paying job that does not compensate them for time lost from work as a result of their attendance in court proceedings. The non-working parent often manipulates the system by obtaining repeated adjournments and/or the attorneys may seek repeated adjournments because of scheduling difficulties caused by the large court dockets. The repeated adjournments may ultimately jeopardize the employment of the working party/parent by requiring them to choose between maintaining gainful employment or attending court proceedings to fight for the custody of their children.

This is compounded by the fact that the working party/parent is usually self-represented. Thus, the poor and working poor are not only the hardest hit by the financial impact of our depressed economy, but they are also denied meaningful equal access to the legal system. A person who cannot resolve outstanding legal issues may become permanently unable to obtain and/or keep a job or benefit from programs designed to lead to employment or family preservation.

In addition, from a judicial perspective, “fact finding” is difficult because pro se litigants are unable to identify the relevant issues, make objections and/or properly present evidence. As a result, the Judge’s ability to preside as a neutral arbiter of the dispute is greatly compromised.

These are just examples of how the lack of adequate civil legal services can contribute to a family in crisis.



In the area of debt collection, which I frequently see in City Court, these cases clog court calendars because there is no one to negotiate with the attorney for the credit card companies in order to reach a pretrial resolution of the outstanding indebtedness. The debtors frequently appear pro se and are unfamiliar with strict filing procedures, potential defenses and other rights and remedies recently made available to them. They are also unable to identify legal technicalities that may prevent the creditors from securing judgments against them. Civil collection proceedings can also compromise the Court's ability to be impartial and present ethical issues as well.

The provision of free and/or reduced legal services would result in a more efficient and effective resolution of these disputes, enhance the debtor's chances of becoming economically sound, thereafter enabling the debtor to contribute to the economy with by purchasing food, and clothing, and other goods and services with the money saved instead of being subjected to criminal contempt orders for noncompliance that result in incarceration, loss of employment, and further cost to the taxpayers.

The need to strengthen the delivery of civil legal services to the poor, low and moderate income individuals also arrives when they need to exercise their right to appeal adverse decisions. The unfamiliarity with strict time guidelines and the inability to access trial and/or hearing transcripts further deprives their access to justice.

**SUGGESTION:**

I would like to suggest that the system by which civil legal funds are available to legal service

organizations that provide service to the indigent be modified to enable indigent grandparents who file visitation and guardianship petitions to receive the same free legal representation as indigent grandparents in custody proceedings. By creating this broader right to counsel in this type of civil matter, we are reducing the cost that society would have to pay as a result of the collateral consequences of foster care placement.

**CONCLUSION:**

The assistance of an attorney is critical for a fair and just resolution of a legal matter. Yet the majority of the poor, low and moderate income individuals living in Western New York do not have access to an attorney for their civil matters, primarily due to the lack of a recognized constitutional right to an attorney in civil cases, as well as the inadequate funding for nonprofit civil legal service programs.

I applaud the Office of Court Administration for spearheading efforts to address the critical issues related to civil legal services.

I would also like to thank you for the opportunity to be heard and for creating a forum where the issues of equal access to justice can receive attention, meaningful consideration and support.

Very truly yours,

Judge E. Jeannette Ogden

**Arthur A. Russ, Jr.**

President, Bar Association of Erie County;  
Of Counsel, Phillips Lytle LLP

**ARTHUR A. RUSS, JR.**

**Of Counsel, Phillips Lytle LLP**

**(716) 504-5703**

**[aruss@phillipslytle.com](mailto:aruss@phillipslytle.com)**

**Mr. Russ is the President of the Bar Association of Erie County and previously served on the Board of Directors for the Erie County Bar Association Volunteer Lawyers Project, Inc. He is currently a member of the New York State Bar Association House of Delegates. He focuses his practice in the areas of corporations, general business and finance, real estate, subsidized housing, industrial revenue bonds, taxation, securities, estate and trust planning and health care.**

#### **HONORS & AWARDS**

- Listed in *The Best Lawyers in America*®
- Selected for the *Upstate New York Super Lawyers*® list, 2007-2008
- Who's Who Among Executives and Professionals, 2008

#### **EDUCATION**

State University of New York at Buffalo School of Law, LL.B., *cum laude*, 1967  
Northwestern University, B.A., 1964

