

# APPENDICES

## THE TASK FORCE TO EXPAND ACCESS TO CIVIL LEGAL SERVICES IN NEW YORK

REPORT TO THE CHIEF JUDGE OF THE STATE OF NEW YORK



NOVEMBER 2014

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**NOTE:**  
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<http://www.nycourts.gov/ip/access-civil-legal-services>

**APPENDIX 1:**

**Acknowledgment of Law Firms That Provided *Pro Bono*  
Assistance to the Task Force**

## Acknowledgement of Law Firm Pro Bono Assistance to the Task Force

### **Sullivan & Cromwell LLP**

Robert J. Giuffra, Jr. (Partner, Task Force member)  
Jessica Klein (Pro Bono Counsel)  
Lara J. Loyd (Associate)  
Chiansan Ma (Associate)  
Inbar R. Gal (Associate)  
Daniel R. Lorme (Associate)  
Christian P. Jensen (Summer Associate)  
Madeline B. Jenks (Legal Assistant)  
Julie N. Pearlman (Legal Assistant)  
Mary C. Reiser (Legal Assistant)

### **Skadden, Arps, Slate, Meagher & Flom LLP**

Robert C. Sheehan (Of Counsel, Task Force Member)  
Ronald J. Tabak (Special Counsel)  
Brenna DeVaney (Pro Bono Counsel)  
Brittany Dorman (Associate)  
Yosef Ibrahim (Former Associate)  
Roman Rodriguez (Associate)  
Carolyn Stoner (Associate)

### **Simpson Thacher & Bartlett LLP**

Mark G. Cunha (Partner, Task Force Member)  
Harlene Katzman (Pro Bono Counsel)  
Carola Beeney (Pro Bono Coordinator)  
Sarah Eichenberger (Former Associate)  
Drew Harmon (Associate)  
Jonathan Kelley (Associate)  
Linton Mann, III (Associate)  
Kelly Mannion (Associate)  
Michael Donnelly (Chief Information Officer)  
Lloyd Pace (Information Technology Training Manager)

### **Proskauer Rose LLP**

Betsy B. Plevan (Partner, Task Force Member)  
David A. Picon (Partner)  
Stacey O'Haire Fahey (Director of Pro Bono)  
William Fogleman (Associate)  
Katrina E. McCann (Associate)  
Latoya S. Moore (Associate)  
Allison Candal (Project Assistant)  
Jerrel Harvey (Project Assistant)

**APPENDIX 2:**

**Request for Proposals from Oversight Board  
for 2014-2015**

Judiciary Civil Legal Services in New York

FISCAL YEAR 2014-2015

Request for Proposals

**APPLICATION FORMS AND INSTRUCTIONS**

## Contents

- I. Background Information and Instructions
- II. Application Cover Sheet
- III. Application Summary Table
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  - G. Resumes and job descriptions of senior management and project staff.
  - H. Photocopy of correspondence issued by the Internal Revenue Service that indicates the applicant's status as a tax-exempt organization
  - I. Client Financial Eligibility Guidelines
  - J. Client Grievance Procedures
  - K. Case Acceptance Policy and Procedures
  - L. Insurance Certificates (see Exhibit 1)
  - M. Affirmative Action/EEO Policy
  - N. Documentation of Current NY Charities Registration
  - O. Documentation of Taxpayer Identification Number (TIN)
  - P. Vendor Responsibility: Acknowledgment Form and VR Questionnaire if applicable and submitting on paper

### Exhibits/Appendices:

- Exhibit 1: Insurance Requirements
- Exhibit 2: Vendor Responsibility Requirements/Instructions
- Exhibit 3: Maximum Available Funding by County
- Exhibit 4: Evaluation Tool



## **I. Background Information and Instructions**

Chief Judge Jonathan Lippman’s Task Force to Expand Access to Civil Legal Services has found that there is an unacceptable crisis of the unrepresented in the courts of New York State. Each year, more than 2.3 million low-income New Yorkers must navigate the complexities of the State’s civil justice system without the assistance of counsel in disputes over the most basic necessities of life. This crisis burdens our courts and represented parties by requiring Judges and other court personnel to devote greater time to cases involving unrepresented New Yorkers than would be necessary if currently unrepresented parties were assisted by counsel. It prevents unrepresented parties from receiving full access to justice and hurts our State by reducing the amount of federal assistance for New Yorkers and by increasing other costs arising from poverty.

In its initial 2010 Report the Task Force proposed a multi-year plan to allocate funding within the Judiciary’s budget for civil legal services for New Yorkers in all areas of the State living at or below 200 percent of the federal poverty level (\$46,100 in annual income for a family of four in 2012).<sup>1</sup> At the Chief Judge’s direction, the Task Force has prioritized civil legal problems involving the “essentials of life”— housing, family matters, access to health care and education, and subsistence income. During State fiscal year 2012-13, the Judiciary awarded \$25 million for this critical initiative to civil legal service providers throughout the state. During fiscal year 2013-14 an additional \$15 million was awarded, providing a total of \$40 million to service providers. As a result of those grants, more low-income New Yorkers have received civil legal assistance. Although there have been some gains, the Task Force finds that there is still a substantial gap to be bridged in access to justice in core civil legal matters involving the “essentials of life.” In keeping with its multi-year plan, the Task Force recommended that the current allocation for civil legal services in the Judiciary budget once again be increased. With the support of the Governor and the Legislature, the 2014-15 State fiscal year budget allocated an additional \$15 million for this critical initiative.

The parameters for the funding and the mechanism for distributing funds were adopted by the Chief Judge in response to the Task Force’s recommendations. The Chief Judge has established an Oversight Board, consisting of the Chief Administrative Judge of the Courts, the Chair of the Chief Judge’s Task Force to Expand Access to Civil Legal Services, and the Chair of the IOLA Board, to oversee the process for the allocation of this funding.

Funds will be allocated to each county based on the proportion of the population living at or below 200% of the poverty line. Each of the contracts awarded in 2012-13 and 2013-14 will be renewed at the same funding level for the provision of services in each county. The additional \$15,000,000 will be awarded pursuant to this competitive procurement. The purpose of competitively bidding the additional \$15,000,000 is to continue to promote a broad array of quality civil legal services that directly address each of the “essentials of life” and improve access to such services in each county. An additional goal is

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<sup>1</sup> <http://www.nycourts.gov/ip/access-civil-legal-services/PDF/CLS-TaskForceREPORT.pdf>

to further encourage cooperative agreements that promote collaboration among legal service providers, bar associations and law schools.

It is the intent of this Request for Proposals (RFP) to award contracts for Judiciary Civil Legal Services in the counties for which funding is available as listed in Exhibit 3. The Unified Court System (UCS) is soliciting sealed proposals for the purpose of establishing one or more contracts to provide the services herein.

### **A. Applicant Eligibility**

Awards will be made to qualified organizations which are non-profit entities, tax-exempt under the Internal Revenue Code and eligible to receive funds for the provision of civil legal services without charge to poor persons within a geographical area in New York State.

In addition, an applicant must have an audit mechanism that provides accountability for “Judiciary CLS Funds.”

Applicants must have staff with the requisite training, knowledge and experience to resolve client problems in the most effective and efficient manner.

Applicants seeking funding for joint projects between two or more funding-eligible organizations should have only one of the organizations submit an application for the project. The participating organizations should decide which organization will submit the application. The application should be submitted in the name of the organization, not in the name of the proposed project, unless the project is a separate legal entity. The application should contain one budget which allocates the expenditures among the participating organizations. Joint project applications are considered separately and have no effect on any application for a different project that is submitted individually by any of the participants in a proposed joint project.

### **B. Funding**

Available funding for the Judiciary Civil Legal Services program is allocated by county based on the proportion of the population living at or below 200% of the poverty line. The amount allocated by county under this procurement was determined by allocating the total 2014-15 fiscal year appropriation of \$55,000,000 by the proportion of the population living at or below 200% of the poverty line and adjusting by the amount previously awarded to each county in the 2012-13 and 2013-14 fiscal year competitive procurements. See Exhibit 3, Maximum Available Funding by County.

Applicants may submit a single proposal to serve a single county or multiple counties. Proposals must articulate the specific counties to be served and the “essentials of life” service types to be provided in each county in the Application Summary Table.

### C. Award Selection Criteria and Method of Award

Proposals will be reviewed and rated by the Oversight Board to Distribute Judiciary Civil Legal Services Funds in New York to ensure that the “essentials of life” – housing, family matters, access to health care and education, and subsistence income – are provided for throughout the state.

Proposals will be evaluated and points awarded in the following categories:

Organizational Capacity:	15 points maximum
Overall Program Plan	50 points maximum
Reasonableness of Cost (Overall Budget):	15 points maximum
County-Specific Program Plan:	15 points maximum <sup>2</sup>
County-Specific Reasonableness of Cost:	5 points maximum <sup>3</sup>
<b>TOTAL POSSIBLE POINTS</b>	<b>100</b>

A minimum total score of 85 is required for a contract to be awarded. A separate score will be calculated for each county for which services are proposed. Funding will be awarded to each responsible applicant that proposes to provide services in a given county and that receives a score of 85 or more. Responsibility is determined in accordance with the criteria articulated in paragraph I(G) below.

Reviewers will consider the following factors in awarding points in each category:

#### Organizational Capacity (15 Points Maximum)

1. The extent to which the applicant demonstrates that the organization’s mission aligns with the provision of civil legal services to low income clients and has experience providing civil legal services to low income clients. (5 points). Reviewers will consider the following source(s) of information: Mission Statement; Narrative Proposal, Organizational Capacity, questions 1, 2 and 5.
2. The extent to which the applicant demonstrates that the organization has instituted mechanisms likely to result in high quality provision of civil legal services, taking into account significant developments which may have impacted on the ability to institute such mechanisms. (5 points). Reviewers will consider the following source(s) of information: Narrative Proposal, Organizational Capacity, questions 3, 4, 6, 7, 8 and 9.

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<sup>2</sup> A separate score will be calculated for each county for which services are proposed.

<sup>3</sup> A separate score will be calculated for each county for which services are proposed.

3. The extent to which the applicant demonstrates effective use of technology to enhance access to and quality of civil legal services. (2 points). Reviewers will consider the following source(s) of information: Narrative Proposal, Organizational Capacity, question 10.
4. The ability of the organization to respond to victims of natural disasters (3 Points). Reviewers will consider the following source(s) of information: Narrative Proposal, Organizational Capacity, question 11

#### Overall Program Plan (50 Points Maximum)

1. The extent to which the application proposes to address essentials of life issues as defined in RFP Section I: Background Information and Instructions (10 points). Reviewers will consider the following source(s) of information: Narrative Proposal, Program Description, question 1.
2. The extent to which the applicant proposes provision of direct legal services. (10 points). Reviewers will consider the following source(s) of information: Narrative Proposal, Program Description, questions 2, 3 and 4.
3. The accessibility of the proposed program (8 points). Reviewers will consider the following source(s) of information: Narrative Proposal, Program Description, questions 5 and 6.
4. The proposed caseload in context of catchment area and funding requested. (14 points). Reviewers will consider the following source(s) of information: Narrative Proposal, Program Description, questions 7 and 8.
5. The collaborative nature of the proposed program (8 points) Reviewers will consider the following source(s) of information: Narrative Proposal, Program Description, questions 9 and 10.

#### Reasonableness of Cost: Overall Budget (15 Points Maximum)

1. The extent to which the proposed program will effectively use state dollars for the delivery of quality services. (5 points). Reviewers will consider the following source(s) of information: Budget.
2. The extent to which the salaries and fringe benefits for the proposed program are appropriate for the positions listed in the proposal. (4 points). Reviewers will consider the following source(s) of information: Budget.
3. The extent to which the percentage of UCS funds that support administrative costs (including salaries and fringe benefits of non-program staff, real estate expenses that are not used for the direct delivery of services, and related costs) is comparable to the percentage found in the budgets of similarly sized agencies. (4 points). Reviewers will consider the following source(s) of information: Budget.

4. The extent to which the non-personnel service costs included in the budget are reasonable for the operation of the proposed program. (2 points). Reviewers will consider the following source(s) of information: Budget.

#### County Specific Program Plan (15 Points Maximum)

1. The extent to which the proposed program provides accessible, quality services within the county served (10 points). Reviewers will consider the following source(s) of information: Narrative Proposal, County Specific Questions 1, 2, 3, 4, 6.
2. The proposed caseload in context of catchment area and funding requested. (3 points). Reviewers will consider the following source(s) of information: Narrative Proposal, County Specific Question 5.
3. The extent to which the proposed program avoids redundant services (2 points). Reviewers will consider the following source(s) of information: Narrative Proposal, County Specific Question 7.

#### County Specific Reasonableness of Cost (5 Points Maximum)

1. The extent to which the proposed program will effectively utilize state dollars for the delivery of quality services in the county. (5 points). Reviewers will consider the following source(s) of information: Application Summary Table.

Once applications are received, a list of all applicants will be circulated to the Oversight Board with Conflict of Interest Disclosure Forms, which must be filed prior to Oversight Board review of applications. Oversight Board members are required to disclose current affiliations with applicants, and they are precluded from reviewing and being involved in decisions on grants involving those organizations.

The funding amount awarded to each qualified applicant will be based on the following criteria:

- The nature and scope of the services to be provided
- A preference will be given for applications that propose direct legal services and;
- A preference will be given for applications that address essentials of life needs not currently met within the catchment area.
- The estimated number of clients to be served
- Expertise in providing services to a specific sub-population or sub-populations within the catchment area (i.e. ability to provide services in languages other than English, or in a culturally appropriate manner to specific sub-groups)
- Accessibility of the proposed services to eligible clients in the catchment area as demonstrated by:
  - Maintenance of physical offices in the catchment area

- Linkage agreements with other departments of the applicant’s organization or other organizations in the community that provide social services to the target population and that might result in greater client access to civil legal services.
- Capacity to provide accessible services to a specific sub-catchment area (i.e. a particular municipality or neighborhood within a given county)

UCS reserves the right to award multiple contracts for the same county. When more than one qualified proposal is received for the same county, UCS shall award a proportion of the total amount allocated for the particular county to each qualified applicant to ensure a broad array of services to address the legal needs of clients in each of the four high priority “essentials of life” areas is available and accessible.

If no awards are made for a particular county, UCS reserves the right to reallocate the funds allocated to that catchment area to proportionally increase the amounts available to other awarded contracts providing services within the same Judicial Department.

#### **D. Grant Contract**

Grant recipients will enter into a contract with UCS or, in the case of qualified applicants already under contract with UCS to provide Civil Legal Services, be subject to amendment of their current contract. New contracts will be for the 2014-2015 state fiscal year (April 1, 2014-March 31, 2015), with an estimated commencement date retroactive to April 1, 2014. New contracts will also have two (2) optional one-year renewal terms, the exercise of which will depend on grants in subsequent years.

#### **E. Reporting Requirements**

Grant recipients will be required to report on the use of the awarded funds. The due dates, format and specific information to be contained in the reports will be determined by UCS.

#### **F. Insurance Requirements**

Grant recipients will be required to maintain during the term of the contract: (i) workers’ compensation and disability benefits insurance; (ii) commercial general liability insurance; and (iii) professional liability insurance. See Exhibit 1 for specific coverage requirements and documentation that must be submitted with application.

## **G. Vendor Responsibility**

UCS is required to conduct a review of every organization with which it enters into a contract in order to provide reasonable assurances that the organization is responsible. Vendor responsibility is determined by a review of each prospective contractor's legal authority to do business in New York State, business integrity, financial and organizational resources, and performance history. Organizations applying for funding which, if awarded, would result in a new or amended contract with a total amount of \$100,000 or more are required to submit a Vendor Responsibility Questionnaire. See Exhibit 2 for detailed instructions on completion of the Vendor Responsibility Questionnaire.

## **H. Questions**

Applicants may submit questions concerning this RFP by email only to:

Amelia Hershberger: [ahershbe@nycourts.gov](mailto:ahershbe@nycourts.gov)

Please indicate in "Subject" field: Judiciary CLS RFP 2014-15 Question(s)

The deadline to submit questions is Wednesday, May 21, 2014, before 1:00 pm. A Questions & Answers (Q&A) sheet will be posted on the UCS website a few days after the deadline for submission of questions.

**IMPORTANT:** All questions regarding this RFP must be in writing and directed solely to the attention of the above-designated person.

## **Application Submission Procedures/Deadline**

### *Step One: Complete the Grant Application*

Please follow the formatting instructions and page limits. Applications must be single-spaced with one inch page margins (not including attachments, financial forms and data tables) using a 12 point font. In order to facilitate photocopying, please do not permanently bind applications.

An Application includes the Application Cover Sheet, Application Summary Table, Narrative Proposal, Budget and Attachments.

### *Step Two: Assemble the Following Attachments:*

- A. Audited Financial Statement from the Most Recently Ended Fiscal Year
- B. Most Recent Annual Report. If the applicant does not publish an annual report, please explain.
- C. Mission Statement
- D. Organizational chart

- E. Board of Directors Roster. For each board member include name, address, length of current term, total years of service on the board, and number of meetings attended in state fiscal year 2013-2014
- F. Minutes of the Last Four Meetings of the Board of Directors
- G. Resumes and job descriptions of senior management and project staff.
- H. Photocopy of correspondence issued by the Internal Revenue Service that indicates the applicant's status as a tax-exempt organization
- I. Client Financial Eligibility Guidelines
- J. Client Grievance Procedures
- K. Case Acceptance Policy and Procedures
- L. Insurance Certificates (see Exhibit 1)
- M. Affirmative Action/EEO Policy
- N. Documentation of Current NY Charities Registration
- O. Documentation of Taxpayer Identification Number (TIN)
- P. Vendor Responsibility: Acknowledgment Form and VR Questionnaire if applicable and submitting on paper

*Step Three: Deliver the Application with all Required Attachments via either electronic format or paper format as instructed below:*

### **Submission via electronic format**

Prior to submitting electronically, applicants must request and receive a User Name and Password for the UCS SharePoint Web Service. Applicants may submit requests for a User Name and Password by email only to:

Amelia Hershberger: [ahershbe@nycourts.gov](mailto:ahershbe@nycourts.gov)

Please indicate in "Subject" field: Judiciary CLS RFP 2014-15 SharePoint User Name/Password Request

The deadline to requests a User Name and Password is Wednesday, May 28, 2014, before 1:00 pm.

User Names, Passwords, the SharePoint URL and instructions for uploading files will be provided via an e-mail reply.

Application documents must be uploaded no later than Wednesday, June 4, 2014, before 2:00 pm.

Applications must be submitted in portable document format (PDF).



**In paper format**

Applications must arrive at the address below no later than Wednesday, June 4, 2014, before 2:00 pm.

Deliver ONE signed, hard copy original and THREE additional copies (four complete sets) of the Application to:

Amelia Hershberger  
New York State Office of Court Administration  
Division of Professional and Court Services  
Grants and Contracts  
2500 Pond View, Suite 104  
Castleton-on-Hudson, New York 12033

All envelopes/cartons must also be labeled with the following information on two sides:

**“Deliver immediately to Amelia Hershberger”**  
**“Sealed Application - Do not open”**  
**“JUDICIARY CIVIL LEGAL SERVICES #003 – Due June 4, 2014 before 2pm”**

**II. Application Cover Sheet**

Legal Name of Applicant Organization	
Executive Director/CEO	
Proposal Contact Person, Title, Phone Number and Email Address	
Total Budget of Organization	
Total FTE Staff Employed in Organization	
Number of FTE Staff Funded Under This Proposal	
Summary of Proposal (indicate principal program activities in 2 or 3 sentences)	
Total Funding Requested	
Address	
Phone	
Fax	
Email	
Website Address	
Federal Tax Identification No. (TIN)	
New York State Charities Registration Number (If exempt, please explain.)	
Executive Director or Chief Executive Officer Signature	
Board Chair Signature	

**III. Application Summary Table**

Indicate the county or counties to be served in the “County Name” column and the subject areas to be served in each by placing an “X” in the appropriate columns.