#### **ADMITTED TO PRACTICE**

New York  
U.S. Tax Court  
U.S. Supreme Court

#### **JUDICIAL CLERKSHIPS**

- NYS Supreme Court, Appellate Division, Fourth Judicial Department, Confidential Law Assistant, 1967-1969

#### **PRESENT ACTIVITIES**

- Mercy Hospital Foundation
  - Board of Trustees, Chairman
- Catholic Health System of WNY
  - Compliance Committee, Chairman
  - Board of Directors
  - Audit Committee, Vice Chairman
- University at Buffalo Foundation, Inc., Board of Trustees and Audit Committee
- Gibraltar Industries, Inc., Director
- Buffalo Renaissance Foundation, Director, President, 2005-2006
- Holy Cross Cemetery, Secretary of Advisory Board
- National Council of The Multi-Family Housing Industry
- The Buffalo Club, Director, 2008-2011

#### **PAST ACTIVITIES**

- National Multiple Sclerosis Society, Western New York Chapter, 2002 Annual Dinner Chair
- University Heights Community Development Association, Inc., Former Director
- Mercy Hospital of Buffalo, Chairman, 1992-1998
- The Buffalo Club, Director, 1996-1998
- Country Club of Buffalo, President, 2001-2002
- Catholic Health System of WNY, Director, 1998-2008

Short Summary of Planned Testimony  
Task Force to Expand Access to Civil Legal Services in NY  
Fourth Judicial Department Hearing  
October 6, 2011

Arthur A. Russ, Jr., President  
Bar Association of Erie County

I will be discussing the level of poverty and the overwhelming need for free civil legal services in the Buffalo area. I will briefly discuss the 5 local providers of free civil legal services and the collaborative steps that they have already taken by co-locating in one building and how some of the programs are sharing space, a phone system and other equipment, and working collaboratively to obtain funding and provide services. I will also discuss how this has led to cost savings, easier access by clients, better and more efficient service for clients, and better overall cooperation/collaboration among the providers of these services. Even after all of these collaborative efforts, the need is still overwhelming.

Testimony  
Task Force to Expand Access to Civil Legal Services in NY  
Fourth Judicial Department Hearing  
October 6, 2011

Arthur A. Russ, Jr.  
President  
Bar Association of Erie County

My name is Arthur A. Russ, Jr. I am Of Counsel at Phillips Lytle LLP and I am the current President of the Bar Association of Erie County. I am also a former Board Member of the Erie County Bar Association Volunteer Lawyers Project and a current member of the New York State Bar Association House of Delegates.

I want to thank Judge Lippman and the Task Force for conducting these hearings and raising awareness of the overwhelming need for civil legal services for low income people.

With such overwhelming need, collaborations and cost sharing efforts are essential for making every dollar go further. This is especially true here in the Buffalo area where there is such a high level of poverty. Buffalo, the second largest city in the state, and the third poorest large city in the nation, with 30% of its population living below the poverty level. <http://bit.ly/sCaaU>. 38.4% of Buffalo children under the age of 18 and 14.0% of people 65 and older in Buffalo are living below the poverty line.

Here in Buffalo, we have five (5) legal services and pro bono programs serving the counties at the western end of New York State. The geographic area that they collectively serve consists of the counties of Erie, Niagara, Chautauqua, Cattaraugus, Allegany, Wyoming, Genesee and Orleans, and the cities of Buffalo, Niagara Falls, Lockport, Jamestown, Albion and Dunkirk. The area is both urban and rural. Erie County is the largest county in the region with a population of over 900,000 (91% urban, 9% rural).

I want to tell you about some of the terrific collaborations occurring here in the Buffalo area. Some of their best collaborations have included the Courts as a partner – like VLP and NLS's Attorney of the Morning Program representing low income tenants facing eviction and the Eighth Judicial District Pro Bono Committee which works to recruit, train and support pro bono attorneys. It is my understanding that the Honorable Paula L. Feroleto, Administrative Judge for the Eighth Judicial District will be describing those efforts, so I will concentrate on the other efforts of the local legal services providers.

The five (5) local programs are:

**Legal Services for the Elderly, Disabled or Disadvantaged** was incorporated in 1978 to provide free civil legal services to seniors, disabled and low-income people in a six county area and on the Seneca Nation of Indians reservation. They also provide guardian services to an additional 67 elderly and disabled individuals and are trustees for another 300 disabled persons utilizing the Western New York Coalition Pooled Trust. Their goal is to use the legal system to help their clients live independently and with dignity. Their current priority areas are health care, housing, veterans' support, income maintenance, grandparent's advocacy and elder abuse prevention.

The **Erie County Bar Association Volunteer Lawyers Project**, Inc. (VLP) has a dual mission to: (1) provide quality free civil legal services for low income people and smaller not for profit groups; and (2) to effectively involve volunteers in the delivery of those services. VLP recruits, trains and coordinates the efforts of pro bono attorneys, its staff attorneys and volunteers provide representation in a wide array of civil legal services cases. All of VLP's services are available in Erie County, while an increasing array of its services are now also available to clients throughout the entire 8<sup>th</sup> Judicial District.

The **Western New York Law Center** ("WNYLC") is a not-for-profit legal organization (501 (c) (3)), established in 1996, that provides legal and technology assistance for the benefit of low-moderate income clients and communities and legal assistance organizations. WNYLC engages in fair lending advocacy and direct representation of homeowners facing foreclosure, and has initiated class actions on behalf of public assistance recipients in Western New York whose benefits are illegally being delayed or denied.

**Neighborhood Legal Services**, Inc. provides legal services to the poor and disabled in the five-county region of Erie, Niagara, Wyoming, Genesee, and Orleans. Services are provided in the areas of: family law including kinship custody matters, domestic violence, divorce, custody and legal assistance to victims of HIV or cancer; housing law including landlord/tenant, public housing and housing discrimination; public benefits advocacy for people cut off or denied governments benefits including public assistance, Food Stamps, Medicaid, Social Security Disability and SSI. NLS also provides community education and training to over 3,000 clients, attorneys and community advocates each year.

The **Legal Aid Bureau of Buffalo** was founded 100 years ago and provides free civil legal services, representation for children and criminal defense work for low income people. Their civil unit handles family law, housing and unemployment cases.

The five programs work together to keep people out of homeless shelters by providing eviction defense and mortgage and tax foreclosure defense. They keep people off of the welfare rolls by helping people with SSI benefits, unemployment insurance claims and child support cases. They keep kids out of the expensive foster care system by handling adoptions, representing grandparents (and other relatives) who step in to seek custody when families become dysfunctional, and parents who setting

up standby guardianships so that when they become incapacitated or die, the standby guardian seamlessly becomes the guardian. They help people with fresh starts financially and emotionally by providing assistance with bankruptcies and divorces including victims of domestic violence.

These programs cumulatively served more than 11,000 low income and elderly clients last year. Their efforts saved taxpayers an estimated \$7.48 million in tax dollars by keeping people out of homeless shelters through representation in evictions, mortgage foreclosures and tax foreclosures and by getting people off of the welfare rolls by winning SSI benefits and unemployment benefits.

In addition to the taxpayer savings, our five (5) local programs' efforts resulted in at least \$9 million coming into the pockets of low income people by winning SSI benefits, unemployment insurance benefits and child support cases. I cannot overemphasize the importance of bringing that money into our local struggling economy. Putting extra money into the hands of low income people immediately stimulates a wide variety of sectors of the local economy. Low income people cannot afford the luxury of saving. Peter R. Orszag, Congressional Budget Office Director, wrote, "To boost cost-effectiveness further, policymakers would need to focus on lower-income households and those with difficulty borrowing. The studies of the 2001 tax rebate suggest that such lower-income and credit-constrained recipients increased their spending substantially more than the typical recipient."

One reason that the local programs are able to serve so many clients is that four (4) years ago, all five (5) programs co-located in one building here in downtown Buffalo. Three of the organizations (LSED, WNYLC and VLP) share common space, including a library, a student/volunteer clinic room, two conference rooms, a reception area and a lunch room.