County Name	Housing	Family Matters	Access to Healthcare and Education	Subsistence Income	Amount of Funding Requested (Cannot exceed amount articulated in Exhibit 3)

County Name	Housing	Family Matters	Access to Healthcare and Education	Subsistence Income	Amount of Funding Requested (Cannot exceed amount articulated in Exhibit 3)
		Total Funds Requested			

#### IV. Narrative Proposal

**PAGE LIMIT: Ten single-spaced pages for Organizational Capacity and Program Description responses combined. Two single-spaced pages for each response to County Specific Questions.**

**Organizational Capacity. The answers to the questions in this section should describe current programs and activities and demonstrate the existing capacity of the organization to provide civil legal services and to effectively and efficiently manage government-funded programming.**

1. Briefly describe all of the organization's current principal activities.
2. Describe the organization's prior experience providing civil legal services to low-income persons.
3. Summarize in 100 words or less the organization's most significant achievements in providing civil legal services during the period April 1, 2013 – March 31, 2014 including number of clients who benefitted, dollar benefits obtained for clients, etc.
4. Discuss significant developments that affected the organization's capacity to deliver civil legal services.
5. Describe how the additional funding requested in this RFP will enhance the overall mission and services that the organization currently provides.
6. How are case assignments made?
7. What are the agency's supervisory policies and procedures?
8. Describe the agency's mechanisms for assuring quality of service for:
  - client intake
  - case assignment
  - case management and supervision
  - training of staff and volunteers
9. Describe the policies and procedures in place to ensure client confidentiality.
10. Describe the organization's use of technology to enhance access and quality of civil legal services.
11. Describe the organization's plans to quickly respond to the civil legal service needs of victims of natural disasters (e.g. Super-storm Sandy and Hurricane Irene).

**Program Description. The answers to the questions in this section should describe the new, enhanced or expanded programming to be provided if awarded funding under this RFP.**

1. Provide a description of the problems to be addressed by the proposed services, including which essentials of life priorities will be addressed.
2. Indicate the service delivery method(s) the program will employ by placing a check in the appropriate box(es) below:
  - Direct legal services provided by staff attorneys
  - Direct legal services provided through referral to pro bono attorneys
  - Direct services provided by non-attorney staff (i.e. paralegals), supervised by attorneys
  - Direct legal services provided by law students or recent law school graduates supervised by attorneys
  - Training or education to support pro se representation
  - Provision of legal information
  - Referral to other civil legal service providers
  - Referral to other social services
  - Mediation / alternative dispute resolution
  - Other [explain in question 4 below]
3. Indicate the level of service the program will provide by placing a check in the appropriate box(es) below
  - Comprehensive representation
  - Representation in Appeals or Other Complex Matters
  - Representation in Court and/or Administrative Proceedings
  - Limited advice and counsel
  - Assistance in Completing Forms or Applications
  - Brief Advice and/or Information
  - Efforts to divert cases from court
  - Legal Education
  - Other [explain in question 4 below]

4. Provide additional information regarding the service delivery method(s) and level of service.
5. How will potential clients become aware of the availability of the proposed services? Indicate how the proposed outreach methods address special needs, for example, language barriers, physical disabilities, etc.
6. Describe the intake process for potential clients seeking to access the organization's services. Include information on points of access (web, phone, in person). Describe each step in the process and indicate the staff or other professionals involved in each step (e.g., receptionists, paralegals, lawyers, etc.)
7. Does the applicant use the following definition of a case for the purpose of statistical reporting?: "A case is defined as the provision of legal assistance to an eligible client with a legal problem, or set of closely-related legal problems accepted for assistance" If no, describe the applicant's definition of a case.
8. Based on the definition articulated in question 7 above, what is the estimated number of cases to be handled by the program during the 2014-15 fiscal year?
9. Does the program plan involve collaboration with other legal services providers, bar organizations and/or law schools? If so, identify the organizations involved in the project and explain how the collaboration enhances the quality of and access to legal services. Attach letters of support from the partner organization(s).
10. Identify other partnerships and collaborations with social services agencies, medical providers, schools, community-based organizations or other entities that will participate as partners in the proposed program. Attach letters of support from the partner organization(s).

**County-Specific Questions. The applicant must answer these questions once for each county for which funding is applied.**

1. Describe the specific geographic catchment area to be served (i.e. county-wide vs. a particular municipality or neighborhood within a given county)
2. Will the organization maintain a physical office in the catchment area?
3. Discuss the organization's capacity to provide accessible services to citizens in the catchment area.
4. If the services to be provided in this county differ from the overall programmatic description articulated in the Program Description section above, describe the significant differences.
5. Estimate the number of cases to be handled in the county during fiscal year 2014-15.
6. Describe any particular expertise the organization has in providing services to a specific sub-population or sub-populations within the catchment area (i.e. ability to provide services in languages other than English, or in a culturally appropriate manner to specific sub-groups)
7. Describe any arrangements with other legal service providers in the catchment area designed to avoid duplication of efforts.



## VII. Attachments Checklist

Please place an X in each box for the document that is submitted.

<input type="checkbox"/>	A. Audited Financial Statement from the Most Recently Ended Fiscal Year
<input type="checkbox"/>	B. Most Recent Annual Report. If the applicant does not publish an annual report, please explain
<input type="checkbox"/>	C. Mission Statement
<input type="checkbox"/>	D. Organizational Chart
<input type="checkbox"/>	E. Board of Directors Roster (use form supplied on the next page)
<input type="checkbox"/>	F. Minutes of the Last Four Meetings of the Board of Directors
<input type="checkbox"/>	G. Resumes and job descriptions of senior management and project staff.
<input type="checkbox"/>	H. Photocopy of correspondence issued by the Internal Revenue Service that indicates the applicant's status as a tax-exempt organization.
<input type="checkbox"/>	I. Client Financial Eligibility Guidelines
<input type="checkbox"/>	J. Client Grievance Procedures
<input type="checkbox"/>	K. Case Acceptance Policy and Procedures
<input type="checkbox"/>	L. Insurance Certificates: (1) Workers' Compensation; (2) Disability Benefits; (3) Commercial General Liability; and (4) Professional Liability
<input type="checkbox"/>	M. Affirmative Action/EEO Policy
<input type="checkbox"/>	N. Documentation of Current NY Charities Registration
<input type="checkbox"/>	O. Documentation of Taxpayer Identification Number (TIN)
<input type="checkbox"/>	P. Vendor Responsibility: Acknowledgment Form and VR Questionnaire if applicable and submitting on paper

**Board of Directors Roster**

<b>Board Member Name and Address</b>	<b>Length of Current Term</b>	<b>Term Expiration Date</b>	<b>Service (Years)</b>	<b>Number of Meetings Attended in 2013-14</b>

**Please indicate if the Board has a conflict of interest policy.      \_\_\_\_\_ Yes      \_\_\_\_\_ No**

## Exhibit 1

### INSURANCE REQUIREMENTS

Grant recipients will be required to maintain, during the term of the contract, the following insurance coverage:

1. Workers' compensation and disability benefits insurance coverage as required under NYS law. Proof of workers' compensation insurance and disability benefits insurance must be provided with the grant application. If applicant is legally exempt from such coverage, proof of exemption must be provided. The only forms acceptable as evidence of these insurance requirements are:

#### Proof of Workers' Compensation Coverage

- Form C-105.2 - Certificate of Workers' Compensation Insurance issued by private insurance carriers; or
- Form U-26.3 issued by the State Insurance Fund; or
- Form SI-12 - Certificate of Workers' Compensation Self-Insurance; or
- Form GSI-105.2 - Certificate of Participation in Workers' Compensation Group Self-Insurance; or
- Form CE-200 - Certificate of Attestation of Exemption from NYS Workers' Compensation and/or Disability Benefits Coverage.

#### Proof of Disability Benefits Coverage

- Form DB-120.1 - Certificate of Disability Benefits Insurance, or
- Form DB-155 - Certificate of Disability Benefits Self-Insurance; or
- Form CE-200 - Certificate of Attestation of Exemption from NYS Workers' Compensation and/or Disability Benefits Coverage.

Please note that an ACORD Certificate of Insurance is NOT acceptable proof of New York State workers' compensation or disability benefits insurance coverage. Applicants should obtain the appropriate Workers' Compensation Board forms from their insurance carrier or licensed agent, or follow the procedures set forth by the Workers' Compensation Board for obtaining an exemption from coverage. Required forms and procedures may be obtained on the Workers' Compensation Board website at [www.wcb.ny.gov/](http://www.wcb.ny.gov/) and click on 'Employers/Businesses' and/or 'Forms'. Any questions regarding workers' compensation coverage requirements should be directed to:

Workers' Compensation Board  
Bureau of Compliance  
(518) 462-8882  
(866) 298-7830

Applicants awarded funding (whether through a new or amended contract) will be required to provide updated certificates of workers' compensation and disability benefits coverage that name the Unified

Court System as the certificate holder if the applicable form has a space for a certificate holder to be listed. The carrier must enter:

NYS Unified Court System  
Office of Court Administration  
2500 Pond View, Suite 104  
Castleton-on-Hudson, New York 12033

The insurance carrier will notify the certificate holder if a policy is canceled.

2. Commercial General Liability Insurance (bodily injury and property damage on an occurrence basis), contractual and products/completed operations liability coverage, and auto liability with minimum limits as follows:

Bodily Injury and Property Damage	\$1 million, per occurrence, \$2 million, aggregate
Personal Injury and Advertising	\$1 million aggregate
Contractual and Products/ Completed Operations Liability	\$2 million aggregate
Auto Liability, Combined single limits	\$1 million

Commercial general liability insurance coverage must be obtained from commercial insurance carriers licensed to do business in the State of New York. Proof of applicant's commercial general liability insurance coverage must be submitted with the grant application. Applicants awarded funding will be required to submit an updated certificate naming UCS as an additional insured or loss payee as appropriate and providing for at least thirty (30) days advance written notice to UCS of cancellation or non-renewal. The updated certificate must be submitted prior to finalization of the contract.

Products completed operations insurance coverage is not required if applicant provides written documentation prior to finalization of an awarded contract that the organization's commercial general insurance policy does not include coverage for products-completed operations. Automobile liability insurance is not required if applicant does not use vehicles in its operations.

3. Professional liability insurance in the amount of \$1,000,000 for all of applicant's professional employees that will perform with grant funding. Proof of applicant's professional liability insurance coverage must be submitted with the grant application. Organizations awarded funding will be required to contractually agree to obtain tail coverage for a minimum of two years in the event that the organization's professional liability coverage policy is terminated and either: (i) there is no replacement policy; or (ii) the replacement policy does not cover claims made against the organization based on events that occurred prior to the effective date of the new policy.

## Exhibit 2

### VENDOR RESPONSIBILITY REQUIREMENTS

The New York State Unified Court System (UCS) is required to conduct a review of a prospective contractor to provide reasonable assurances that the vendor is responsible. The Vendor Responsibility Questionnaire, a required component of all UCS solicitations, is designed to provide information to assist the UCS in assessing a vendor's responsibility prior to entering into a contract with the vendor. Vendor responsibility is determined by a review of each prospective contractor's legal authority to do business in NYS, business integrity, financial and organizational resources, and performance history (including references).

UCS recommends that vendors file the required Vendor Responsibility Questionnaire online via the New York State VendRep system maintained by the Office of the State Comptroller.

If you are already enrolled, go directly to the VendRep System online at: <https://portal.osc.state.ny.us>. To enroll, see the VendRep System Instructions available at: [http://www.osc.state.ny.us/vendrep/vendor\\_index.htm](http://www.osc.state.ny.us/vendrep/vendor_index.htm). Vendors must provide their NYS Vendor Identification Number when enrolling.

Alternatively, vendors may choose to complete and submit a paper questionnaire. Vendors opting to complete and submit a paper questionnaire can obtain the appropriate form from the VendRep website: [http://www.osc.state.ny.us/vendrep/forms\\_vendor.htm](http://www.osc.state.ny.us/vendrep/forms_vendor.htm).

To request assignment of a Vendor Identification Number or for VendRep System assistance, contact the Office of the State Comptroller's Help Desk at 866-370-4672 or 518-408-4672 or by email at [ciohelpdesk@osc.state.ny.us](mailto:ciohelpdesk@osc.state.ny.us).

### VENDOR RESPONSIBILITY ACKNOWLEDGMENT

Please complete either option 1 or option 2 below:

**OPTION 1: \_\_\_ Vendor Responsibility Questionnaire filed online via the VendRep System**

*If you have selected Option 1, please complete the following. The required signature is an acknowledgment that the questionnaire has been filed and certified directly on the OSC VendRep system.*

**ORGANIZATION NAME:** \_\_\_\_\_

**NAME/TITLE:** \_\_\_\_\_

**SIGNATURE:** \_\_\_\_\_

**OPTION 2: \_\_\_ Paper Vendor Responsibility Questionnaire Form Attached**

### Exhibit 3: Maximum Available Funds by County

<u>County</u>	<u>Maximum Available Funds</u>
Bronx	\$1,802,824.00
New York	\$1,332,680.00
<b><u>1st Department Total</u></b>	<b><u>\$3,135,504.00</u></b>
Dutchess	\$142,569.00
Kings	\$2,756,647.00
Nassau	\$476,066.00
Orange	\$227,887.00
Putnam	\$38,593.00
Queens	\$1,836,893.00
Richmond	\$271,402.00
Rockland	\$187,486.00
Suffolk	\$607,291.00
Westchester	\$480,426.00
<b><u>2nd Department Total</u></b>	<b><u>\$7,025,260.00</u></b>
Albany	\$194,385.00
Broome	\$171,251.00
Chemung	\$77,153.00
Chenango	\$46,318.00
Clinton	\$61,321.00
Columbia	\$40,081.00
Cortland	\$38,901.00
Delaware	\$41,356.00
Essex	\$30,595.00
Franklin	\$42,508.00

<u>County</u>	<u>Maximum Available Funds</u>
Fulton	\$52,868.00
Greene	\$37,356.00
Hamilton	\$3,269.00
Madison	\$49,592.00
Montgomery	\$47,152.00
Otsego	\$53,843.00
Rensselaer	\$106,292.00
Saratoga	\$103,613.00
Schenectady	\$102,902.00
Schoharie	\$22,409.00
Schuyler	\$14,474.00
St. Lawrence	\$97,711.00
Sullivan	\$70,991.00
Tioga	\$37,696.00
Tompkins	\$79,126.00
Ulster	\$119,323.00
Warren	\$43,578.00
Washington	\$48,069.00
<b><u>3rd Department Total</u></b>	<b><u>\$1,834,133.00</u></b>
Allegany	\$45,827.00
Cattaraugus	\$77,901.00
Cayuga	\$60,972.00
Chautauqua	\$128,875.00
Erie	\$711,670.00
Genesee	\$44,339.00
Herkimer	\$59,009.00
Jefferson	\$102,955.00
Lewis	\$25,623.00

<u>County</u>	<u>Maximum Available Funds</u>
Livingston	\$42,762.00
Monroe	\$554,599.00
Niagara	\$164,249.00
Oneida	\$194,469.00
Onondaga	\$347,512.00
Ontario	\$64,902.00
Orleans	\$33,134.00
Oswego	\$107,333.00
Seneca	\$29,299.00
Steuben	\$88,537.00
Wayne	\$68,897.00
Wyoming	\$30,204.00
Yates	\$22,035.00
<b><u>4th Department Total</u></b>	<b><u>\$3,005,103.00</u></b>
<b><u>Grand Total</u></b>	<b><u>\$15,000,000.00</u></b>

\*The amount allocated by county under this procurement was determined by allocating the total 2014-15 fiscal year appropriation of \$55,000,000 by the proportion of the population living at or below 200% of the poverty line and adjusting by the amount previously awarded to each county in the 2012-13 and 2013-14 fiscal year competitive procurements.



**EXHIBIT 4**  
**EVALUATION TOOL**  
**SUMMARY RATING SHEET**

**APPLICANT:** \_\_\_\_\_

**COUNTIES TO BE SERVED:** \_\_\_\_\_

- |   |                 |
|---|-----------------|
| <b>A. ORGANIZATIONAL CAPACITY (15 POINTS)</b>                 | <b>A. _____</b> |
| <b>B. OVERALL PROGRAM PLAN (50 POINTS)</b>                    | <b>B. _____</b> |
| <b>C. REASONABLENESS OF COST (OVERALL BUDGET) (15 POINTS)</b> | <b>C. _____</b> |
| <b>D. COUNTY SPECIFIC PROGRAM PLAN (15 POINTS)</b>            | <b>D. _____</b> |
| <b>E. COUNTY SPECIFIC REASONABLENESS OF COST (5 POINTS)</b>   | <b>E. _____</b> |

**A minimum score of 85 is required for a contract to be awarded.**

**TOTAL \_\_\_\_\_**

**EVALUATOR 1 (Print) \_\_\_\_\_**

**(Signature) \_\_\_\_\_**

**EVALUATOR 2 (Print) \_\_\_\_\_**

**(Signature) \_\_\_\_\_**

**EVALUATOR 3 (Print) \_\_\_\_\_**

**(Signature) \_\_\_\_\_**

**DATE**     \_\_\_/\_\_\_/\_\_\_

**APPENDIX 3:**

**Notification of the Issuance of the Request for Proposals**



# The New York State Contract Reporter

This document printed  
Tuesday, 10/28/2014

*NYS' official source of contracting opportunities  
Bringing business and government together*

## Contracting Opportunity

\*\*\* This ad is closed and is in the archives \*\*\*

**Title:** Judiciary Civil Legal Services

**Agency:** Unified Court System, NYS  
Office of Court Administration

**Contract Number:** TBD

**Contract Term:** April 1, 2014 - March 31, 2015 with 2 optional renewals

**Date of Issue:** 05/12/2014

**Due Date/Time:** 06/04/2014 2:00 PM

**County(ies):** All NYS counties

**Classification:** Legal & Investigative Services - *Consulting & Other Services*

**Opportunity Type:** Grant or notice of funds availability

**Entered By:** Amelia Hershberger

**Description:** The New York State Unified Court System's Office of Court Administration is seeking sealed applications for funding to provide judiciary civil legal services in New York State.