They also share a telephone system, and all of the organizations share various types of technology. The shared telephone system is administered in-house, and long distance billing is allocated between the organizations sharing the system. At the time, each of the 3 programs was in need of an updated telephone system. The system that they bought collectively, is at the same level as they would have each needed to by individually. The shared system cost \$22,800 to purchase, and for the phone system alone, they collectively saved \$45,600. They have taken their collaboration to another level with the phones as WNYLC, LSED and VLP are now also on a shared phone bill (saving over \$5,000/year) and sharing internet bandwidth (saving another \$1200/year). The shared telephone system not only saves costs, but it is convenient for connecting misdirected calls to other agencies. Although each of the organizations sharing the system has a separate number, they can transfer calls internally to any advocate on the system.

In addition, the telephone system is set up like a computer network, with patch panels, and the wiring can easily be changed by plugging and unplugging connections,



without the necessity of purchasing a maintenance contract or calling in a phone technician.

The shared conference room includes an overhead projector and screen, and a sound system for holding trainings and other events requiring multimedia support. The large conference room can be set up with various configurations to accommodate trainings, meetings, presentations, etc. It is often used by the other two legal services organizations in the building. The shared clinic space also includes shared high speed Internet connections. The shared spaces are reserved through the use of a common calendar system, available to all advocates on their desktops.

By working together, they were able to raise additional special funding to buy all of the shared equipment and furniture. This special funding also allowed them to pay for the build out costs of their new shared space – which amounted essentially pre-paying over \$120,000 in rent and thus reducing their rent over the life of their 10 year shared lease.

All of these cash savings allow the programs to put more dollars into hiring more staff to represent more clients in need. All of the organizations are exploring other cost savings ventures, such as joint purchase of supplies, insurance and audit services.

In addition to the cash savings, there are several benefits that flow from this arrangement. Because all of the organizations are housed in the same building, clients have been provided a “one stop” option. The organizations maintain and share referral lists by organization and by case type. Clients who walk in asking for assistance are quickly directed to the correct organization so that they do not have to go from organization to organization seeking services.

The 5 programs’ lawyers and paralegals all being in one building facilitates the advocates from different programs working together on issues and cases. Rather than having to spend time going across town to meet, they can simply go down the hall or up the elevator to work together.

In addition, VLP has a wonderful collaboration with our local Bar. Each year, about 400 local lawyers handle about 1000 pro bono cases through VLP. The collaboration with these pro bono lawyers compliments the efforts of the staff lawyers to help provide more and better service for clients.

However, even with all of these superlative efforts and collaborations, the need remains overwhelming. Statistics gathered over a sample 2 month period indicate that **40,000 low income clients in the Buffalo area per year are being turned away and facing their important civil legal problems without the help of a lawyer.**

It is a black eye on the principles of justice that we all hold so dear that people in need are being denied access to justice concerning basic human needs such as housing, public benefits and family matters.

## **Conclusion**

I want to close by thanking the Chief Judge and the Task Force for your exemplary efforts and results. In these very difficult economic times the State must be more vigilant, more active and more aggressive in making sure that people in need do not fall prey to denial of life sustaining benefits, loss of their home or further injustice. Your leadership is helping to expand our investment in civil legal services and ensuring greater access to justice.

Access to justice – funding for legal services -- is NOT a special interest. Providing legal assistance to the poor and the elderly is a fundamental public interest. Thank you.

Respectfully submitted by:  
Arthur A. Russ, Jr.  
President  
Bar Association of Erie County

# **Gabrielle Threet**

Client of Erie County Bar Association Volunteer Lawyers Project,  
accompanied by Robert M. Elardo

## Task Force to Expand Access to Civil Legal Services in NY

### Fourth Judicial Department Hearing

October 6, 2011

Gabrielle Threet  
Client of  
Erie County Bar Association Volunteer Lawyers Project

#### Background

Gabrielle Threet is a former client of the Erie County Bar Association Volunteer Lawyers Project for an unemployment insurance benefits hearing. Ms. Threet has a 4-year-old daughter, Jayla, and is a recent graduate of Buffalo State College. From October 2007 until her discharge in October 2010, Ms. Threet worked at Erie Community College as a student assistant to foster care and at risk youth. At the time of her discharge, Ms. Threet was simply told her position was no longer available. However, ECC later challenged her receipt of unemployment benefits alleging she falsified her time cards during the week she was undergoing surgery at Roswell Park. A pro bono attorney provided through the Volunteer Lawyers Project worked with Ms. Threet to successfully defend her benefits against the misconduct allegation. Ms. Threet currently works as a counselor at Berkshire Farms Center for Youth and at Gateway Longview.

#### Summary of Planned Testimony

In October 2010, Ms. Threet was discharged from her position as a student assistant at Erie Community College. Ms. Threet contacted the Erie County Bar Association Volunteer Lawyers Project after receiving notice that her employer was challenging her unemployment benefits. VLP provided a volunteer attorney who worked with Ms. Threet throughout the course of an extended and complex hearing process to preserve her unemployment benefits. Having a volunteer attorney provided not only legal advice and representation, but also emotional support throughout the hearing process. In addition, having an attorney allowed Ms. Threet to focus her attention on her search for a new job. Ms. Threet's unemployment benefits enabled her to provide basic necessities for her family, maintain payments on her electricity and gas bills, purchase school supplies for her daughter, continue repaying her student loans to avoid default, and finance her job search. By the time the final unemployment hearing concluded, Ms. Threet had obtained employment as a counselor for Baker Victory Services. Her unemployment benefits and her access to legal services allowed Ms. Threet to provide for her family and maintain her finances until she could find a new job.

## Testimony

Task Force to Expand Access to Civil Legal Services in NY

Fourth Judicial Department Hearing

October 6, 2011

Statement of Gabrielle Threet  
Client of  
Erie County Bar Association Volunteer Lawyers Project (VLP)

Good morning. My name is Gabrielle Threet and I'm a former client of the Erie County Bar Association Volunteer Lawyers Project. VLP, and a pro bono attorney assigned by VLP, represented me from February through May of 2011 in my unemployment insurance benefits case.

From 2007 through 2010, I worked as a student assistant with the Independence Bound Program at Erie Community College, which provides counseling for at-risk foster care youths. My job responsibilities included helping to run programs and workshops and maintaining student files. In October 2010, I was told my position in the Program was no longer available. At the time, I was not given any reason for why I was being let go. Later, I discovered my employer fired me for allegedly falsifying my time cards in August 2010. The time period at issue was when I took four days off to have surgery at Roswell Park. In order to make up the time I knew I was going to miss, I worked extra hours in the weeks leading up to and after the surgery. In the past, my supervisor had always allowed me to count these extra hours on days on my time card when I was not physically in the office. This is exactly what I did, and I submitted my time card which was approved by my supervisor. Not until after I was fired did I learn this was against my employer's policy.

The Department of Labor initially granted my unemployment benefits. However, I soon received notice that my employer was contesting my eligibility for benefits. They were arguing that I was discharged for misconduct for falsifying my time cards, and therefore I should not be eligible for benefits. Since I had already been receiving benefits, I was very concerned not only that my only source of income would be taken away, but also that I would be required to repay the money I had already received.

After contacting Volunteer Lawyers Project, the first step in their program is to attend a general orientation and meet with a staff attorney. Before even being assigned a pro bono attorney to handle my case, VLP had already started to ease my nerves by teaching me about the unemployment benefits hearing process. VLP staff attorneys ensured I had complied with the appropriate procedures to request a hearing and explained the law to me as it applied to my case. They also made sure I understood how to effectively present the documents and witnesses for my case before the administrative law judge.

When I was informed a volunteer attorney had accepted my case, I felt relieved and empowered. I felt confident that I'd be able to fight my case and fight for the correct outcome. I felt like I finally had a voice in a system I was completely unfamiliar with.

As it turned out, my case was far more complex than I initially imagined. First, my employer was represented by a highly experienced attorney. Second, my case lasted three full hearings that spanned three and a half months. There were 25 documents submitted into evidence, 5 witnesses to examine or cross-examine, and several subpoenas to review and comply with. And last, as if going into court weren't intimidating enough, my employer showed up to each hearing with a team of lawyers, assistants, supervisors, and witnesses. Having my attorney throughout the process gave me confidence and emotional support to know that my side of the story was going to be heard. He helped me focus on the relevant legal issues, relevant evidence, and made sure I was prepared for each hearing.

Ultimately, the judge ruled in my favor, finding that I had not committed misconduct because I had not falsified my timecards, and had been following my supervisor's instructions.