For more information, visit [www.nycourts.gov/admin/bids/currentsolicitations.shtml](http://www.nycourts.gov/admin/bids/currentsolicitations.shtml)

## Contact Information

**Primary contact:** Unified Court System, NYS  
OCA Division of Professional and Court Services  
Amelia Hershberger  
Management Analyst  
2500 Pond View  
Suite 104  
Castleton-on-Hudson, NY 12033  
United States  
Ph: 518-238-4357  
AHERSHBE@courts.state.ny.us

**Submit to contact:** Unified Court System, NYS  
OCA Division of Professional and Court Services  
Amelia Hershberger  
Management Analyst  
2500 Pond View  
Suite 104  
Castleton-on-Hudson, NY 12033  
United States  
Ph: 518-238-4357  
AHERSHBE@courts.state.ny.us

## Bid Results

Bid Results have not been entered



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**APPENDIX 4:**

**Grants Awarded by the Oversight Board for  
Judiciary Civil Legal Services Funds in New York  
for 2014-2015**

**2014-15 Judiciary Civil Legal Services Awards**

Provider Name	New Awards per 2014-15 RFP	Renewals or Amendments of Existing Contracts (if any)	Total Awards 2014-15
Advocates for Children of New York	\$6,900.00	\$45,500.00	\$52,400.00
Albany County Bar Association	\$46,200.00	\$77,000.00	\$123,200.00
Asian American Legal Defense and Education Fund	\$0.00	\$50,120.00	\$50,120.00
Association of the Bar of the City of New York Fund Inc	\$169,225.00	\$304,250.00	\$473,475.00
Bronx Defenders	\$82,421.00	\$395,707.00	\$478,128.00
Brooklyn Bar Association	\$69,370.00	\$168,706.00	\$238,076.00
Brooklyn Defender Services	\$512,489.00	\$297,489.00	\$809,978.00
Brooklyn Legal Services Corporation A	\$139,958.00	\$130,476.00	\$270,434.00
CAMBA	\$209,500.00	\$844,000.00	\$1,053,500.00
Capital District Women's Bar Association Legal Project	\$110,371.00	\$231,056.00	\$341,427.00
Catholic Migration Services	\$0.00	\$40,600.00	\$40,600.00
Center for Family Representation	\$202,762.00	\$269,000.00	\$471,762.00
Central American Legal Assistance	\$0.00	\$68,620.00	\$68,620.00
Central American Refugee Center	\$24,400.00	\$0.00	\$24,400.00
Children's Rights Society	\$32,395.00	\$75,050.00	\$107,445.00
Day One	\$15,774.00	\$30,205.00	\$45,979.00
Empire Justice Center	\$264,970.00	\$807,061.00	\$1,072,031.00
Erie County Bar Association Volunteer Lawyers Project	\$106,250.00	\$272,287.00	\$378,537.00
Family Center Inc	\$0.00	\$15,082.00	\$15,082.00
Frank H. Hiscock Legal Aid Society	\$213,944.00	\$655,689.00	\$869,633.00
Goddard Riverside Community Center	\$42,000.00	\$78,200.00	\$120,200.00
Her Justice	\$88,500.00	\$204,853.00	\$293,353.00
Hofstra University	\$49,140.00	\$49,421.00	\$98,561.00
Housing Conservation Coordinators	\$52,500.00	\$84,450.00	\$136,950.00
Jewish Association of Services for the Aged	\$65,250.00	\$94,950.00	\$160,200.00
Journey's End Refugee Services	\$35,097.00	\$36,405.00	\$71,502.00
Latino Justice PRLDEF	\$0.00	\$36,210.00	\$36,210.00
Legal Action Center	\$49,500.00	\$0.00	\$49,500.00
Legal Aid Bureau of Buffalo	\$171,031.00	\$396,486.00	\$567,517.00
Legal Aid Society of Mid-New York	\$0.00	\$145,000.00	\$145,000.00
Legal Aid Society of Northeastern New York	\$760,180.00	\$2,062,710.00	\$2,822,890.00
Legal Aid Society of Rochester	\$282,965.00	\$626,074.00	\$909,039.00
Legal Aid Society of Rockland County	\$65,620.00	\$208,682.00	\$274,302.00
Legal Assistance of Western New York	\$789,675.00	\$2,107,360.00	\$2,897,035.00
Legal Information for Families Today	\$0.00	\$107,500.00	\$107,500.00
Legal Services for the Elderly, Disabled or Disadvantaged of Western NY	\$207,523.00	\$336,050.00	\$543,573.00
Legal Services NYC	\$1,554,048.00	\$4,756,496.00	\$6,310,544.00
Legal Services of Central New York	\$933,204.00	\$2,285,964.00	\$3,219,168.00
Legal Services of the Hudson Valley	\$897,373.00	\$2,535,567.00	\$3,432,940.00
Lenox Hill Neighborhood House	\$63,000.00	\$129,800.00	\$192,800.00
Make the Road New York	\$114,630.00	\$282,394.00	\$397,024.00
Mental Health Association of Erie County	\$0.00	\$73,178.00	\$73,178.00
MFY Legal Services	\$548,050.00	\$1,570,370.00	\$2,118,420.00
My Sister's Place	\$43,365.00	\$100,282.00	\$143,647.00
Nassau / Suffolk Law Services Committee	\$484,051.00	\$2,002,830.00	\$2,486,881.00
Neighborhood Defender Service Inc	\$0.00	\$150,333.00	\$150,333.00
Neighborhood Legal Services	\$427,473.00	\$1,228,697.00	\$1,656,170.00
New York Center for Law and Justice	\$15,400.00	\$0.00	\$15,400.00
New York City Gay and Lesbian Anti Violence Project	\$60,927.00	\$0.00	\$60,927.00
New York Law School	\$26,514.00	\$0.00	\$26,514.00
New York Lawyers for the Public Interest	\$42,000.00	\$91,700.00	\$133,700.00
New York Legal Assistance Group	\$1,065,625.00	\$2,125,979.00	\$3,191,604.00
New York Legal Assistance Group	\$0.00	\$244,478.00	\$244,478.00
Northern Manhattan Improvement Corp	\$348,000.00	\$921,000.00	\$1,269,000.00
Pace University	\$38,045.00	\$166,620.00	\$204,665.00
Part of the Solution	\$35,000.00	\$0.00	\$35,000.00
Partnership for Children's Rights	\$12,581.00	\$85,260.00	\$97,841.00
Prisoner's Legal Services	\$0.00	\$60,000.00	\$60,000.00
Queens Volunteer Lawyers Project	\$75,000.00	\$274,900.00	\$349,900.00
Richmond County Bar Association	\$0.00	\$60,000.00	\$60,000.00
Ridgewood Bushwick Senior Citizens Council	\$116,620.00	\$122,500.00	\$239,120.00

Provider Name	New Awards per 2014-15 RFP	Renewals or Amendments of Existing Contracts (if any)	Total Awards 2014-15
Rural Law Center of New York	\$100,440.00	\$248,968.00	\$349,408.00
Safe Horizon	\$109,872.00	\$331,800.00	\$441,672.00
Sanctuary for Families	\$196,388.00	\$710,237.00	\$906,625.00
The Door A Center for Alternatives	\$42,050.00	\$106,000.00	\$148,050.00
The Legal Aid Society	\$1,554,048.00	\$4,756,496.00	\$6,310,544.00
The Safe Center, LI	\$86,200.00	\$150,000.00	\$236,200.00
Touro College	\$36,680.00	\$241,920.00	\$278,600.00
Urban Justice Center	\$648,410.00	\$1,137,541.00	\$1,785,951.00
Vera Institute of Justice	\$89,000.00	\$613,700.00	\$702,700.00
Volunteer Lawyers Project of Onondaga County	\$88,487.00	\$125,956.00	\$214,443.00
Volunteer Legal Services Project of Monroe County	\$75,589.00	\$120,400.00	\$195,989.00
Volunteers of Legal Services	\$0.00	\$47,180.00	\$47,180.00
Western New York Law Center	\$91,950.00	\$380,800.00	\$472,750.00
Worker Justice Center of New York	\$114,070.00	\$408,405.00	\$522,475.00
<b>TOTAL</b>	<b>\$15,000,000.00</b>	<b>\$40,000,000.00</b>	<b>\$55,000,000.00</b>



**APPENDIX 5:**

**Public Notice of the Chief Judge's Hearings Published  
on the Unified Court System's Website**

# The Chief Judge's Hearings on Civil Legal Services

**The Hon. Jonathan Lippman**, Chief Judge of the State of New York, will be conducting his fifth annual series of public hearings to evaluate the continuing unmet civil legal services needs in all parts of the state and to assess the level of resources necessary to meet those needs. As requested in the June 2010 Joint Legislative Resolution, the Chief Judge will report to the Legislature on the information obtained at the hearings, as well as the continuing work of the Task Force to Expand Access to Civil Legal Services in New York, and will request State funding to meet these unmet needs.

**The Chief Judge will conduct one hearing in each of the four** Appellate Division Departments together with the Presiding Justice of that Judicial Department (Presiding Justice Luis A. Gonzalez of the First Department, Presiding Justice Randall T. Eng of the Second Department, Presiding Justice Karen K. Peters of the Third Department, and Presiding Justice Henry J. Scudder of the Fourth Department), Chief Administrative Judge A. Gail Prudenti, and the President of the New York State Bar Association, Glenn Lau-Kee.

## THE HEARINGS WILL TAKE PLACE AS FOLLOWS:

### FIRST DEPARTMENT

Monday, September 22, 2014, from 10 a.m. to 12 p.m.  
Appellate Division, 27 Madison Avenue, Manhattan

### FOURTH DEPARTMENT

Monday, September 29, 2014, from 11:30 a.m. to 1:30 p.m.  
Telesca Center for Justice  
One West Main Street, 5th Floor, Rochester

### SECOND DEPARTMENT

Tuesday, September 30, 2014, from 10 a.m. to 12 p.m.  
Supreme Court, Richmond County  
26 Central Avenue, St. George, Staten Island

### THIRD DEPARTMENT

Monday, October 6, 2014, from 2 p.m. to 4 p.m.  
Court of Appeals, 20 Eagle Street, Albany

**The purpose of the public hearings** is to receive the views of interested individuals, organizations and entities on the following issues:

- The impact of Judiciary Civil Legal Services funding of \$12.5 million for Fiscal Year (FY) 2011-12, \$25 million for FY 2012-13, \$40 million for FY 2013-14 and \$55 million for FY 2014-15.
- The current state and scope of the unmet need for civil legal services by low income New Yorkers confronting legal problems involving the "essentials of life," including housing, family stability and personal safety in domestic relations, access to health care or education, or subsistence income and benefits.
- The continuing impact of Hurricane Sandy on the legal services needs of low income New Yorkers.
- The economic and social consequences of the lack of sufficient civil legal services in communities and for the courts, including the impact on the elderly and on education of children.
- The costs and benefits, to the courts, communities and the State, from the provision of civil legal services in matters involving the "essentials of life."
- The particular problems affecting the availability of legal services in rural communities and how to address them.
- The potential for reduction in the unmet need through:
  - Preventive and early intervention services by legal services providers.
  - Enhanced use of technology, including identifying areas where improvements in technology access and utilization can increase the delivery and efficacy of legal services.

- Expansion of the availability of pro bono legal services by private attorneys.
- Innovations in law school and law student involvement in serving communities in need through clinical, experiential and fellowship options for students, including the new Pro Bono Scholars Program.
- Programs being developed to assist law students in fulfilling the new bar admission requirement of 50 hours of pro bono service.
- Programs using volunteers who are not lawyers, such as the new Court Navigator Program.

**THE CHIEF JUDGE'S HEARING PANEL WILL CONSIDER BOTH ORAL TESTIMONY (BY INVITATION ONLY) AND WRITTEN SUBMISSIONS.** Persons interested in presenting oral testimony or making a written submission are asked to follow the procedures and deadlines described below. Please note that the Hearing Panel cannot accept any comments, written or spoken, addressing details of individual litigation or comments about individual judges or attorneys.

**Because of the limited time available for the hearings, oral testimony is by invitation only.** If you are interested in being invited to testify at a hearing, you should send an email to [CivilLegalServices@nycourts.gov](mailto:CivilLegalServices@nycourts.gov) **no later than 14 days in advance of the hearing** at which you propose to testify. **Proposed testimony should be no more than 10 minutes in length.** If requesting an invitation, please (1) identify yourself and your affiliation (and if you are requesting an invitation for someone else to testify, that individual's name and affiliation); (2) attach a prepared statement or a detailed outline of the proposed testimony and specify which of the topics described above will be addressed; (3) indicate at which of the hearings the testimony is proposed to be given. In advance of the hearing, invitations to testify will be issued and will include an approximate time for each presenter's testimony. For those not invited to present oral testimony, your proposed testimony will be deemed a written submission.

**Persons unable to attend a hearing, or those interested only in making a written submission,** may submit their remarks by emailing them to:

**CivilLegalServices@nycourts.gov at least seven (7) days in advance of the hearing,** or by mailing the submission to the **Task Force to Expand Access to Civil Legal Services in New York** at the address below. The Task Force is assisting the Chief Judge in preparing for the hearings and in reporting on its results.

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

**Mail:** **The Task Force to Expand Access to Civil Legal Services**  
c/o Chiansan Ma, Esq.  
Sullivan & Cromwell LLP  
125 Broad Street, 32nd Floor  
NY, NY 10004-2498

For further information please visit the Task Force's website

[www.nycourts.gov/ip/access-civil-legal-services](http://www.nycourts.gov/ip/access-civil-legal-services)

**APPENDIX 6:**

**Witness Lists for the Chief Judge's Four Hearings  
on Civil Legal Services**

# The Chief Judge's Hearings on Civil Legal Services

## FIRST DEPARTMENT HEARING

Monday, September 22, 2014

### WITNESS LIST

---

1- **Hon. Melissa Mark-Viverito** (*Speaker, New York City Council*)

---

2- **Zachary W. Carter, Esq.** (*Corporation Counsel for the City of New York*)

---

3- **Debra L. Raskin, Esq.** (*President, New York City Bar Association; Partner, Vladeck, Waldman, Elias & Engelhard, P.C.*)

---

4- **William D. Rahm, Esq.** (*Senior Managing Director, Centerbridge Partners, L.P.*)

---

5- **PRO BONO EFFORTS**

**Jennifer L. Kroman, Esq.** (*Director of Pro Bono Practice, Cleary Gottlieb Steen & Hamilton LLP*)

**Joellen R. Valentine, Esq.** (*Director & Assistant General Counsel, Citigroup Inc.*)

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6- **CLIENTS**

**Wun Kuen Ng** (*Client of MFY Legal Services, Inc., accompanied by Donna Chiu*)

**Karen Rivera** (*Client of Legal Services NYC, accompanied by Nelson Mar*)

**Yvette Walker** (*Client of The Legal Aid Society, accompanied by Kathryn Kliff*)

For additional information on the unmet needs for civil legal services, see the Reports of the Task Force to Expand Access to Civil Legal Services in New York in 2010, 2011, 2012 and 2013, which are available at [www.nycourts.gov/ip/access-civil-legal-services](http://www.nycourts.gov/ip/access-civil-legal-services).

# The Chief Judge's Hearings on Civil Legal Services

## FOURTH DEPARTMENT HEARING

Monday, September 29, 2014

### WITNESS LIST

---

#### 1- LOCAL OFFICIALS

**Hon. Stephanie A. Miner** (*Mayor, City of Syracuse*)

**Hon. Loretta C. Scott** (*President and Councilmember At-Large, Rochester City Council*)

**T. Andrew Brown, Esq.** (*Corporation Counsel, City of Rochester*)

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#### 2- EDUCATION

**Van Henri White, Esq.** (*President and Commissioner, Rochester City School District Board of Education; Chair, Council of Urban Boards of Education*)

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#### 3- CLIENTS

**Julie Longmore** (*Client of Hiscock Legal Aid Society, accompanied by Susan Horn*)

**Dawn and Michael Farnsworth** (*Clients of Western New York Law Center, accompanied by Kate Lockhart*)

**Eileen Kleps** (*Client of Western New York Law Center, accompanied by Kate Lockhart*)

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#### 4- COMMUNITY AND BUSINESS LEADERS

**Commissioner M. Josh McCrossen** (*Wayne County Department of Social Services*)

**Sandra A. Parker** (*President & CEO, Rochester Business Alliance*)

For additional information on the unmet needs for civil legal services, see the Reports of the Task Force to Expand Access to Civil Legal Services in New York in 2010, 2011, 2012 and 2013, which are available at

**[www.nycourts.gov/ip/access-civil-legal-services](http://www.nycourts.gov/ip/access-civil-legal-services).**

# The Chief Judge's Hearings on Civil Legal Services

## SECOND DEPARTMENT HEARING

Tuesday, September 30, 2014

### WITNESS LIST

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1- **Commissioner Steven Banks** (*New York City Human Resources Administration*)

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2- **Hon. Kenneth P. Thompson** (*Kings County District Attorney*)

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3- **Hon. Rory L. Lancman** (*New York City Council Member [District 24]; Chair, City Council Committee on Courts and Legal Services*)

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4- **STATEN ISLAND COMMUNITY LEADERS PANEL**

**Hon. Debi Rose** (*Deputy Majority Leader, New York City Council [District 49, North Shore]*)

**Reverend Doctor Demetrius S. Carolina** (*Executive Director, Central Family Life Center*)

**Thomas Cunsolo** (*President, Staten Island Alliance*)

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5- **COORDINATING LEGAL SERVICES AND PRO BONO: CONTINUED NEED FROM SUPER STORM SANDY**

**Scott M. Primiano** (*President, The Insurance Advocates, Flood Direct National Insurance Program*)

**Steven G. Leventhal, Esq.** (*Access to Justice Program Chair, Nassau County Bar Association; Leventhal, Cursio, Mullaney & Sliney, LLP*)

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6- **CLIENTS**

**Shaun Little** (*Client of The Legal Aid Society, accompanied by Judith Goldiner*)

**Taiwo Osinaike** (*Client of Legal Services NYC, accompanied by Rachel Hannaford*)

**Diego Parra** (*Client of Legal Services NYC, accompanied by Stephanie Taylor*)

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For additional information on the unmet needs for civil legal services, see the Reports of the Task Force to Expand Access to Civil Legal Services in New York in 2010, 2011 and 2012, which are available at

**[www.nycourts.gov/ip/access-civil-legal-services](http://www.nycourts.gov/ip/access-civil-legal-services).**

# The Chief Judge's Hearings on Civil Legal Services

## THIRD DEPARTMENT HEARING

Monday, October 6, 2014

### WITNESS LIST

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1- **Dean Martha Minow** (*Morgan & Helen Chu Dean & Professor of Law, Harvard Law School*)

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2- **Hon. Katherine M. Sheehan** (*Mayor, City of Albany*)

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3- **Hon. A. Gail Prudenti** (*Chief Administrative Judge, NYS Unified Court System*)

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4- **Corinda Crossdale** (*Director, NYS Office for the Aging*)

---

5- **Dr. Elizabeth Becker** (*Senior Vice President, NERA Economic Consulting*)

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### 6- CLIENTS

**Tajma Motley** (*Legal Aid Society of Northeastern New York, accompanied by Marlene Morales*)

**Dideolu Olufunke Okediran** (*Client of The Legal Project, accompanied by Lorraine Silverman*)

**Cinnamin Schmitz** (*Client of Legal Aid Society of Mid-New York, accompanied by Matthew Schreck*)

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For additional information on the unmet needs for civil legal services, see the Reports of the Task Force to Expand Access to Civil Legal Services in New York in 2010, 2011, 2012 and 2013, which are available at

**[www.nycourts.gov/ip/access-civil-legal-services](http://www.nycourts.gov/ip/access-civil-legal-services).**

**APPENDIX 7:**

**Transcript of the First Department Hearing  
Held on September 22, 2014**



**In The Matter Of:**  
*First Department Hearing v.*

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*September 22, 2014*

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SUPREME COURT OF THE STATE OF NEW YORK  
FIRST DEPARTMENT

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FIRST DEPARTMENT HEARINGS

ON CIVIL LEGAL SERVICES

- - - - - X

27 Madison Avenue  
New York, New York  
September 22, 2014

BEFORE:

HONORABLE JONATHAN LIPPMAN,  
Chief Judge

HONORABLE A. GAIL PRUDENTI,  
Chief Administrative Judge

HONORABLE LUIS A. GONZALES,  
Presiding Justice

GLENN LAU-KEE,  
President of the State Bar Association

APPEARANCES:

HON. MELISSA MARK-VIVERITO  
ZACHARY W. CARTER, ESQ.  
DEBRA L. RASKIN, ESQ.  
WILLIAM D. RAHM, ESQ.  
JENNIFER L. KROMAN, ESQ.  
JOELLEN R. VALENTINE, ESQ.  
WUN KUEN NG, Client  
YVETTE WALKER, Client  
KAREN RIVERA, Client

NINA J. KOSS, C.S.R., C.M.  
PETER KAUFMAN  
Official Court Reporters

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PROCEEDINGS

JUSTICE LIPPMAN: Welcome to this beautiful courtroom. We are so pleased that you are all here. This is the beginning of this year's civil legal services hearing.

Here in the state there are four hearings that will go on in New York State, one in each of the judicial departments. The Second Department hearing will be in Staten Island, and then we additionally have one in Albany and one in Rochester.

I would introduce the panel who is sitting here with me. To your right, far right is Glenn Lau-Kee, who is the President of the New York State Bar Association. Sitting to my immediate right is Luis Gonzalez, the Presiding Justice of the Appellate Division, First Department, and my former colleague who, we had such a pleasant time sitting here together in this beautiful Appellate Division courtroom, and to my left is the Chief Administrative Judge, A. Gail Prudenti, and we are delighted to be here.

The reason why we are here is because there is a justice gap in this city, in this state and this country between the finite legal resources, available resources and the desperate need for legal representation for the poor and people of limited means.

Three out of four persons who have come to the

## PROCEEDINGS

1  
2 Legal Aid Society seeking assistance get turned away because  
3 of a lack of resources. 2.3 million people go through the  
4 courts of the State of New York each year without legal  
5 representation.

6 It is a difficult economic time and there are  
7 people fighting for the necessities of life, a roof over  
8 their heads, their physical safety, the well-being of their  
9 families and their livelihoods, who literally can fall off  
10 the cliff without legal representation helping them to fight  
11 these battles about the very essentials of life, which we  
12 are all entitled to.

13 This has such great consequences for our society,  
14 for our communities and it is at a tremendous cost that we  
15 fail to provide legal representation for all, equal  
16 representation, equal justice for all.

17 In the judiciary, this is our constitutional  
18 mission to foster equal justice. It is not tangential to  
19 what we do -- it is at the heart of what we do. That's why  
20 we have taken the lead with the legal profession in our  
21 state to host these hearings, to assure that our message  
22 gets across and of why this is important.

23 This whole idea of Judges, of lawyers, recognizing  
24 legal representation is so important, really goes back to  
25 biblical times and the admonition of the Bible, the Old  
26 Testament, "justice, justice shall you pursue for rich and

## PROCEEDINGS

1  
2 poor, high and low alike," goes back as long as there have  
3 been lawyers, as long as there have been lawyers and this is  
4 something so fundamental in our society.

5           There is a recognition of the judiciary's role in  
6 this regard by the Legislature, and I might note that  
7 Assemblywoman Helene Weinstein, who is the Chair of the  
8 Assembly Judiciary Committee is here, and is instrumental in  
9 the passage -- and is a member of our Task Force and who is  
10 instrumental in the passage of a resolution by the New York  
11 State Legislature that asks us to hold these hearings each  
12 year and to come back to the Legislature with what the  
13 monetary requirements are to eliminate or at least narrow  
14 the justice gap.

15           I thank the Assemblywoman Weinstein, your committee  
16 and the Legislature, for giving us this opportunity to come  
17 in and measure the need and come in and describe it to you.

18           To assist in this effort, we have the Task Force to  
19 enhance legal services in our state. It is critical in  
20 terms of these hearings, in terms of making our case. I  
21 note that the people who are here from the Task Force are  
22 Helaine Barnett, Nadia Gareeb, Adriene Holder, Marcia Levy,  
23 Lillian Moy, the famous Lillian Moy, Raun Rasmussen, Debbie  
24 Wright, Chris O'Malley from IOLA, Mary Mone, Lauren Kanfer,  
25 and Fern Fisher, the Deputy Chief Administrative Judge for  
26 the City Courts, and very much a stalwart in the fight for

## PROCEEDINGS

1  
2 legal services in our state.

3 So, the bottom line of all of this is that, as a  
4 result of these hearings and our request to the Legislature  
5 this year we have \$70 million in funding to give out to  
6 legal service providers, 15 of which goes to IOLA, which the  
7 bottom line of that, it is the tip of the iceberg in terms  
8 of the need, and I say that quite advisedly, that it is no  
9 where the near the need, and therefore, it's very important  
10 that we reorder our priorities to understand, to have our  
11 public understand the issues, that civil legal services for  
12 the poor is as important as housing and education and  
13 hospitals and all the other things that are so fundamental  
14 in our society.

15 And, that's what we are trying to do, to get this  
16 message out, and recognize that lawyers, as represented by  
17 President Lau-Kee, have such an important role to play in  
18 pro bono work, volunteer pro bono work to help the poor.

19 We have tried to, with the support of the state  
20 bar, reach out to the different parts of our constituency,  
21 whether it be elderly lawyers, who are in our attorney  
22 emeritus program, lawyers from the corporate counsels, from  
23 the corporations, or lawyers or aspiring law school students  
24 in law school.

25 New York has the only requirement in the country  
26 right now that law school students give 50 hours of pro bono

## PROCEEDINGS

1  
2 work before they can be admitted to the bar. So, we are  
3 very proud of that program and of the Pro Bono Scholar  
4 Program, by which lawyers or aspiring lawyers give the last  
5 term of their law school careers to pro bono work in order  
6 to be able to take the bar exam in February. So, all these  
7 programs are contributing.

8 The past hearings over the years have had  
9 testimonies from statewide officials, citywide officials,  
10 legislators, advocates, clergy, lawyers, heads of bar  
11 associations, everyone and anybody in this state, to  
12 recognize that this is -- that we are not just coming to  
13 this enterprise by saying this is important, poor people  
14 need help.

15 Well, you know what? Poor people do need help, but  
16 what we are also trying to make is the point that this is  
17 for the betterment of our society, and the bottom line is  
18 the economic well-being of our society.

19 Our Task Force, headed by Helaine Barnett, who is  
20 seated right there -- Helaine, stand up -- who has done such  
21 a fabulous job, is the Chair of the Task Force and has  
22 estimated that for every dollar invested in civil legal  
23 services in the city and state, six dollars are returned to  
24 us, to the taxpayers, through lower incarceration rates,  
25 lower social services costs, more federal dollars flowing  
26 into New York City and New York State.

## 1 PROCEEDINGS

2 So, we will be again holding these hearings, making  
3 our case to the Legislature with our report on December 1st,  
4 and we are so happy that you are all here today, and I  
5 couldn't be more delighted and pleased to introduce you to  
6 our first witness who, I would say, is not only one of the  
7 most prominent and powerful people in New York City, but  
8 more than that, is one person who I know is singularly  
9 dedicated, with all of the energy she has, to fighting  
10 income inequality and to finding justice for all, equal  
11 justice for all, for every single person in this City. Her  
12 sincerity, her passion, is so obvious and so clear to all of  
13 us.

14 So, I welcome the Honorable Melissa Mark-Viverito,  
15 the Speaker of the New York City Council, who is, again,  
16 just a towering figure in this City, and I couldn't be more  
17 grateful to her for coming to this hearing and for giving us  
18 her thoughts on the need for civil legal services.

19 Madam Speaker, it's great to have you here.

20 SPEAKER MARK-VIVERITO: Thank you, Chief Judge  
21 Lippman for your kind words, and also thank you to Presiding  
22 Judge Gonzalez, Chief Administrative Judge Prudenti, and New  
23 York State Bar Association President Lau-Kee for the  
24 opportunity to present testimony on one of the most serious  
25 challenges facing the judicial system today -- equal access  
26 to justice.



## PROCEEDINGS

1  
2 I want to first acknowledge your significant  
3 accomplishments. You have been a persistent and strong  
4 voice in the struggle for simple fairness for low-income New  
5 Yorkers and I -- along with my colleagues in the Council --  
6 are proud to join you in that effort.

7 Through your tireless advocacy, you have secured  
8 funding to pay for the representation of thousands of New  
9 Yorkers in housing, benefits and family matters. The  
10 increase in Judiciary Civil Legal Services funding during  
11 the last four years that the Task Force has been working is  
12 remarkable. You have grown the annual commitment from \$12.5  
13 million to \$55 million during that time.

14 I am proud to report the Council has also grown its  
15 investment by almost doubling funding for legal services in  
16 New York City this year. In fact, we dedicated more than  
17 \$20 million -- the City's largest commitment ever -- to  
18 civil legal services. For fiscal year 2015, we increased  
19 our Anti-Eviction program funding to \$5 million. We also  
20 provided \$3.75 million for citywide legal services -- a 150%  
21 increase over the previous year. We increased funding for  
22 our legal services for the working poor initiative by 45% to  
23 \$1.5 million. We increased funding for our domestic  
24 violence initiative, which includes legal services, by about  
25 41% to \$4 million and we doubled funding for our immigrant  
26 battered women's initiative to \$1 million.

## 1 PROCEEDINGS

2 Obviously, we share your goals. The Council  
3 therefore strongly supports the Chief Judge's call for  
4 significant growth in statewide Judiciary Legal Services  
5 funding in the State budget.

6 The Council also supports your efforts to marshal  
7 additional attorney and law student pro bono hours --  
8 through both the Pro Bono Scholars program and 50-hour bar  
9 admission requirement -- which will help low-income New  
10 Yorkers access the civil services they so desperately need.

11 We also admire your initiative approach to  
12 experiential legal education, which is another area you are  
13 examining through today's hearing. We believe that  
14 experiential legal education -- whether internships,  
15 externships or clinics -- play an important role in the law  
16 school experience, providing students with real-world  
17 experience, training and mentorship.

18 Indeed, the Council's legislative divisions are  
19 enthusiastic participants in law school externship and  
20 post-graduate fellowship programs. Our externs and fellows  
21 receive superb training from experienced attorneys and many  
22 of these students go to impactful careers in public service  
23 at the Council and elsewhere. Such programs play an  
24 important role in developing the next generation of public  
25 interest lawyers. Additionally, we hope to have the  
26 opportunity to participate in the new Pro Bono Scholars

## PROCEEDINGS

1  
2 program, which would allow us to partner with New York's law  
3 schools to further support the professional development of  
4 public-service minded law students and provide them with  
5 meaningful opportunities to serve New Yorkers.

6 And, of course, your work with the Center for Court  
7 Innovation has led to tens of thousands of legal matters  
8 being handled by new preventative and early intervention  
9 legal assistance efforts as opposed to traditional courts.  
10 The Council is a long time supporter of CCI, and has helped  
11 fund its programs for fiscal year 2005. The Community  
12 Courts, the Domestic Violence court parts, the Mental Health  
13 Court and many other specialized programs are now vital  
14 parts of our legal system.

15 The access to justice crisis in New York City is  
16 one in which we dare not let our guards down. We must keep  
17 searching for innovation and opportunity to bridge the gap  
18 in representation. Therefore, I am proud to share with you  
19 that the Council has recently created a new Committee on  
20 Courts and Legal Services. Chaired by Council Member Rory  
21 Lancman, this Committee will complement and amplify the  
22 tremendous work you and your Task Force have done in  
23 addressing unmet needs in civil legal services.

24 The Council -- through this new committee -- is  
25 eager to be your partner in addressing access to justice  
26 issues. Council Member Lancman is particularly well-suited

## PROCEEDINGS

1  
2 to leading our effort. He has substantial experience as an  
3 attorney and legislator, including serving on the Assembly  
4 Judiciary Committee. He has been a tremendous advocate on  
5 access to justice issues and I know will be working closely  
6 with you to support and expand your initiatives.

7 One more issue I would like to raise with you --  
8 just as important as efforts at providing access to justice  
9 are the measures we take to avoid the need for Court  
10 intervention. I want to commend the Task Force for its  
11 recognition of the importance of preventive efforts and to  
12 let you know about some of the work the Council is doing now  
13 on that front.

14 On the legislative side, one of the Council's first  
15 acts this session was to enact a broad expansion of the paid  
16 sick time law. More low-wage workers than ever will not  
17 have to risk their jobs and, in turn, their apartments, food  
18 and other essentials to care for a sick child. We also  
19 recently passed a law creating a new City identification  
20 card, for which all New Yorkers will be eligible. The  
21 Police Department has agreed to accept the card as  
22 identification, and so it will not need to arrest as many  
23 folks as they do now on summonsable offenses.

24 We have also sought to help New Yorkers facing  
25 federal immigration enforcement actions. Let's be clear --  
26 when we talk about the City's immigrant population, we are

## PROCEEDINGS

1  
2 talking about New Yorkers who have been here for years, set  
3 down roots, started families, work and pay taxes. The  
4 upheaval and disruption for families and communities caused  
5 by detention and deportation is heartbreaking, unnecessary,  
6 and fundamentally unfair.

7 Detention facilities are well known for their  
8 deplorable conditions and immigrants are often placed in  
9 facilities far from their communities, making it very  
10 difficult, if not impossible, to communicate with family or  
11 even obtain the documents they need to defend themselves.  
12 Those in detention cannot provide for their families, who  
13 may end up in Housing Court for eviction proceedings, face  
14 debt collection actions or no longer obtain appropriate  
15 medical care.

16 Since 2011, I have worked to reduce the City's  
17 unnecessary involvement with federal immigration  
18 enforcement. We have passed laws that enhance the City's  
19 ability to be more discerning when deciding whether to  
20 assist authorities in dragnet-like enforcement actions, and  
21 we plan on significantly expanding these laws in the very  
22 near future.

23 On the funding side, we have sought to help  
24 low-income New Yorkers more successfully navigate  
25 immigration Court. I don't have to tell you there is a  
26 crisis of under representation in federal Immigration Court.

## PROCEEDINGS

1  
2 When an immigrant, who is eligible for some form of relief  
3 is nevertheless deported simply because she lacks  
4 representation, her family feels it. The spillover impact  
5 can be devastating as it relates to the essentials of  
6 life -- housing, access to health care and education,  
7 subsistence income and family matters.

8 While the Council has historically funded  
9 initiatives to provide legal services to immigrants and the  
10 need for representation and legal services programs for  
11 immigrant New Yorkers, the need for representation has  
12 escalated dramatically in the face of the Obama  
13 administration's ramped up enforcement efforts and  
14 Congressional inaction on immigration reform. So, we have  
15 looked for innovative approaches to the problems immigrant  
16 New Yorkers face.

17 The City Council helped launch the  
18 first-in-the-nation program to offer legal representation to  
19 detained, indigent New Yorkers facing deportation -- the New  
20 York Immigrant Family Unity Project, something advocated by  
21 some of them on the Task Force, and other great advocacy  
22 groups. In 2014, working with a group of experts, Judge  
23 Robert Katzman, Chief Judge of the U.S. Court of Appeals for  
24 the Second Circuit and the Vera Institute of Justice, the  
25 Council funded a pilot program which achieved great success.

26 I am proud to say we increased funding for the

## PROCEEDINGS

1  
2 program this year to \$4.9 million so that every indigent  
3 person detained in the New York City area will be  
4 represented by an attorney. The program is now up and  
5 running, keeping intact immigrant families that otherwise  
6 might have been unnecessarily torn apart by a loved one's  
7 deportation and hopefully by doing so, avoiding the  
8 financial and family disruption harm that might result in  
9 state Civil Court involvement.

10 Just as heartbreaking and tragic is the  
11 apprehension and detention of unaccompanied minors at our  
12 southern border. We have all seen the reports of a recent  
13 and substantial surge in the number of child refugees  
14 fleeing violence, human trafficking, poverty and human  
15 rights abuses in Central America.

16 In fiscal year 2012, 14,000 children arrived alone  
17 at the border -- double the amount of previous years. In  
18 fiscal year 2013, the number climbed to 23,000. Since  
19 October 2013, over 63,000 unaccompanied minors have been  
20 apprehended at the border. The numbers are staggering and  
21 make no mistake -- this is a humanitarian crisis. We have  
22 an obligation to protect these kids, thousands of whom have  
23 been placed with relatives and loved ones here in New York  
24 City.

25 Recently the federal government announced that it  
26 would accelerate the removal process for these kids. On

## PROCEEDINGS

1  
2 August 13th of this year, the Immigration Court commenced a  
3 daily special docket for these cases. I visited the "surge"  
4 docket personally and it is, to say at the least, quite  
5 distressing -- traumatized children standing before a judge  
6 without a lawyer. While it is obvious these kids need help  
7 getting into school, obtaining medical and psychiatric  
8 services, thankfully we have a governmental and social  
9 service provider infrastructure in place that can assess and  
10 work to meet those needs. The most urgent need, though, is  
11 legal representation, without which these children may be  
12 returned to the seriously dangerous and deplorable  
13 conditions they fled.

14 The agencies currently providing legal services for  
15 immigrants do incredible work with limited funding, but they  
16 simply do not have the capacity to handle all the new cases.  
17 I will be making an announcement in the very near future  
18 outlining the Council's approach to ensuring that these  
19 children have legal representation.

20 So, in closing, I want to thank you again for all  
21 you have you down to close the representation gap in New  
22 York, and also to remind those listening that despite our  
23 initial accomplishments the gap remains. Poverty is  
24 persistent in New York and the need for equal access to  
25 justice is still great. I look forward to continuing our  
26 work together and thank you for the opportunity to speak



## PROCEEDINGS

1  
2 today.

3 Thank you.

4 JUSTICE LIPPMAN: Speaker, I thank you for your  
5 wonderful work in so many areas that translate to the issues  
6 we are talking about today, and I agree with you,  
7 particularly on the immigration issues, so up and front and  
8 center with the consequences being so grave as to a lack of  
9 representation for people who are not represented in these  
10 areas, but tell me, in a general way, you know, we are  
11 trying anything out on all fronts, how to make this case for  
12 legal representation.

13 What do you see as the role of the City, as opposed  
14 to the role of the State Legislature, in relation to  
15 supporting funding advocating for legal representation for  
16 the poor dovetailing?

17 SPEAKER MARK-VIVERITO: We have done what we can at  
18 the local level. We have to see the same level of  
19 investment happening in the budget in general, but there has  
20 been an increase, but I think that really, to make the case  
21 as I was trying to kind of allude to, what are the  
22 repercussions when that legal representation is not  
23 provided? It is a greater cost as a society, as a City,  
24 when we are not doing that.

25 I think we have to look at it in economic terms.  
26 Obviously, I feel it's a moral imperative, but you have to

## PROCEEDINGS

1  
2 make an economic case as to why, so people can really  
3 understand the value in investing additional monies and  
4 resources to legal services, because the consequences of not  
5 having -- people having to go to Housing Court, or people  
6 not having the right to access other services or have a lack  
7 of civil services has implications. I think that's the role  
8 we play. Putting money, putting resources and taxpayer  
9 dollars re-invested in that, is a way of demonstrating that.