Throughout the entire process, my unemployment benefits were my only source of income to support me and my four year old daughter. Having these benefits allowed me to keep a promise I made to myself: to never go on welfare. The benefits also provided financial stability throughout the hearing process. I was able to meet the small, day-to-day living expenses for my family, simple things like paying for toiletries. I was able to make payments on a budget plan to keep my electricity and gas on. I was able to provide my daughter with school supplies and school uniforms. And I was able to continue paying my student loans to prevent them from going into default.

In addition to meeting these expenses, my benefits and my volunteer lawyer gave me the opportunity to focus on my job search rather than my unemployment hearing. I was not content to live off my unemployment benefits until they ran out. I started applying for new jobs immediately. Time, money, and energy that would have been spent on my hearing was instead spent on job applications, Department of Labor job trainings, and travelling to interviews.

By focusing on my job search, I was able to find a job as a counselor for Baker Victory Services that started just before my unemployment hearings finally ended. My unemployment benefits had kept me on my feet throughout the process until I was able to earn my next paycheck. Since then, I have switched to a new position as a counselor at Berkshire Farms Center for Youth and I am also working as a counselor at Gateway Longview.

As I'm sure is clear by now, I truly enjoy working with youth and I am grateful for the assistance the Volunteer Lawyers Project provided throughout the hearing process as a bridge between jobs. I feel that VLP truly believed in me and fought for me. Without their assistance and without my unemployment benefits, I would not have been able to meet my basic living expenses, I would have needed to apply for welfare, and my job search would have been significantly more difficult. I hope that all low income families and individuals living in poverty continue to have access to the unemployment law services I received from the Volunteer Lawyers Project and my pro bono lawyer.

Thank you.

# **Justin L. Vigdor**

Chair, Telesca Center Capital Campaign;  
Past President, New York State Bar Association and Monroe County  
Bar Association;  
Senior Counsel, Boylan Code LLP



**Justin L. Vigdor**

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### **Areas of Practice**

Business, Corporate & Securities

Alternative Dispute Resolution

### **Education**

LLM, New York University

LLB, *magna cum laude*, St. John's University

B.S., University of Maryland

### **Professional Affiliations**

As a member of the Monroe County Bar Association, Mr. Vigdor served as its President (1977), was Chairman of its Corporation, Banking and Business Law Section (1972-1973) and was President of its Foundation. He has served as President of the New York State Bar (1985-1986), is a director and has been President of its Foundation and has served as a member of its House of Delegates since 1977. He is also a Founder of the Senior Lawyers Section of the NYSBA, serving as Chair from 2009-2011. Mr. Vigdor was also a member of the House of Delegates of the American Bar Association from 1984 to 1996 and was a Trustee of the National Conference of the Bar Foundations. He is a Life Fellow of both the New York Bar Foundation and the American Bar Foundation. For five years from its inception, he chaired the Board of the New York IOLA Fund. He is a member of the Society of Corporate Secretaries and Governance Professionals, an Official Referee of the New York State Commission on Judicial Conduct and a Director of the Committee for Modern Courts. He is a member of the Estate Planning Council of Monroe County. He was a director of IEC Electronics Corp. and was the President of the U.S. Arbitration and Mediation Service of Upstate New York. He is a Trustee of the Ames-Amzalak Charitable Trust. As one of four New York State Uniform Law Commissioners, Mr. Vigdor has served on the Executive Committee of the National Conferences of Commissioners on Uniform State Laws and has chaired several Uniform Law Drafting Committees. He was elected a Life Member of the Uniform Law Conference in 2008. He is also admitted to the Florida Bar and numerous federal courts and commissions.

### **Professional Honors and Achievements**

Mr. Vigdor has been listed in *The Best Lawyers in America*, *Who's Who*, *Who's Who in American Law*, *Who's Who in the World* and *New York Super Lawyers* for many years and has



been the recipient of numerous awards including the Rodenbeck Award for Service to the Community and Legal Profession; the Nathaniel Award for Community Service and Professional Accomplishments; Board Leadership Award from the United Way and Rochester Business Journal; the Humanitarian Award from the Foundation of the Monroe County Bar; the Professionalism Award from the Monroe County Bar Association; and awards from the Al Sigl Center, Mary Cariola Children's Center, Quad A for Kids, Brighton Chamber of Commerce, Association of County Clerks, Jewish Community Federation and U.S. Committee on Sports for Israel. An annual "*Justin L. Vigdor Award*" to New York State Banks has been established in his honor by the New York IOLA Fund. An annual "*Justin L. Vigdor Senior Lawyer Award*" was created by the Monroe County Bar Association, and he was the first recipient. He has served as a panelist on numerous topical and professional subjects and has contributed published articles to various periodicals. Mr. Vigdor recently received a 2009 Philanthropy Award from the Rochester Area Community Foundation, and was also honored with the Woerner Kollmorgen Award for community leadership by Nazareth College.