10 JUSTICE LIPPMAN: Simply so pleased when you talk  
11 about the role of the State and the City, is your  
12 appointment of this new children's committee which, I think,  
13 brings together, at least in my mind, a focus in the City  
14 that is so direct, and I think will be so helpful rather  
15 than what we have in the City.

16 We have had terrific support from the City, but  
17 it's been sort of scattered. We haven't been able to put it  
18 together. What I am particularly pleased about is your  
19 appointment to the Committee to focus on this issue. It's  
20 what we need, this focus.

21 People, human beings, fall between the cracks and  
22 particularly in difficult economic times, and no one knows  
23 and no one, I won't say cares, but it's very difficult to  
24 focus the resources, help advocate, and I am so pleased, and  
25 Councilman Lancman called me and he will testify at the  
26 Staten Island hearing.

## PROCEEDINGS

1  
2           SPEAKER MARK-VIVERITO: Yes.

3           JUSTICE LIPPMAN: It's a focus that, while the  
4 City has been terrific, I want to commend you. It's such a  
5 wonderful, direct recognition of the importance of this  
6 issue.

7           SPEAKER MARK-VIVERITO: I think that committee can  
8 be a great partner in your Task Force and Council Member  
9 Lancman made the case why he felt it was important for that  
10 to be a separate committee and I agreed with him.

11           We made the decision instead of legal services  
12 under one committee and the courts under one committee, and  
13 getting lost within that, it was really important and in  
14 light of what you are saying, the lack of access to  
15 representation, the crisis we have in terms of access to  
16 justice, I think it's critical. So, I think it will be a  
17 great partner with your Task Force, and I think there is a  
18 lot of good work that can come out of it.

19           JUSTICE LIPPMAN: I think it's terrific, but one  
20 other question.

21           Now, I mentioned and you mentioned the same issue  
22 that, yes, we know there is a moral and ethical issue and  
23 how important this is to us, to our society, and obviously  
24 the individuals involved, but the economic well-being, the  
25 economic bottom line, I think sometimes is a failure to see  
26 that this is a great investment for our tax dollars in many

## PROCEEDINGS

1  
2 ways.

3 Do you think a lack of legal representation hurts  
4 the City's economy?

5 SPEAKER MARK-VIVERITO: Well, I mean, look, let me  
6 say I, unfortunately, represent the second poorest district  
7 in New York City. I represent East Harlem and the South  
8 Bronx, with the most public housing in the City of New York,  
9 a great number of low-income individuals, and in terms of  
10 the constituent services, the number one issue we get is  
11 housing related, whether it's people facing eviction,  
12 aggressive landlords, and they don't exactly know what  
13 recourse they have.

14 We are incredibly thankful and grateful to the  
15 legal providers who we partner with. We actually have a  
16 mobile van in front of our office today to provide services  
17 to the community. So, because, you know, if someone is  
18 facing eviction, not only in terms of the impact on the  
19 family, the impact on the children, right, you have now a  
20 family that will be in a homeless shelter, is going to be  
21 homeless and has to avail themselves of shelters.

22 How disruptive is that to the child in terms of  
23 getting a sound education, and what are the implications,  
24 long term, on the economic future of that family and  
25 disruptive in terms of the work. We have people working  
26 full time, who are living homeless in this City. I mean, so

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1  
2 there is economic consequences to that, in terms of having  
3 to provide additional services.

4 And so that really is just a very small example,  
5 but that's amplified so many times. I know as much as we  
6 want to help everyone that comes to our door, there are many  
7 we can't. So, there are many people that are facing those  
8 challenges, and I think that has really negative  
9 repercussions economically to the City.

10 So, I think it's really great to have a Mayor that  
11 understands that, the inequity that exists. We have the  
12 greatest income gap in the country in this City. We have an  
13 imperative to figure out how our public policies can roll  
14 that back. It won't be without challenges, but I know he  
15 has a partner in the Council in trying to address that,  
16 because it's about the economic viability of New York City.

17 We need everyone to be able to live here, have a  
18 quality of life and it's in the best interest of the City to  
19 do that.

20 JUSTICE LIPPMAN: I think that says it all  
21 graphically, that each thing has so many other implications.  
22 You lose a roof over your head, your kids can't go to  
23 school -- whatever it is -- you can't function in society,  
24 can't spend money in your community, you know, your job is  
25 effected.

26 In so many different ways, there is sort of this

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1  
2 effect that lack of legal representation can have enormous  
3 personal consequences to the individual and to the  
4 communities, and I think that's such an obvious point that I  
5 think is often lost, that this gentleman, why didn't the  
6 person get a lawyer? That would be nice. Their entire  
7 lives are at stake.

8 Later today when you will see some of the clients  
9 who come in and say what legal services have done for them  
10 in so many instances, they actually saved a human being's  
11 life, with all of the economic consequences that come to our  
12 communities.

13 So, anybody else have any questions?

14 JUSTICE GONZALEZ: Just to commend the efforts the  
15 City Council has made, and also to commend the Speaker and  
16 the City Council for its efforts.

17 You have recognized that we have embarked on a very  
18 difficult journey -- that is, to provide justice to those  
19 that are vulnerable, and it's terrific to see the commitment  
20 that has been made to the objective we are trying to  
21 achieve.

22 We have achieved a certain degree of success, but  
23 in no small part, it's not because of the lack of efforts we  
24 have made, but it's because of people like you and  
25 institutions that you lead that have made it possible.

26 So, on behalf of the, at least the Appellate

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1  
2 Division, First Department, thank you very much.

3 SPEAKER MARK-VIVERITO: Thank you very much.

4 JUSTICE PRUDENTI: Thank you, Madam Speaker, and  
5 just two things.

6 One, I would like to thank you for the comments you  
7 made about being interested in participating in our new Pro  
8 Bono Scholars program. So, thank you very much, and I think  
9 it could be very, very helpful in another area that you  
10 mentioned that I wanted to mention to you, which is with  
11 regard to immigration status, you know we have been working  
12 quite diligently with our family courts on a new special  
13 juvenile immigration status, and I think that these two  
14 programs we are setting in place on the procedures and  
15 protocols, but we also need these children to be  
16 represented. So maybe, between our joint efforts, we can  
17 achieve much this year.

18 If you think it's appropriate, I think that maybe  
19 we could accomplish this goal, start along this road by, I  
20 could contact Councilman Lancman, Rory Lancman, and try to  
21 talk to him about the Pro Bono Scholars program as well as  
22 the special juvenile immigration status.

23 SPEAKER MARK-VIVERITO: Rob Newman, who is here  
24 with me, has been working closely with me, as has other  
25 staff, on the unaccompanied minors issue. As I said, we  
26 will be shortly rolling out some plan, but that's an area

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1  
2 that I am extremely passionate about.

3 I think the inaction at the federal level is just  
4 deplorable, and so we have to figure out how municipalities  
5 can address this on their own. These children deserve  
6 representation. How can you talk about a child that is  
7 12 years old, 13 years old, coming before a judge and not  
8 having any sort of guidance, and I just, you know, it is a  
9 moral imperative. But, we keep using the word, but it's  
10 true, some of what we have seen at the border, right, in  
11 terms of how people are reacting to these children, Judge,  
12 is really shameful, but we will figure it out.

13 Does it have an economic impact? Again, we can  
14 help these children. So definitely, I would love to see how  
15 we can partner, as we roll out any ideas on how to address  
16 this issue.

17 Thank you so much.

18 JUSTICE PRUDENTI: Thank you.

19 JUSTICE LIPPMAN: Thank you, Madam Speaker. Thank  
20 you for your passionate voice in this area, and continuing  
21 to partner together in this critical issue that we all care  
22 so much about, and you are terrific, and we so appreciate  
23 you being with us today.

24 SPEAKER MARK-VIVERITO: Thank you.

25 JUSTICE LIPPMAN: Thank you so much.

26 (Continued on next page.)



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3 HON. JONATHAN LIPPMAN: The next witness, also  
4 someone not unfamiliar to City government, the  
5 Honorable Zachary W. Carter, the Corporation Counsel of  
6 The City of New York.

7 Just let me first say, before the Corporation  
8 Counsel gives his remarks, that Zach is someone whom I  
9 know so well, for probably three decades now, someone  
10 who is one of the outstanding lawyers in this City and  
11 this country, and I can't think of a better person to  
12 be in charge of the Corporation Counsel's office of The  
13 City of New York, which is the most important public  
14 legal office in the nation, someone who is committed to  
15 equal justice in his various roles -- his role as a  
16 judge, as a prosecutor, as a lawyer, and now he's  
17 particularly well suited to be the top lawyer in the  
18 City of New York.

19 Again, he is another voice for equal justice,  
20 who I think has been so prominent over so many years,  
21 and it is so important in this struggle that we are all  
22 involved in.

23 It is a delight and a pleasure to welcome my  
24 friend, Zach Carter, to come and testify today.

25 MR. CARTER: Thank you very much, Judge  
26 Lippman, and Chief Administrative Judge Prudenti,

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2 Presiding Justice Gonzalez, and Glen Lau-Kee.

3 It is a privilege to be here to testify before  
4 the Task Force to Expand Access to Civil Legal Services  
5 in New York. Thank you for the opportunity to testify  
6 today on the need for expanded access to legal  
7 representation in civil cases.

8 As a former member of the Board of New York  
9 Legal Services, when it was still called CALS --  
10 Community Action For Legal Services -- I have been a  
11 long-time witness to the struggle to provide funds to  
12 support legal services for the poor and working class  
13 of this City who are denied meaningful access to the  
14 courts when they are not represented by counsel.

15 It is a honor to be here today in my role as  
16 the Corporation Counsel of The City of New York.

17 I commend the Chief Judge for his foresight  
18 and leadership in addressing the acute and chronic need  
19 that low-income New Yorkers have for free or low-cost  
20 legal representation.

21 My legal career took root in criminal  
22 practice, first as a prosecutor, and later as a judge  
23 and defense counsel.

24 By the time I started practicing law in the  
25 mid-1970's, Gideon -vs- Wainwright was imbedded in the  
26 criminal justice system as a well-recognized right. I

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2 could not imagine a criminal justice system that did  
3 not afford an accused individual legal representation  
4 at every stage of the process.

5 After all, each criminal case implicates  
6 liberty interests, however nominal those interests may  
7 be in a given case.

8 However, individuals seeking access to our  
9 courts of civil jurisdiction often have interests at  
10 stake nearly as dear as liberty or even life itself.

11 Think of a family facing foreclosure or  
12 eviction, or a parent threatened with the loss of  
13 custody of a child, or the loss of access to health  
14 services, or reasonable accommodations for a  
15 disability.

16 At the Law Department, we are charged with  
17 vigorously defending the City's interests in civil  
18 litigation before our courts. But, we believe the  
19 interests of the City are best served when individuals  
20 bringing claims against the City are well represented.  
21 We believe that both fairness and efficiency are served  
22 best in cases where claimants are represented by able  
23 counsel.

24 However, far too many plaintiffs cannot afford  
25 attorneys and must proceed pro se. By way of example,  
26 over 90 percent of the tenants lack counsel in eviction

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2 proceedings last year. It is not surprising that  
3 almost 30,000 families were evicted. Experience has  
4 shown that legal representation can reduce preventable  
5 evictions. We must fund legal services at a level that  
6 permit everyone facing eviction to have representation  
7 by counsel.

8 After September 11 and Superstorm Sandy, we  
9 saw the critical role legal services played to ensure  
10 access to needed benefits to get families back on their  
11 feet. Families are still struggling to recover from  
12 Superstorm Sandy even after two years. There will be  
13 other crises, and we will need legal services to assist  
14 us.

15 We applaud the efforts of the Chief Judge to  
16 encourage pro bono representation on the broadest  
17 possible scale. Judge Lippman's initiative promises to  
18 create a culture of service, particularly among new  
19 entrants to the bar, that will have long-lasting  
20 effects on the state of legal representation for the  
21 poor.

22 That said, it remains fundamentally necessary  
23 that we fund paid legal services organizations  
24 sufficiently to ensure that all indigent persons will  
25 be represented in civil cases.

26 Thank you for the opportunity to testify

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2 concerning these important issues today, and I will  
3 take any of your questions.

4 HON. JONATHAN LIPPMAN: Zach, let me ask you a  
5 question, which I think you're uniquely suited to  
6 answer.

7 Early on in your remarks, you touched a little  
8 bit on the right to counsel, and I guess my question is  
9 this:

10 You talked about Gideon, which everyone in  
11 this room probably knows is the landmark case that said  
12 that every person, when their liberty is at stake, is  
13 entitled to counsel's representation.

14 While certainly 50 years after Gideon -- and  
15 it is uneven -- criminal indigent defense  
16 representation is at least that constitutional floor,  
17 that everyone gets represented.

18 What do you think today are the prospects of  
19 going toward, whether you want to call it a "civil  
20 Gideon" or call it the right to counsel, the right to  
21 effective representation,, what's your view; are we any  
22 closer to it?

23 If you look at the criminal side 20 years  
24 before Gideon, in Betts vs. Brady, the United States  
25 Supreme Court said there is no right to legal  
26 representation; and not too many years ago, in Turner

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2 vs. Rogers on the civil side, where the Court really  
3 said that you may have a right to a fair process in  
4 civil cases, but not necessarily a right to legal  
5 representation?

6 Do you think there will come a point, from  
7 your perspective as the Corporation Counsel, where one  
8 will have a civil right to counsel, where a civil right  
9 to counsel exists?

10 Is that a dream? Is that possible? How do  
11 you view where we are today?

12 MR. CARTER: I think it is conceptually  
13 possible. I think, ironically, there could be even  
14 more support for representation for indigents in civil  
15 cases than there was in criminal cases, because one of  
16 the problems for making of criminal justice policy was  
17 that we had to overcome our anger about crime and  
18 victimization before we could make a smart decision.

19 That is generally not as much at issue in  
20 civil cases. Obviously, there are complaints about  
21 frivolous lawsuits, but for the most part, everyone has  
22 had a friend or a relative who has been denied some  
23 government benefit, or has had their home foreclosed,  
24 or is on the verge of eviction, or is involved in some  
25 sort of a domestic relations issue, who is sympathetic  
26 to that person's need for representation.

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2 The challenge on the civil side is really  
3 resources, because I think that the pool of individuals  
4 who need services probably is even larger than the pool  
5 of defendants who are accused of crime before our  
6 courts.

7 So I think that the challenge is to make the  
8 case that the investment in civil legal services makes  
9 sense on a cost-benefit-analysis basis.

10 One of the things that I suppose -- and this  
11 may be something that the Task Force has talked about  
12 already -- where Michael Jacobson, who is now Dean of a  
13 school at CUNY that's actually in development that is  
14 focusing on the efficiency of governmental  
15 organizations, particularly on city government.

16 And among the things that Michael conceived of  
17 when he was head of the Vera Institute of Justice was  
18 the use of tools of cost-benefit analyses that  
19 demonstrated that resources invested in certain  
20 criminal justice programs and reducing incarceration  
21 made sense on a cost-benefit-analysis basis, and  
22 getting support in making that case.

23 HON. JONATHAN LIPPMAN: I agree with you, that  
24 a case can be made. I think part of it is hearings  
25 like this that make the case publicly.

26 If you look at the criminal issue, I think if

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1  
2 you ask people -- and they watch TV programs and movies  
3 about criminal cases -- if you ask anybody in this  
4 country, "Do you think someone whose liberty is at  
5 stake is entitled to a lawyer?" almost 100 percent of  
6 the people do say "Yes."

7 I think we are coming to the day, where if you  
8 ask people if someone is going to lose the roof over  
9 their head, do you think that they are entitled to a  
10 lawyer, I think there is a growing majority of the  
11 population that would say yes, because we are making  
12 this case publicly, and I think it is so important.

13 MR. CARTER: Also, judges are a very, very,  
14 very important voice. Having sat as judge myself and  
15 presided over cases with pro se litigants, I know how  
16 uncomfortable it is to be in a situation where you see  
17 someone unrepresented and you know that while you have  
18 an obligation to be frugal, as decent person who cares  
19 about justice, everyone is in agreement that you may  
20 cross that line and feel that you need to reach out and  
21 help. But, you do it self-consciously; you don't do it  
22 with the same obligation or even right to provide  
23 self-representation that each claimant deserves.

24 But I think that having judges talk about  
25 those experiences, I think it helps.

26 HON. JONATHAN LIPPMAN: I agree, that most of



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2 them feel exactly the way you think. If you want to  
3 serve justice and be mindful as a neutral, it goes to  
4 the other point that you made, about it being so  
5 important that an attorney on the other side -- whether  
6 it is a landlord, whether it is the City of New York,  
7 or whoever it is -- when you have a person  
8 unrepresented, the individual doesn't get justice in  
9 the process; it's ill-served.

10 I think that's a terrific point also.

11 Any other questions from the Panel?

12 All right, I want to thank the Corporation  
13 Counsel, my old friend Zach, for taking time away from  
14 a really enormously busy and difficult schedule to come  
15 here and testify. It is a sign of his commitment that  
16 he has come, a sign of his commitment that he has had  
17 for a lifetime; that's nothing new here today. This is  
18 someone who has dedicated his life to principles.

19 Thank you so much.

20 MR. CARTER: Pleasure to be here.

21 HON. JONATHAN LIPPMAN: The next witness will  
22 be the President of the City of New York Bar  
23 Association, Debra L. Raskin, and I would indicate that  
24 the City Bar Association, which President Raskin  
25 represents, is, I would say, the seminal Bar  
26 Association, along with the New York State Bar

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2 Association, in the country that our State Bar and City  
3 Bar for not only their quality of their membership, but  
4 of the consciousness of issues of equal justice and  
5 fair play in our courts and in our corridors of legal  
6 power.

7 I think what is so interesting is that the  
8 City Bar has been such a leader on the ethics of issues  
9 facing lawyers and what their obligations and  
10 responsibilities are, in terms of legal services for  
11 the poor, and in helping those in need.

12 So I want to thank you, Debra Raskin, for  
13 coming and am so pleased to see the Bar here  
14 represented today by such a spectacular lawyer.

15 Welcome, and thank you.

16 MS. RASKIN: Thank you very much.

17 I appreciate the opportunity to testify today  
18 on behalf of the New York City Bar Association at this  
19 annual hearing to address access to justice for  
20 New Yorkers who cannot afford an attorney for their  
21 crucial civil legal services needs.

22 Chief Judge Lippman, we applaud your  
23 commitment and that of Helaine Barnett and the Task  
24 Force. You all have made New York a leader in  
25 increasing access to justice.

26 However, as we all know, the justice gap still

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2 is far too wide, and calls for more resources, more  
3 commitment and more innovative approaches.

4 The New York City Bar has long been committed  
5 to providing access to justice, which we address both  
6 through policy initiatives and providing direct legal  
7 assistance. We continue to advocate for an adequate  
8 funding of the federal Legal Services Corporation and  
9 have supported each of the increases in legal services  
10 funding presented in recent State Judiciary budgets.

11 In addition to our legal and policy work in  
12 this area, our public service affiliate, the City Bar  
13 Fund, has two divisions providing direct legal  
14 assistance. Our City Bar Justice Center leverages the  
15 efforts and resources of the City's legal community to  
16 increase access to justice for low-income individuals  
17 in New York City, and our Cyrus R. Vance Center for  
18 International Justice stimulates and coordinates pro  
19 bono efforts in Latin America, Africa and elsewhere in  
20 the world.

21 Through Chief Judge Lippman's and Chief  
22 Administrative Judge Prudenti's outstanding leadership,  
23 the Judiciary Budget now includes \$55 million for civil  
24 legal services, in addition to \$15 million in IOLA  
25 replacement funds.

26 We urge that you stay the course toward the

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2 original goal of a \$100 million increase in annual  
3 civil legal services funding. This is a crucial  
4 element of any effort to provide additional legal  
5 assistance to those who cannot afford it.

6 The fact that over two million people continue  
7 to enter New York courthouses every year to fend for  
8 themselves without counsel is testimony to how much  
9 more we need to do.

10 Of course, adding this funding is a necessary  
11 but not sufficient condition. As we ask more of the  
12 State's taxpayers, so we must ask more of the legal  
13 profession, and must consider and implement new ideas  
14 to provide assistance.

15 The City Bar understands it must provide the  
16 opportunities, training and guidance to support lawyers  
17 who want to do pro bono work. At the City Bar Justice  
18 Center, we engage volunteer lawyers in targeting  
19 particular needs within our community. We have a broad  
20 array of programs through which volunteers can assist  
21 those in need, from the homeless to cancer survivors,  
22 from immigrant women and children who have been  
23 trafficked or abused, to persons who risk losing their  
24 homes through foreclosure.

25 Our Veterans project continues to assist those  
26 who served this country in their fight to obtain the

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2 benefits they are rightly due. And our Legal Hotline  
3 not only is the largest free general civil legal  
4 services hotline in New York City, but also now  
5 provides brief legal services in addition to responding  
6 to callers' questions.

7 The additional funding provided to the City  
8 Bar Justice Center in the last round of funding will  
9 enable the Center to increase the Legal Hotline's  
10 capacity for brief services, such as creating court  
11 papers for pro bono litigants and will enable us to  
12 expand our new LGBT Advocacy project, to provide direct  
13 legal services to LGBT New Yorkers who cannot afford an  
14 attorney.

15 We know the rest of the organized Bar is  
16 committed to undertaking pro bono activities. However,  
17 our combined commitment has not generated a sufficient  
18 amount of pro bono hours and support to come close to  
19 meeting the need.

20 Just to consider one major area of need,  
21 homelessness is at record levels, with approximately  
22 56,000 people sleeping each night in the City's shelter  
23 system. More than 12,000 families with children are  
24 living in homeless shelters, and the average stay is  
25 over 14 months. The Justice Center's homeless program,  
26 and other legal services efforts, meets part of the

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2 need, but this remains a critically underserved  
3 population.

4 The City Bar has supported efforts, including  
5 those recommended by the Task Force, to increase pro  
6 bono activity. We supported the rule that established  
7 a 50-hour pro bono requirement for admission to the New  
8 York Bar. As this rule first affects the law school  
9 class of 2014, it has now been built into the  
10 educational fabric.

11 Similarly, law schools are adopting the pro  
12 bono Scholars Program, which gives interested 3L's the  
13 opportunity to take the bar exam in February of their  
14 senior year, so long as they devote their last semester  
15 of law school to providing pro bono service for the  
16 poor through an approved externship program.

17 This year, the City Bar Justice Center looks  
18 forward to hosting two pro bono Scholars, and we  
19 believe this program has great promise for providing  
20 needed services to low-income New Yorkers while giving  
21 3L's practical experience in a supervised setting.

22 While these initiatives are designed for  
23 incoming lawyers, all of us have the responsibility as  
24 officers of the court and as members of a privileged  
25 profession to give back. The City Bar continues to  
26 support the requirement that lawyers report their pro

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2 bono activities and donations to legal services  
3 organizations as a means both to encourage more  
4 activity and assemble data with which to better analyze  
5 pro bono efforts around the state.

6 We also applaud the Task Force's initiative to  
7 find appropriate ways in which non-lawyers can assist  
8 individuals who otherwise would not have counsel. In  
9 fact, we recommended such an approach in a report we  
10 issued nearly 20 years ago, and in a report issued in  
11 2013 by our Committee on Professional Responsibility.  
12 We greatly appreciate the productive work of the  
13 Committee, co-chaired by Fern Schair and Roger  
14 Maldonado, in getting this initiative underway.

15 We also believe part of the push to both  
16 stimulate funding -- including private contributions --  
17 and encourage pro bono participation is to demonstrate  
18 that providing legal services to the poor is  
19 cost-effective. The Task Force has conducted studies  
20 showing that a dollar spent on providing legal services  
21 generates substantially more in benefits.

22 The City Bar's Immigration & Nationality Law  
23 Committee recently asked the economic consulting firm  
24 NERA to study the costs and benefits of providing free  
25 legal counsel to immigrants facing detention and  
26 deportation and found that the amount spent would be

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2 offset by savings in detention, foster care, case  
3 processing and transportation outlays alone, even  
4 without quantifying other likely fiscal, social and  
5 administrative benefits. We believe more such studies  
6 would strengthen the argument that legal services  
7 funding is an investment in our society and one that is  
8 quantifiably productive.

9 One significant hurdle to increasing pro bono  
10 participation is the concern of a significant number of  
11 lawyers that they lack training and support to provide  
12 these services.

13 In addition, sometimes a lawyer who has the  
14 spirit but lacks the knowledge and support to  
15 competently perform pro bono falls short of providing  
16 the assistance the client needed. We need to find ways  
17 to make pro bono more satisfying to the lawyers and  
18 more effective for the client.

19 I have appointed a group within the City Bar  
20 to examine this topic and make recommendations, which I  
21 expect within the next year.

22 Let me conclude by again thanking you and the  
23 Task Force for your leadership and inspiration, which  
24 already has resulted in many thousands more individuals  
25 receiving legal assistance. We at the City Bar look  
26 forward to continuing to work with you in our joint



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2 pursuit of truly increasing access to justice in New  
3 York.

4 HON. JONATHAN LIPPMAN: Thank you, Debra  
5 Raskin, thank you.

6 Let me ask you a question.

7 You talked about the City Bar's interest in  
8 getting lawyers involved in a volunteer program.

9 How difficult is it to match the lawyer with a  
10 need; how do you do that?

11 You know, it would seem simple, but obviously,  
12 it's not.

13 MS. RASKIN: I think there are several ways in  
14 which we do this.

15 First of all, the City Bar has a number of  
16 committees that work in specialized areas of the law,  
17 and so by encouraging lawyers to take their  
18 specializations and utilize that -- and just to give  
19 you an example a private practice lawyer in trusts and  
20 estates, not necessarily an area that one thinks about  
21 when one thinks about poor people -- the Justice Center  
22 established an area of work for volunteer lawyers for  
23 working class and poor families who may suddenly have  
24 come into money through a small inheritance and don't  
25 know what to do with it and how to plan for their  
26 dependents, and so on.

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2 That's an example of taking the skills that  
3 people need and directing them to the community.

4 Another example is that we have really an  
5 entrepreneurial project, where transactional lawyers,  
6 lawyers who work on expensive mergers of corporations,  
7 go to the community and help start out business people,  
8 with a business plan or deal with an incorporation.

9 So I think part of the issue is helping  
10 lawyers channel what they know to the needs of poor and  
11 working clients.

12 HON. JONATHAN LIPPMAN: While we're very proud  
13 of all our lawyers and all their great expertise, they  
14 can be trained in an area that they are not really  
15 familiar with; a good lawyer is a good lawyer. I  
16 think, with a relatively small amount of time, that  
17 lawyer can be trained to work in an area that maybe  
18 wasn't their original skill set.

19 Let me ask you another question, which is my  
20 final question.

21 You praised the non-lawyer initiative.

22 We've been surprised -- and I think President  
23 Lau-Kee has also been surprised -- that lawyers are not  
24 upset about it, for the most part, of having  
25 non-lawyers help them provide legal services.

26 What's the theory? Why is it okay for

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non-lawyers who haven't gone to law school, in terms of being a lawyer, being able to practice law, why is that okay? Why do you think that the Bar is in general taking a positive view towards use of non-lawyers?

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2 T3 MS. RASKIN: I think the dirty legal secret is that  
3 there are many aspects of the law that are not that  
4 complicated. They can be terrifying to a civilian who is  
5 coming into Court for the first time and has no experience  
6 with forms or where to sit or when to stand and any of the  
7 kind of issues that, with some modicum of training and  
8 experience, non lawyers can provide significant support.

9 It's not a substitute for lawyers, as things are  
10 more complicated and at other levels of proceedings, but it  
11 certainly can help, and also, as a practical matter these  
12 aren't things that lawyers are going to be paid to do.

13 So, on the issue of competition to the bar, which I  
14 know President Lau-Kee and I both have heard voices on this,  
15 really should not be a problem.

16 JUSTICE LIPPMAN: I agree with you, in most of the  
17 areas or all the areas we are talking about using this kind  
18 of assistance, people are not represented anyway. They are  
19 not taking business away from lawyers. I just think it's  
20 such a logical place to go, and I always have the example,  
21 you can have a lawyer who is kind of we are talking about  
22 training lawyers and not in a particular area, you can have  
23 a lawyer who is generalist, who knows a lot of things about  
24 a lot of law and when it comes to a particular narrow area,  
25 you might have a non lawyer who is extremely expert in this  
26 area, who could provide representation -- it's the wrong

## PROCEEDINGS

1  
2 word, but more help to a person in need of legal assistance,  
3 not because, as you say, the lawyer -- anything that is  
4 complex or where the skills are so important, you can be  
5 trained in a particular -- I use an example, these housing  
6 counselors that are used in the Federal government program  
7 in foreclosure proceedings.

8 These housing counsel probably know more than  
9 anybody else in the world about foreclosure proceedings, so  
10 it's an interesting dynamic.

11 Any other questions? President Lau-Kee?

12 PRESIDENT LAU-KEE: Just, I just wanted to say that  
13 President Raskin has it quite right. I think the issue for  
14 the Bar Association is to how to get this expertise in these  
15 areas where it is so desperately needed, to the attorneys  
16 who can help, and this is where I am looking forward to  
17 working together with our bar associations, as all bar  
18 associations around the State should be working together on  
19 this problem.

20 I think the City bar has been really a leader in  
21 being able to marshall and be a resource here. I want to  
22 make a point that lawyers don't have to necessarily be  
23 expert immediately in these areas. But, the bar  
24 associations, they can provide support for lawyers as this  
25 happens, so, in the same way you have levels of complexity  
26 and we should be able to, within some structure, accommodate

## PROCEEDINGS

1  
2 that, and I look forward to working with the City bar and  
3 other bar associations in tackling this problem.

4 JUSTICE LIPPMAN: Judge Gonzalez.

5 JUSTICE GONZALEZ: To reflect on the navigators or  
6 facilitators -- my experience is in Housing Court. We have  
7 a practitioner in Housing Court here, who is now in the  
8 Appellate Division, Justice Orlando Acosta. He knows what I  
9 am talking about, that navigators or facilitators, although  
10 we used to call them community activists, come into Court  
11 and are extremely helpful. So helpful, the landlord's  
12 attorney would welcome them, because they would make the  
13 process a lot less difficult.

14 So, it's something that can be welcomed, without an  
15 attendant deficit on the part of the attorney's potential  
16 for income. So, it's a nice balancing. I think it's a  
17 win-win situation.

18 JUSTICE LIPPMAN: Let me also say that very justice  
19 that Judge Gonzalez was talking about, Justice Acosta, is  
20 also a member of the Task Force, and has a Legal Aid  
21 background and is committed to this issue for so many years.

22 We are so pleased to have Justice Acosta with us  
23 and in his courtroom. He owns it with Judge Gonzalez. The  
24 two of them own this courtroom.

25 Judge Prudenti, do you have any questions?

26 JUSTICE PRUDENTI: Not really a question, but I

## PROCEEDINGS

1  
2 just want to thank you and the City bar, and to take this  
3 opportunity to thank you for your encouragement and  
4 involvement in the Pro Bono Scholars program. I know I  
5 really look forward to your Task Force report on training  
6 the pro bono lawyers, I have to say, from my perspective  
7 from the Appellate Division where we are.

8 I have to tell you a very zealous, dedicated young  
9 lawyer, with a great supervisor, is probably the best  
10 advocate I have ever seen, so thank you. We look forward to  
11 working with you.

12 MS. RASKIN: Thank you so much.

13 JUSTICE LIPPMAN: Thank you, President Raskin.

14 The next speaker is William D. Rahm, who is the  
15 senior Managing Director of Centerbridge Partners.

16 Mr. Rahm, we welcome you, and I would note that he  
17 is not only a distinguished person and leader in the  
18 business community, but a lawyer.

19 I think one of the things that we are trying to  
20 make clear in this hearing is that legal services for the  
21 poor is not just something that is ethical, a good thing to  
22 do, but it's good for our economy, for our businesses, for  
23 our communities, and the bottom line is that we have been so  
24 pleased to have testimony at so many of these hearings from  
25 notable leaders in the business community, is to make that  
26 connection, that this is not just some exercise in being a

## PROCEEDINGS

1  
2 "do-gooder", even though doing good is something we are all  
3 happy about and proud of.

4 So, I am so pleased that Mr. Rahm has taken time  
5 from his important responsibilities at Centerbridge Partners  
6 to come over and talk to us from the perspective, to a  
7 significant degree, of a business leader, an important  
8 business leader who gets it, what this is all about.

9 So, welcome. Thank you for coming.

10 MR. RAHM: Thank you very much.

11 Good morning, and thank you for inviting me to  
12 address this distinguished panel today on the need for  
13 expanded access to legal representation in civil cases.

14 There is a clear fairness argument to support these  
15 services. As we mentioned earlier, we accept the right to  
16 counsel in criminal cases really throughout the country, but  
17 many civil matters result in hardship as impactful on an  
18 individual's life as any penalty handed down by a criminal  
19 court. Equally relevant, and perhaps overlooked, is the  
20 economic value of providing services to poor New Yorkers to  
21 help them deal with civil legal matters.

22 As Judge Lippman mentioned, Centerbridge Partners  
23 is a private investment firm with offices in New York and  
24 London and has approximately \$25 billion in capital under  
25 management. The firm focuses on private equity and  
26 distressed investments. The Centerbridge funds provide a



## PROCEEDINGS

1  
2 platform through which Centerbridge can invest throughout  
3 the capital structure in industries and geographies in which  
4 the Firm has substantial knowledge. Our team includes more  
5 than 200 professionals and our investors include some of the  
6 largest pension funds, university endowments and sovereign  
7 wealth funds in the world.

8 At Centerbridge, we seek to improve every portfolio  
9 company. We invest in both growth-oriented businesses led  
10 by entrepreneurs and at times bankrupt companies requiring  
11 significant turnarounds. In every case, a major driver of  
12 success is empowering talented individuals to perform their  
13 functions well. Additionally, broad-based economic growth  
14 encourages sales growth in most businesses, which help our  
15 investments. Both of these drivers benefit from access to  
16 legal services.

17 A few examples may help illustrate these points.  
18 At both Centerbridge, in our firm itself and at our  
19 portfolio companies, we have employees who require  
20 assistance with visa or other immigration matters.  
21 Fortunately, we have the resources to provide counsel to  
22 these people. Most individuals, even at large companies,  
23 don't have the benefit of legal representation in these  
24 cases and it can create a significant financial and  
25 emotional burden on the employees that limits their  
26 productivity at work. Worse still, if the matter is not

## PROCEEDINGS

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2 properly handled and a strong contributor needs to leave the  
3 country temporarily or permanently, companies typically need  
4 to re-hire and re-train a replacement, which imposes a cost  
5 on the company as well as the individual.

6 Now, this economic and social cost is rarely  
7 limited to the immigrant employee. When an immigrant who is  
8 eligible for some form of relief is nevertheless deported  
9 because she lacks legal reputation her family is impacted  
10 and that impact can be devastating to their lives:

11 disrupting their housing situation, affecting their access  
12 to health care and education and, potentially, separating  
13 children from their family. These costs borne by the  
14 immigrant's family must be considered in the analysis of  
15 what value the State receives from providing legal services  
16 for the immigrant on the initial matter.

17 In addition, the costs avoided by the State in the  
18 situation where the immigrant employee has legal  
19 representation and does not create further situations of  
20 need, is something that should also be considered in the  
21 economic analysis.

22 Housing issues, as have been discussed several  
23 times today, offer another example. As a result of the  
24 housing crisis, tens of thousands of homeowners were left  
25 with mortgages in default. Many of these homeowners live in  
26 New York state and have struggled to deal with the

## PROCEEDINGS

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2 administrative burden of resolving these defaults with  
3 mortgage servicers or lenders. The process is complicated  
4 and difficult to navigate, even for sophisticated  
5 professionals, and it imposes real hardship on low-income  
6 residents of our state who lack the resources to hire  
7 experienced counsel.

8 Furthermore, I imagine that the higher number of  
9 pro se defendants in housing courts reduces the efficiency  
10 of the judicial process. By efficiently, I just don't mean  
11 speed of conclusion or resolution, but also the economic  
12 efficiency of the outcome, whether or not there should be a  
13 modification or some other resolution that might produce the  
14 most efficient allocation of resources.

15 Ultimately, the housing crisis has caused a real  
16 drag on the U.S. economy. Access to legal representation  
17 for homeowners might have allowed for a better resolution of  
18 mortgage defaults as well as less economic waste; these  
19 services would surely have benefited both individuals and  
20 broad-based economic growth in our state and across the  
21 country.

22 As a new father, I can understand how the prospect  
23 of losing parental rights or not being able to provide  
24 shelter for your family can be as terrifying as a jail  
25 sentence. On moral grounds alone, I commend the Chief Judge  
26 and Task Force for their efforts in this area to expanding

## PROCEEDINGS

1  
2 access to legal services.

3 As an investor and a business person, I appreciate  
4 the economic value that could be unlocked by expanding civil  
5 legal services in areas such as immigration, family rights,  
6 housing, health care and education. The burden placed on  
7 low-income New Yorkers who lack representation reduces  
8 their ability to contribute to economic growth for our state  
9 and surely limits their productivity wherever they may work.

10 I applaud the Task Force for its work and support  
11 the recommendation for additional funding for civil legal  
12 services.

13 JUSTICE LIPPMAN: Thank you. I know that it's such  
14 an important message that you deliver as a member of the  
15 business community, and hard for people to understand, that  
16 you know, this is not just going with your hand out and  
17 saying gentlemen, help poor people, which is great and we  
18 should all help poor people.

19 But, in a real, meaningful economic sense, the  
20 dollars and cents add up in the economy and it really better  
21 improves it by helping more people with legal  
22 representation. It's a hard concept we are trying to get  
23 across. It doesn't generally, you know, you throw money  
24 into the social well-being and people get that, but they  
25 don't get it that it really could be that when you add up  
26 the dollars and cents, that it's a boon to the economy to

## PROCEEDINGS

1  
2 not have people fall off the cliff in the middle of economic  
3 hard times.

4 MR. RAHM: Yes, I believe that's true. President  
5 Raskin spoke before me and mentioned an economic analysis  
6 that her association has done with third parties to support  
7 that assertion. I have not done the specific economic  
8 analysis myself, but based on my experience I would say that  
9 there are presently two drivers of that value.

10 One is simply the avoidance of waste of state  
11 resources, and that waste avoidance means there are more  
12 resources for the state to invest in other areas that can  
13 help grow the economy, and most business people will talk  
14 about the importance of spending by the State or Federal  
15 government or the City government, and so I think  
16 initiatives that can help avoid waste should be supported by  
17 business people.