### **Community Activities**

Civic leadership has been a hallmark of Mr. Vigdor's career, and his community involvement includes: Past President and Director, AAA of New York State; Past Chair, AAA of Western and Central NY; Past Chair, Board of Governors, Al Sigl Center Partners' Foundation; Past Chair, Board of Directors, Al Sigl Center for Rehabilitation agencies; Chairman of the Board of Rochester Arts Festival, Inc.; Trustee, Ames-Amzalak Charitable Trust; Member of the Dean's Advisory Committee of the Eastman School of Music; Director, Jewish Community Federation of Greater Rochester; Past Chair, Professional Advisory Committee Jewish Community Foundation of Greater Rochester; Past President Jewish Family Service of Rochester; Past Member Advisory Board; Kidney Foundation of Upstate NY; Past Director, Mary Cariola Children's Center; Member, Past Member of Professional Advisory Committee, Home Care of Rochester; Member, Advisory Board, Quad A For Kids; Director, Philip Bernstein Society; Past Member Advisory Board, High Technology of Rochester; Past Director, United Way of Greater Rochester and Monroe County; Past Director, Rochester Chapter, American Red Cross; Past Member, Advisory Committee, League of Women Voters; Past Director, Rochester Downtown Development Corporation; Past Discussion Leader, Great Books Foundation.

## **Testimony of Justin L. Vigdor**

**Past President, New York State Bar Association**  
**Past President, New York State Bar Foundation**  
**Past President, Monroe County Bar Association**  
**Past Chair of New York Iola Fund**  
**Chair of Telesca Center Capital Campaign**

Before the Chief Judge's Task Force to Expand Access to Civil Legal Services in New York, October 6, 2011 at Buffalo New York.

Chief Judge Lippman, Presiding Judge Scudder, President Hassett, Chair Barnett and members of the Task Force, it is both an honor and a pleasure to appear before you today.

I have been told that my task is to describe the origin of the Telesca Center For Justice (the "Center") in Rochester New York. I know that Bryan Hetherington has appeared, or will shortly be appearing, before you to discuss the Center's benefits to its constituent Agencies and its operations. Please forgive us if we overlap.

The Center is the realization of a vision and a dream of Monroe County's bar leaders and legal service providers going back several decades to bring under one roof the Monroe County Bar Association ("MCBA"), the Foundation of the Monroe County Bar ("Foundation") and Monroe County's legal services providers: the Legal Aid Society, Empire Justice Center, Monroe County Legal Assistance Center and the Volunteer Legal Services Project (the "Providers").

Indeed, Hanna Cohn, whom some of you may have known, the founder of the Volunteer Legal Services Project, was one of the most vocal proponents of the concept. Sadly, Hanna died prematurely, several years before her dream was realized.

For years the Providers were scattered around the City in shabby, antiquated but affordable buildings. Because of their different funding sources they each were charged with accommodating only certain civil legal needs and poor people were often obliged to shuttle by bus from one to another.

The MCBA attempted to ameliorate the problem by creating a central telephone intake process which was of very limited effectiveness and was eventually discontinued. The Directors of the Agencies themselves convened annually for a coordination of services meeting during which they discussed programming and plans for addressing community problems.