18 The second is really in increasing the productivity  
19 of businesses and private enterprises. All businesses are  
20 fundamentally run by people, and those people may be high  
21 paid executives and they may be low-income workers, and any  
22 of those individuals who are distracted from their  
23 day-to-day job by situations outside of work, will limit the  
24 productivity of that business.

25 And, since a more high paid executive has the  
26 resources to hire representation that can minimize those

## PROCEEDINGS

1  
2 distractions, and a lower income worker does not, those  
3 distractions are going to more greatly limit the  
4 productivity of the lower income worker, in my estimation,  
5 than they would of a higher paid executive, and that company  
6 would benefit from legal representation being provided to  
7 those workers.

8 JUSTICE LIPPMAN: Let me ask you one other  
9 question.

10 As a business, not as a business person, but as a  
11 lawyer, how is it possible, when you said at the beginning  
12 and I believe it is true, that the impact of not having a  
13 lawyer in a civil case can be as dramatic as the loss of  
14 liberty itself in a criminal case? Is that possible?

15 MR. RAHM: Yes, I think your Honor mentioned  
16 earlier there is certainly a popular conception of criminal  
17 cases in this country that mostly derives from media, and  
18 often that is in the case of, you know, violent crimes or  
19 serious felonies, where the penalty is a very long-time loss  
20 of liberty. It could be a lifetime in jail or worse, could  
21 be many years in jail, but there are many criminal penalties  
22 that result in fines, many criminal penalties that result in  
23 shorter term incarcerations, and when comparing those types  
24 of penalties which are the result of a process for which  
25 legal representation is provided, against the loss of  
26 parental rights, or the loss of one's home, or the inability

## PROCEEDINGS

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2 to provide health care for someone that you love, I think  
3 that many people would faster serve a short time in jail and  
4 certainly pay a penalty of financial means, than lose access  
5 to their loved ones, whether through parental rights or  
6 whether having to take your family -- as was mentioned  
7 earlier, we have 12,000 families in shelters today losing  
8 housing and being forced to live in homeless shelters --  
9 imposes a tremendous burden where many people would rather  
10 undertake a criminal penalty rather than a civil penalty.

11 So, I do think there are such instances in which  
12 the result of a civil process could be much more detrimental  
13 to someone's liberty and their pursuit of happiness as a  
14 criminal penalty would be.

15 JUSTICE LIPPMAN: Thank you.

16 President Lau-Kee.

17 PRESIDENT LAU-KEE: Mr. Rahm, I see that you are a  
18 David Rockefeller Fellow, and a number of years ago I went  
19 through that program as well.

20 For those of you who don't know, that's a very  
21 intensive program of the New York City Partnership that  
22 puts, that exposes leaders to all aspects of the government  
23 and society's problems in New York City, and so it doesn't  
24 surprise me that you are here, and I thank you for being  
25 here.

26 I think one of the questions I have, and I know

## PROCEEDINGS

1  
2 this is how, and this has really cropped up, often we feel  
3 that in the dealing with these problems of legal services  
4 the legal profession is talking to itself.

5 How is it do you think that this question may  
6 resonate within the business community? It's a very  
7 important business community represented by the Partnership.  
8 It's the best firms in New York City that have tremendous  
9 resources here, and if they understood as well the economic  
10 analysis that underpins this, that they would be very  
11 interested in helping advance closing this gap, if you will.

12 Do you have a feeling on that? I know you just  
13 went through the program and so you may not be as familiar  
14 with the Partnership, but you might have something --

15 MR. RAHM: Sure. I think that Partnership members  
16 care about the health of the City because they are leaders  
17 of businesses and leaders of organizations that employ tens  
18 of thousands of people in this City. So, understanding how  
19 access to legal services can improve the growth of the City,  
20 what is the economic costs from the sense of either a state  
21 wasting or limiting productivity of businesses when  
22 representation is not provided in things like housing,  
23 health care, family matters, would be something, I think,  
24 the Partnership would be interested in, and I think also how  
25 it might continue to improve the quality of life of the  
26 City.



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1  
2 I think that people who don't have proper access to  
3 housing, who end up in homeless shelters, people who end up  
4 going through foster care, not having access to the right  
5 kind of health care, education, ultimately end up probably  
6 having a more difficult life themselves, but also not  
7 contributing to the quality of life of everyone else in the  
8 City as much as they could. So, I think if you could  
9 demonstrate that, this would reduce homelessness, it would  
10 reduce health care issues, it would improve educational  
11 issues and other sort of essentials of life that, I think,  
12 people in the Partnership really do care about, not just for  
13 themselves and their immediate families, but for people more  
14 broadly in the city and that would resonate with the  
15 Partnership.

16 PRESIDENT LAU-KEE: I guess we may be in touch in  
17 the future then.

18 JUSTICE LIPPMAN: Anything else? Okay. Thanks so  
19 much.

20 Thank you for appearing today, and thank you  
21 generally. You have been terrific and get our friend Kathy  
22 Wylde, the Executive Director of the New York City  
23 Partnership who is here, and thank you Kathy for your  
24 support and testifying, and thank you Bill Rahm for your  
25 testimony.

26 JUSTICE LIPPMAN: Our next witness will be Jennifer

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1  
2 Kroman, the Director of Pro Bono Practice at Cleary Gottlieb  
3 Steen & Hamilton and Joellen Valentine, Director and  
4 Assistant General Counsel for Citigroup.

5 Let's hear in particular how the community, the  
6 community can, the law firm in the business community, the  
7 legal community goes about helping us with pro bono.

8 MS. KROMAN: Good morning. Thank you for allowing  
9 me to testify before you today.

10 As you mentioned, I am the Director of the Pro Bono  
11 Practice at Cleary Gottlieb Steen & Hamilton, an  
12 international law firm with more than 1200 lawyers.  
13 Although lawyers in Cleary's 16 offices undertake pro bono,  
14 I am going to confine my remarks today to the pro bono work  
15 done by the approximately 700 lawyers in our New York  
16 office.

17 Pro bono is an essential part of the civil legal  
18 services delivery system, enabling legal services  
19 organizations to leverage their resources and increase their  
20 capacity to represent low-income New Yorkers. Last year,  
21 Cleary Gottlieb's New York lawyers logged more than 50,000  
22 pro bono hours. In this respect, Cleary Gottlieb is not  
23 unique: all over New York State, associates and partners at  
24 law firms big and small, in-house counsel, solo  
25 practitioners, and other attorneys are working on pro bono  
26 cases. Indeed, some studies indicate that lawyers in New

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1  
2 York contribute more than 2.5 million pro bono hours each  
3 year.

4 The vast majority of Cleary Gottlieb's pro bono  
5 hours are spent on behalf of individuals fighting for the  
6 basic necessities of life -- such as shelter, safety, and a  
7 living wage -- or for particularly underserved populations  
8 such as domestic violence and sex trafficking victims,  
9 veterans and undocumented immigrants. Many times, these two  
10 spheres overlap.

11 In 2013, for example, we represented dozens of  
12 trafficking victims. Among other things, we helped vacate  
13 their prostitution convictions by filing post-conviction  
14 motions where there is no right to counsel, we defended  
15 clients in Family Court proceedings where pimp-traffickers  
16 tried to gain custody of children, and we helped  
17 international sex trafficking victims file for T-Visas, a  
18 specific form of immigration relief exclusively for  
19 trafficking victims.

20 With respect to housing, we recognize that  
21 affordable and safe housing is critical to ensuring the  
22 well-being and health of families in New York. To that end,  
23 we spent thousands of hours last year working to prevent  
24 families from being evicted from public and private housing.

25 Additionally, for decades, Cleary Gottlieb has  
26 sponsored two externships: one at Lawyers Alliance for New

## PROCEEDINGS

1  
2 York, which provides transactional legal services to  
3 nonprofits that improve the quality of life for New Yorkers,  
4 and one at MFY Legal Services, which provides civil legal  
5 representation and community education to nearly 5,000  
6 households every year.

7 Each Cleary Gottlieb extern spends approximately  
8 four months working full-time at Lawyers Alliance or MFY and  
9 then is replaced by the next extern, effectively providing  
10 each of these organizations with an additional year round,  
11 full-time attorney. The MFY extern is essentially dedicated  
12 to representing indigent New Yorkers in Housing Court. It  
13 is worth noting that one of Cleary Gottlieb partners who now  
14 supervises much of our pro bono housing work was an MFY  
15 extern in 1998.

16 That brings me to the importance of what I call the  
17 "snowball effect" of pro bono. I have seen time and time  
18 again how taking just one pro bono case as a young lawyer  
19 can and will foster a lifetime commitment to pro bono.  
20 When I started at my firm as a litigation associate nearly  
21 20 years ago, one of my first cases was a pro bono lawsuit  
22 seeking minimum wage for a class of homeless New Yorkers.  
23 During the course of the case, I spoke often to many of  
24 these plaintiffs about their other seemingly endless legal  
25 woes. Their legal problems were the ones typically faced by  
26 our city's most vulnerable people -- someone would call me

## PROCEEDINGS

1  
2 on the brink of eviction because their benefits had been cut  
3 off or a plaintiff would show up at Cleary Gottlieb's  
4 offices after having been attacked by an intimate partner  
5 without knowing where else to go.

6 Meeting these New Yorkers and hearing their  
7 stories -- and seeing how I could help -- changed my view of  
8 legal work forever. From then on, there was never a time as  
9 a litigation associate and then a litigation partner at  
10 Cleary Gottlieb that I did not do pro bono work. And now  
11 that I have the privilege of overseeing and managing Cleary  
12 Gottlieb's pro bono practice on a full-time basis, a career  
13 shift that I attribute in no small part to that one case  
14 many years ago, I see this day in and day out. As one  
15 associate recently e-mailed me: "I will never forget the  
16 look of relief, gratitude and shock in Mr. S' eyes following  
17 our victory in his case. When I spoke to him a few days  
18 later, he said that he was able to sleep soundly for the  
19 first time in three years. I would like to help out on  
20 another case."

21 We are rightfully proud of all of the pro bono work  
22 that we do. We relish the victories on behalf of our  
23 clients -- the 78 year-old woman that gets to live in her  
24 NYCHA apartment, the special education secured for a  
25 disabled child desperate for an appropriate education, and  
26 the two-year Order of Protection granted to a woman that

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1  
2 allows her to go to work each day without fear. But of  
3 course, when only 20 percent of low-income New Yorkers can  
4 have their civil legal needs met, we in the Pro Bono  
5 Community must constantly think about ways to do more, to  
6 reach more people, to work together in the private bar to do  
7 pro bono work more efficiently.

8 I want to conclude my testimony where I began by  
9 noting that pro bono work is a critical way to enable legal  
10 services organizations to leverage their resources. The  
11 private bar could not do pro bono work without the amazingly  
12 talented and committed attorneys and staff members at the  
13 organizations that we work with on a daily basis. It is not  
14 an exaggeration to say the work we do with groups like The  
15 Legal Aid Society, Legal Services New York City, and  
16 Sanctuary for Families in virtually every one of our pro  
17 bono cases allows us to do this work. These non profits  
18 screen the individual clients, they train our lawyers, and  
19 importantly, they work with us throughout the case. We rely  
20 upon our legal services colleagues for their expert advice,  
21 their counsel, and their guidance. For this reason,  
22 whenever there is a discussion of expanding the pro bono  
23 work done by the private bar as a means of addressing the  
24 access to justice gap for low and moderate income New  
25 Yorkers, there must simultaneously be discussion of  
26 increasing the resources and capacity of the civil legal

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services organizations.

Thank you.

JUSTICE LIPPMAN: Thank you.

(Continued on next page.)

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HON. JONATHAN LIPPMAN: Thank you.

And let me just ask you one question.

Why do lawyers do pro bono and why should you do pro bono?

MS. KROMAN: To some extent, in my view, it's not important why they take their first case -- whether they take it because they feel a form interaction or you take it because there's a particular partner that they want to work with, or take it to gain the experience of standing up in Housing Court and arguing for the first time -- the importance is that they take it -- and what I've seen time and time again -- is that if they take it once, the second time they take it --

HON. JONATHAN LIPPMAN: Why? Why is it that once they do it, they want to do all the more?

MS. KROMAN: Because when they take it the next time, they feel a moral imperative.

HON. JONATHAN LIPPMAN: That's a good answer, and I hope and believe that that's the case.

Okay, Joeleen Valentine.

MS. VALENTINE: Thank you very much for having me this morning, Justice Prudenti.

My name is Joeleen Valentine, and I am an in-house litigator at Citigroup.



1  
2           For nearly the last eight years, I have been  
3 participating in the New York City Family Court  
4 Volunteer Attorney Program, or VAP, specifically in the  
5 clinics for unrepresented litigants in Family Court,  
6 which I'll call "the Clinics."

7           These Clinics started in 2006, and they reach  
8 a population in great need. I understand that 80  
9 percent of filings in Family Court are pro se and  
10 remain that way, and yet these litigants grapple with  
11 some of life's most critical and personal issues.

12           Coincidentally, 2006 was the same year that  
13 Citigroup's Legal launched its pro bono Initiative,  
14 encouraging its lawyers to use their skills for the  
15 public good. The time was perfect.

16           Citigroup joined the Clinics at their  
17 inception in November 2006, partnering with the firm of  
18 Greenberg Traurig, another founding participant in the  
19 Clinics.

20           In 2006, the Clinics launched with just five  
21 firms and one corporation, Citigroup, sending  
22 approximately 40 volunteer attorneys to staff Clinics  
23 in Brooklyn, two days a week.

24           Now, we've grown to over 300 attorneys, with  
25 roughly 50 solo practitioners and about 250 lawyers  
26 from 40 different firms and corporations. We now staff

1  
2 in-person in four boroughs and by video conference in  
3 Staten Island and Ontario County.

4 Citigroup has been able to sustain its  
5 volunteer base in the Clinics for two primary reasons.

6 First, support for pro bono work continues to  
7 thrive at Citigroup and goes to the highest levels of  
8 Citigroup's Legal Department up to and including the  
9 General Counsel.

10 Second, the Clinics are well suited to the  
11 schedules of and demands on in-house attorneys.  
12 Citigroup asks its volunteers to give one morning or  
13 afternoon a month in one of the Project's locations.  
14 Last-minute substitutes can be found if schedules  
15 change.

16 Training for CLE credit is available  
17 year-round. It is offered live five to six times a  
18 year and at any time on DVD's. The work itself is  
19 limited in scope. Sessions typically last 30 to 45  
20 minutes, depending on the complexity and the needs of  
21 the client, but there is no ongoing relationship once  
22 the session ends. Volunteers do not appear with the  
23 litigants in proceedings. Issues are confined to  
24 custody, visitation, paternity, support, guardianship  
25 and family offense, allowing volunteers to gain more  
26 confidence and knowledge over time.

1  
2           An essential part of the Clinics has been the  
3 excellent court attorneys who made everything work.  
4 They handle scheduling, provide real-time screenings  
5 during intake and provide valuable insight into the  
6 court and nuances of the law gained through years of  
7 experience.

8           Since the volunteers are not family law  
9 experts, having court attorneys who are makes all the  
10 difference, not just in keeping attorneys in the  
11 Program but in recruiting them as well.

12           The Clinics provide needed and important  
13 advice. Many times, a client's access to a lawyer in  
14 the Clinic will be that client's only chance for legal  
15 advice. The advice helps not just the advocates, but  
16 ultimately improves the process for all participants  
17 because clients of the Clinics arrive at court  
18 appearances more prepared and with a clearer  
19 understanding of important issues.

20           Of course, there is always more to be done,  
21 and that is why I'm here. Citigroup remains committed  
22 to delivering legal services to those who cannot afford  
23 them, whether through this effort or others, and we  
24 look forward to continuing our partnership with the  
25 court system to help low-income families get fair  
26 treatment and access to justice.

1  
2 HON. JONATHAN LIPPMAN: Let me ask you one  
3 question.

4 Why is it important to Citigroup to be  
5 involved in pro bono work, to have their employees  
6 involved in pro bono work?

7 MS. VALENTINE: I can only speak from my  
8 personal experience, which harkens back to something  
9 Mr. Carter said earlier, which is that we need a  
10 culture of service.

11 During my entire time at Citigroup, we have  
12 had that culture of service that pervades the legal  
13 profession. Law firms in the City have made vast pro  
14 bono efforts, and I think Citigroup recruits its  
15 lawyers from those places, so they come in with that  
16 moral imperative, that culture, and it becomes part of  
17 the corporate culture that is essential to being an  
18 active participant.

19 HON. JONATHAN LIPPMAN: Thank you.

20 We thank the corporate community and  
21 particularly Citigroup and the law firms -- Cleary,  
22 certainly, being one of our outstanding supporters --  
23 and we appreciate it.

24 Any questions?

25 HON. A. GAIL PRUDENTI: I just have one  
26 question for the Director of Cleary.

1  
2           How do you encourage lawyers, who are  
3           incredibly busy, to get involved in the program?

4           MS. KROMAN: A combination of one-on-one  
5           outreach. I try to meet with every summer associate  
6           who comes into the firm and every new associate who  
7           comes into the firm.

8           One of the most effective ways is that we  
9           bring in clients to speak. So we have a lunch  
10          scheduled in a couple of months where a woman who got  
11          asylum as a trafficking victim and was just reunited  
12          with a daughter she hasn't seen in years, they are  
13          going to come in and speak to a broad audience of  
14          Cleary lawyers about what the pro bono work meant to  
15          them.

16          It's really repetition, so I send a lot of  
17          e-mails, and it's not just me, I think. That's the  
18          other important thing. All the partners at Cleary are  
19          active in recruiting the younger associates to do pro  
20          bono, and I think that's a very good point that really  
21          is a top-down sort of initiative.

22          HON. JONATHAN LIPPMAN: Thank you for the  
23          culture that you represent, thank you very much.

24          For our last speaker today, we're going to  
25          have some clients of Legal Services: Wun Kuen Ng,  
26          Karen Rivera Yvette Walker; Wun Kuen Ng -- Karen Rivera

1  
2 is accompanied by Nelson Mar, Yvette Walker is a client  
3 of the Legal Aid Society, and she is accompanied by  
4 Kathryn Kliff.

5 Okay.

6 MR. NG: My name is Wun Kuen Ng.

7 Thank you for the opportunity to tell you  
8 about how the legal assistance I received from MFY  
9 Legal Services saved my home and helped me and other  
10 tenants preserve our community. I am 42 years old. I  
11 live at 83-85 Baxter Street in Manhattan's Chinatown.

12 I have lived there for more than 15 years. In  
13 2012, my building was bought by a new landlord. That  
14 landlord had been buying up rent-regulated apartment  
15 buildings on the Lower East Side and Chinatown and  
16 turning them into market-rate luxury housing, but I  
17 didn't know that at the time.

18 At the time, all I knew was that the landlord  
19 sent me a notice saying that he would take me to  
20 Housing Court for eviction because he claimed I wasn't  
21 living in my apartment as my primary residence.

22 The address where the landlord claimed I  
23 really lived was, in fact, my parents' public housing  
24 apartment. I had not lived there since 1999.

25 When I received this notice, I was shocked. I  
26 have lived in my apartment since 1999. The prior owner

1  
2 of the buildings came from the same village in China  
3 that my family is from. Most of the tenants came from  
4 the same village and treated each other like family.  
5 They knew my parents before I moved in. In many ways,  
6 we were like a village in a building. To be accused of  
7 faking my residence there was absurd. Anyone who had  
8 ever spoken to anyone in the building or had taken even  
9 a few minutes to visit me would have known that I lived  
10 there and was part of the community.