In 2005, the MCBA established in 1896, and the Foundation established in 1951, moved to a functional ten-story building at Rochester's Four Corners, the very center of the legal community, and convenient to public transportation and both the federal and state courts. The building was largely vacant but for a bank on the ground floor and a tenant on one other floor. Serendipitously, the leases of the four Providers had recently expired or were near expiring. This provided the MCBA, the Foundation and the Providers with real leverage in negotiating with the building's owner as they had the ability to occupy most of the building. Leases for 15-year terms were negotiated at a very reasonable market rates which obligated the Landlord to advance \$550,000 for renovations and build-outs. The leases gave the MCBA, Foundation, and the Providers the right to name the building and provided that if the Landlord were reimbursed for the \$550,000, the rental rate would be locked at a below market rate of \$10 per square foot for the entire term. Mary Corbitt Lowenguth, the splendid Executive Director of both the MCBA and the Foundation, and the Executive Directors of the Providers came together to determine whether they could raise funds to reimburse the \$550,000 and to finance relocation costs of approximately \$200,000. I was honored to be asked to chair a fund campaign to accomplish that as I had chaired a similar campaign for another collaborative relocation of several community non-profit agencies.

We formed a Campaign Cabinet and began planning to create a unique national model for delivery of legal services. We drafted a formal partnership agreement to create "The Partnership For Equal Justice". The agreement, approved by all six Boards (the "Partners") was designed to govern certain aspects of the campaign. An initial goal of \$1 million was established; \$550,000 for the reimbursement to the Landlord, \$200,000 for moving and relocation costs, \$200,000 for campaign expenses and the balance to add to the Foundation's endowment for future grants to the Providers. The Foundation, being a 501(c)(3), entity agreed to serve as the conduit for the

funds. All parties agreed to suspend other fundraising during the period of the campaign, to share their existing donor data bases and to make available solicitors. A distribution formula was agreed upon for funds raised in excess of the goal. The next \$200,000 was to go to the Foundation and the balance shared equally among the Partners.

That being done, it was agreed that we needed to give the building a compelling identity. We asked our senior federal district court judge for permission to name the building in his honor. Everyone involved agreed that he has been an inspiration to the bar of western New York. His life's work has epitomized equal justice. Rich and poor, black and white, men and women, individuals and corporations, have had access to his court and received sensitive and empathetic hearings. Finally, he agreed and so, we formally named the building "the Telesca Center for Justice".

We engaged a consultant to conduct a feasibility study which confirmed that we could be successful. We proceeded to design the campaign structure and named Chairs and committees to solicit the various categories of potential donors, e.g. large law firms, medium size law firms, small law firms, banks, corporations and title companies, the boards of each of the Partners, foundations, well known local philanthropists and friends of Judge Telesca.

With the enormous dedication of Mary Lowenguth, who throughout was wearing three hats, and the invaluable assistance of Kristi Hughes, the Development Director of the Empire Justice Center for whose services we contracted, we did all the remaining groundwork, e.g. developed campaign kits, with a case statement, donor commitment forms, frequently asked questions, history of the agencies, new releases and other material, held solicitation training sessions and moved forward to raise the funds.

After some quiet fund raising during 2006 among the members of our cabinet, the Partners' boards, some friends of Judge Telesca, a few major law firms and others we had received pledges of approximately \$600,000 of which about \$400,000 was from the legal community. In January of 2007, we raised the goal to \$1.2 million and launched the public phase of the three year campaign. By the end of 2009, we had pledges of over \$1.8 million. We

received financial support from the New York IOLA Fund and the New York State Bar Foundation. We had enthusiastic encouragement and support from the Mayor of Rochester, the County Executive of Monroe County and the Rochester Downtown Development Corporation for helping to revitalize a part of downtown by bringing more than 100 lawyers, paralegals and other personnel to what had been a virtually vacant building.

The Telesca Center has exceeded all expectations. The Providers have up-to-date quarters. Numerous efficiencies have been realized. There is central intake, shared reception areas, shared conference rooms, joint janitorial and payroll services, shared knowledge and talent. A Center for Education has been established in the building seating up to 125 people which is used for CLE, community programs and speaker forums. Each agency has access to the donor base and a planned giving program is contemplated.

In 2008, we received the American Bar Association's Harrison Tweed Award "in recognition of extraordinary achievement to develop or significantly expand access to legal services for low income and indigent persons". We have been visited by other bar associations who seek to replicate The Telesca Center. That is exactly what we had hoped would happen.

We are pleased to report that the fund raising has continued, State grants have been obtained for additional technology and for renovation of the building's lobby which was not in the original plan. Work on the lobby will shortly begin. The total committed is approaching \$2.4 million. We are grateful to this Task Force for its efforts to address the limited availability of legal service to the poor and we pledge to continue to do our part to achieve our shared objectives.