11 I can't afford to hire a lawyer. I do not  
12 make much money. I work as a free-lance journalist and  
13 get a little bit of support from my family. I was very  
14 worried about going to court against the landlord, who  
15 I knew would have a lawyer.

16 Fortunately, I got in touch with MFY Legal  
17 Services, who agreed to represent me in Housing Court.  
18 I'm glad I had a lawyer, because the case dragged on  
19 for over two years. The landlord demanded discovery,  
20 and MFY helped me collect and turn over extensive  
21 documentation of my life. Without a lawyer to help me,  
22 I would have felt overwhelmed, gave up and moved out.

23 I've since learned that that is exactly what  
24 most unrepresented tenants do in this situation, and  
25 many landlords count on that.

26 In my case, after MFY fought back, the

1  
2 landlord discontinued the case and gave me a new  
3 rent-stabilized lease. And not only did MFY represent  
4 me in Housing Court and help save my apartment; they  
5 also invited me to come to a meeting of other tenants  
6 facing the same problem.

7 When MFY had seen the wave of cases coming  
8 from this landlord, they brought together a coalition  
9 of community groups whose members were being harassed  
10 by the same landlord of many different buildings. We  
11 met together to compare our experiences. The coalition  
12 made up of MFY Legal Services; CAAAV Organizing Asian  
13 Communities; Asian Americans For Equality, or AAFE;  
14 Good Ole on the Lower East Side, or GOLES; the Cooper  
15 Square Committee; and University Settlement.

16 We saw that we were all facing the same  
17 problems and the same tactics intended to drive us out  
18 of our homes. At these meetings, I realized we needed  
19 the protection of the law, tenant advocacy policies and  
20 legal services to protect us against monstrous and  
21 predatory landlord who use illegal tactics that are  
22 racially and socially discriminating. Meeting other  
23 tenants made my feel we have a stronger voice to assert  
24 our rights and save our homes and community.

25 Most of these tenants were Chinese in  
26 heritage, like me. Many of them do not speak English.



1  
2 Most of them had lived in Chinatown or the on the Lower  
3 East Side for many years, but were seeing their  
4 neighborhoods transformed by gentrification. Most of  
5 us stood to lose not only our apartments but our  
6 village.

7 As a coalition, we were able to capture the  
8 attention of the New York State Division of Housing and  
9 Community Renewal's Tenant Protection Unit or TPU.  
10 With the help of MFY and the coalition, I and many of  
11 the other tenants met with the TPU and told our  
12 stories.

13 August 20, 2014, the TPU announced that it was  
14 investigating the landlord for harassment and had  
15 issued a subpoena. The TPU investigation has just  
16 begun, but I and the other tenants are hopeful that it  
17 will shine a light on the way the landlord has treated  
18 us and tried to drive us out of our long-time homes and  
19 that the landlord will be forced to change.

20 I am grateful that I was able to connect with  
21 MFY Legal Services and that they had the funding and  
22 capacity to not only help me with my own eviction case,  
23 but also to go beyond my individual case, to bring  
24 together other tenants in the same position and change  
25 the way the landlord does business across the board.

26 I have gone from being isolated and scared to

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knowing that other tenants share my story and stand with me, and that together we will not be moved.

          Please continue to expand funding for civil legal services in our state.

          Thank you once again for the opportunity to testify.

HON. JONATHAN LIPPMAN: Thank you, and we appreciate your testifying and appreciate especially that your testimony indicates what a universal problem it is, that it's not just one person but other people who were in the same situation, and that MFY Legal Services is a place that recognizes that people shouldn't be lumped in together. It should be a more singular example of the kind of situation that someone with limited means finds themselves in, particularly as it relates to housing.

          So thank you very much; we appreciate it.

          Okay, Ms. Walker.

MS. WALKER: Good morning.

          My name is Yvette Walker, and I'm here with my daughter, Jasmine. We are currently living in a homeless shelter in Brooklyn. We became homeless in the spring of 2013 because our landlord lost his house due to foreclosure. We came to PATH and were found eligible for shelter. A few months after being in

1  
2 shelter, I had knee surgery, as I suffer from  
3 degenerative joint disease. The surgery required me to  
4 stay in the hospital for a few days. The shelter staff  
5 told me that Jasmine could not stay in the shelter  
6 without me. As a result, I sent her to stay with my  
7 mother-in-law while I had the surgery. After the  
8 surgery, I had 32 staples down my knee.

9 I came back to PATH with Jasmine in order to  
10 get placed back in a shelter. However, PATH refused me  
11 placement, telling me that we could stay at my  
12 mother-in-law's apartment, even though her landlord  
13 refused to let us stay there and my walker couldn't fit  
14 in the bathroom.

15 Without shelter, Jasmine and I had nowhere to  
16 go. I was scared and frustrated. While walking into  
17 PATH, I saw that there was a van outside with "The  
18 Legal Aid Society" printed on the side. I decided to  
19 go and see if they could help.

20 I met Kathryn Kliff, who explained to me that  
21 she could help advocate for me so that my daughter and  
22 I wouldn't be forced to sleep on the streets. She  
23 wrote a letter, collected my medical documentation and  
24 advocated on my behalf to PATH's lawyers.

25 After she did so, PATH agreed to give us  
26 placement and re-investigate my case. Shortly after

1  
2 that, we were found eligible.

3 We had been living in a shelter for about a  
4 year when the shelter transferred us. They said that  
5 we needed to move to an adult family shelter now that  
6 Jasmine was 18. However, the new shelter was not  
7 medically appropriate for me. The bathroom stalls were  
8 too small for my walker, and so was the shower. As a  
9 result, I couldn't use the toilet or the shower at the  
10 shelter. I had to go to my church all day every day to  
11 be able to use the handicap-accessible shower and  
12 bathrooms. I then had to wait for Jasmine to come home  
13 from school and pick me up so that she could help me in  
14 the shelter.

15 Eventually, I called Kathryn Kliff again,  
16 because it was just too difficult to live somewhere  
17 where I could not access the bathroom facilities.  
18 Kathryn immediately advocated on my behalf to the  
19 lawyers at the Department of Homeless Services or DHS,  
20 and they moved me to a shelter that could accommodate  
21 my walker.

22 Shortly after that, DHS told me that I would  
23 have to move again because they were transitioning the  
24 adult family shelter where I lived into a shelter for  
25 families with minor children. I was scared because I  
26 remembered what happened the last time they transferred

1  
2 me, and I worried that I would be placed in a medically  
3 inappropriate unit again. I reached out to Kathryn  
4 again, and she raised my health issues with DHS once  
5 again.

6 As a result, DHS transported me to a  
7 medically-appropriate shelter in Brooklyn, where I now  
8 reside.

9 Kathryn also connected me to the Coalition for  
10 the Homeless, who helped me apply for supportive  
11 housing. I've been approved and am waiting for an  
12 apartment.

13 Even with all the moving around, Jasmine  
14 graduated high school and will be starting college in  
15 January, where she plans to study pediatric nursing. I  
16 am so proud of her.

17 I am very grateful that the Legal Aid Society  
18 agreed to help us. Without them, my family would not  
19 have a safe place to sleep at night, and Jasmine may  
20 not have been able to achieve her dream of going to  
21 college.

22 However, I know that there are still many  
23 families who are struggling to access shelter that is  
24 safer and medically appropriate. The Legal Aid Society  
25 is an incredible resource to New Yorkers like me who  
26 experience difficult times. Without the Legal Aid

1  
2 Society and other civil legal services programs,  
3 families will have nowhere to turn when they are  
4 wrongfully denied shelter or placed in dangerous  
5 shelters.

6 I am here in support of continued and  
7 increased funding for civil legal services in New York.

8 Thank you for the opportunity.

9 HON. JONATHAN LIPPMAN: Thank you for coming  
10 in and telling us your story. I think it demonstrates  
11 a very human and personal way why their services are so  
12 important and that the Legal Aid Society has been so  
13 instrumental in your life, and we only wish you well,  
14 and I'm so glad that you received the assistance that  
15 you needed.

16 Again, you show graphically why legal services  
17 are so important. There are human beings out there  
18 that have real problems, and none of us wants to forget  
19 about them.

20 Thank you so much.

21 MS. RIVERA: My name is Karen Rivera. I am a  
22 single mother taking care of my son Christian, who has  
23 multiple disabilities, including autism.

24 In 2009, Christian was attending a pre-school,  
25 where he was not doing well. None of the children in  
26 Christian's school had autism, and the teachers there

1  
2 did not know how to work with him. I could see he was  
3 not progressing or developing, and his behaviors became  
4 worse. I could not even take him out to the store or  
5 to the park. I was desperate to find help for him, but  
6 it felt like I was going around in circles and getting  
7 nowhere. I was all alone in caring for Christian, and  
8 his needs were very severe. Because of the amount of  
9 time I spent in trying to find services for Christian  
10 and in keeping him safe, I was at risk of losing my job  
11 as a manager at a local retail store and was struggling  
12 to keep my apartment. It seemed that everything was  
13 falling apart and no one could help me. The struggle  
14 and stress I was experiencing at this time caused me to  
15 become extremely depressed and anxious. I began to  
16 believe that nothing would get better. I worried about  
17 my own mental health, that I might have a nervous  
18 breakdown, and I was afraid that if something happened  
19 to me, there would be no one to take care of Christian.  
20 It was a very bad time.

21 While I was visiting a hospital with  
22 Christian, I met a woman who gave me a card for  
23 attorney Nelson Mar at Legal Services New York City in  
24 the Bronx. I called Mr. Mar, and he scheduled an  
25 appointment to meet with me. I explained everything  
26 that was going on and how worried I was for Christian.

1  
2           Mr. Mar responded to my story with caring and  
3 expressed concern for me and my son. He told me that  
4 he would help me, and for the first time I felt like I  
5 had someone that would be there for me.

6           Mr. Mar also connected me with Legal Services  
7 New York City's social worker. I met with the social  
8 worker, Ms. Tara Lambert, that same day and she talked  
9 to me for a long time and reassured me that there were  
10 services that would help me and Christian and that she  
11 would make sure that I was connected to them.

12           From that day forward, I spoke to Legal  
13 Services New York City every week.

14           I took a leave of absence from my job so I  
15 would have the flexibility and time I needed to care  
16 for myself and Christian. Legal Services New York City  
17 worked very hard to get Christian into a school that  
18 met his needs.

19                           \*       \*       \*



## PROCEEDINGS

1  
2 T5 MS. RIVERA: Once Christian was placed in his  
3 in new school, Legal Services continued to help me. They  
4 worked with Christian's social worker from the Bronx Lebanon  
5 Hospital to connect us with the support services we needed  
6 and this was a big relief for me.

7 While things had gotten better for Christian, I was  
8 still struggling with keeping our Section 8 apartment. I  
9 knew that if I lost our apartment I will have to go into a  
10 homeless shelter with Christian. I had done everything I  
11 was supposed to, but I was still being threatened with  
12 eviction of my Section 8. I tried for a long time to fix  
13 what was happening by myself, but I realized that I couldn't  
14 do it alone. Legal Services of New York took on my housing  
15 case, fought hard for me and got my Section 8 restored.  
16 They found out that the money my landlord was accusing me of  
17 owing was based on a rent amount that was wrong. Instead of  
18 me owing my landlord rent, he actually owed me money!

19 The team at Legal Services NYC has continued to be  
20 there for me, and today I am happy to say that Christian and  
21 I are doing very well. I have a job and Christian is in a  
22 school where he is happy, safe and growing strong. We have  
23 a future, and I thank Legal Services of New York. Their  
24 help and support has made a huge difference for me and  
25 Christian, and I appreciate everything that they have done  
26 and continue to do.

## PROCEEDINGS

1  
2 Thank you.

3 HON. LIPPMAN: Thank you so much. Again,  
4 demonstrating what legal services in this case, Legal  
5 Services NYC can mean to your life, the life of your child,  
6 your having a place to stay and to thrive and to be a part  
7 of the community here in New York City.

8 I think that all of your stories showed that there  
9 is nothing more important as legal services for those people  
10 in need, and that again, as I started out, it's as important  
11 as everything else that we hold dear in our society, whether  
12 it be housing, education or medical care, all of the things  
13 that are really the essentials of life, and that legal  
14 services can be so critical to a human being's enjoyment of  
15 that life, and the things that we are all entitled to, and I  
16 think today, in so many ways, it's really been demonstrated  
17 the value of legal services, pro bono work by lawyers, and  
18 that I think the testimony by our government officials, the  
19 City Council Speaker, the corporation counsel, our bar  
20 associations, the President of the City Bar, the business  
21 community, the Partnership in New York, which is so  
22 interested in these issues, the pro bono efforts of  
23 corporations and law firms, and all of it really translates  
24 to these final three witnesses which, I think, show the  
25 practical effect of the monies we are able to get from  
26 government to fund legal services and these great legal

## PROCEEDINGS

1  
2 services organizations.

3 Again, a wonderful effort by lawyers assisting  
4 those legal service providers in insuring that people, all  
5 people, get a fair shot and get a fair shake are treated  
6 equally by our institutions and by our justice system.

7 So, I thank you for being here, for this first  
8 legal services hearing of this year. This is all working  
9 towards our December 1st report for the Legislature on the  
10 monies that we need to continue to close the justice gap in  
11 our State and to insure equal justice for all.

12 So, thank you all so much. Thank you.  
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**APPENDIX 8:**

**Transcript of the Fourth Department Hearing  
Held on September 29, 2014**

SUPREME COURT OF THE STATE OF NEW YORK

--FOURTH DEPARTMENT--

-----X

THE CHIEF JUDGE'S HEARINGS

ON CIVIL LEGAL SERVICES,

-----X

Telesca Center for Justice  
1 West Main Street  
Rochester, New York 14614  
September 29, 2014

BEFORE:

HONORABLE JONATHAN LIPPMAN,  
Chief Judge of the State of New York

HONORABLE A. GAIL PRUDENTI,  
Chief Administrative Judge

HONORABLE HENRY J. SCUDDER,  
Presiding Justice, Appellate Division, Fourth  
Department

DAVID P. MIRANDA,  
President-Elect of the NYS Bar Association

REPORTED BY:

MELANIE WYSKIEL  
Official Court Reporter

1 W I T N E S S L I S T:

2 HON. STEPHANIE A. MINER,  
3 Mayor, City of Syracuse

4 HON. LORETTA C. SCOTT,  
5 President and Councilmember At-Large, Rochester City Council

6 T. ANDREW BROWN, ESQ.  
7 Corporation Counsel, City of Rochester

8 VAN HENRI WHITE, ESQ.  
9 President and Commissioner, Rochester City School District  
10 Board of Education; Chair, Council of Urban Boards of  
11 Education

12 JULIE LONGMORE,  
13 Client of Hiscock Legal Aid Society, accompanied by Susan Horn

14 DAWN and MICHAEL FARNSWORTH,  
15 Clients of Western New York Law Center, accompanied by Kate  
16 Lockhart

17 EILEEN KLEPS,  
18 Client of Western New York Law Center, accompanied by Kate  
19 Lockhart

20 COMMISSIONER M. JOSH McCROSSEN,  
21 Wayne County Department of Social Services

22 SANDRA A. PARKER,  
23 President and CEO, Rochester Business Alliance  
24  
25

1 CHIEF JUDGE LIPPMAN: Welcome. I want to  
2 welcome all of you to this year's Civil Legal Services  
3 Hearings. This is the second hearing. The first one was  
4 in Manhattan. Tomorrow we're going to do Staten Island  
11:33:02 5 and next Monday, Albany.

6 As you know -- let me first introduce the panel  
7 members. To my right is Presiding Justice Henry Scudder  
8 from the Fourth Department; to my left, Chief  
9 Administrative Judge Gail Prudenti and to the far right  
11:33:26 10 David Miranda, the President-Elect of the State Bar. And  
11 we're so pleased to have the leadership of the court  
12 system presiding over these hearings.

13 You know, we hold these hearings because there  
14 is a justice gap in our city, in our state and in our  
11:33:42 15 nation between the legal resources available and the  
16 desperate need for legal services for people of limited  
17 means and people who are indigent.

18 Around the state I would say it's fair to say,  
19 and particularly in this building where we house so many  
11:34:06 20 legal service providers, it's fair to say that around the  
21 state three out of four people who come in seeking legal  
22 services help are turned away.

23 I want to thank the Monroe County Bar  
24 Association, Steve Modica, for having us, allowing them  
11:34:31 25 in our space -- in their space, to come here and do this

1 hearing in the same building where we have so many  
2 providers. The Monroe County Bar Association has always  
3 been a beacon of strength and support. The legal  
4 services in Monroe County and around the state, and we  
11:34:49 5 thank you, Steve, and we thank all the providers who are  
6 also housed in this building for your support and so much  
7 really vital assistance in the quest for equal justice.

8 I also want to recognize Helaine Barnett, the  
9 Chair of our Task Force to Enhance Civil Legal Services  
11:35:13 10 who is sitting right there. Waive your hand, Helaine.  
11 There she is. And Sheila Gaddis who played such a  
12 federal role in the preparing for these hearings who is  
13 so terrific and we so appreciate her assistance. Judge  
14 George Lowe is here also from the Task Force standing in  
11:35:36 15 the back. Raun Rasmussen is here somewhere, Raun, there  
16 he is. And Anne Erickson is here and thank you, and I  
17 also want to acknowledge Christine Fecko the General  
18 Counsel for IOLA, who is here with us today, and very  
19 much applaud of these proceedings in a mosaic of legal  
11:35:59 20 services in our state.

21 Let me just say that in these difficult  
22 economic times, people literally threaten to fall off the  
23 cliff at great cost to our society and to our community,  
24 and we feel in the judiciary that it is essential to our  
11:36:22 25 Constitutional mission to foster equal justice. This is



1 what the judiciary is supposed to be doing. This is what  
2 the profession is supposed to be doing and that's why we  
3 take the leadership with the Bar in holding these  
4 hearings to measure the gap in legal services for the  
11:36:41 5 poor in Monroe County, in the Fourth Department and in  
6 New York State.

7 This is not tangential to what we do. This is  
8 up front and center to our own judiciary. As recognition  
9 of that role, the Legislature has passed a resolution  
11:36:59 10 that directs us to hold these hearings and come back with  
11 an idea as to how much money is needed to close the  
12 justice gap in our state.

13 The Task Force helps us to plan the hearings,  
14 to digest what we get at the hearings and to put in the  
11:37:18 15 new requests to the Legislature each year. We are proud  
16 that New York has been able to get \$70 million from our  
17 friends and the Legislature and the Executive to support  
18 grants to legal service providers directly by the court  
19 system and through IOLA and we're delighted it's by far  
11:37:39 20 the most in the country of state funding and yet just the  
21 tip of the iceberg.

22 We have done -- we recognize that there isn't  
23 enough money in the world to totally do the job. We need  
24 the pro bono efforts of the Bar to assist us. And that's  
11:37:55 25 why we have our Lawyers Emeritus Program to encourage the

1 baby boomers as they wind down their careers to do pro  
2 bono, why we have focussed on corporate counsel and allow  
3 attorneys not admitted in New York to perform pro bono  
4 work for the poor and why we have focussed on law  
11:38:21 5 students with the only state in the country requiring law  
6 students to do 50 hours of pro bono work before they're  
7 admitted to the Bar in New York.

8 We want it in their DNA that this is what  
9 lawyers do. We help people. We provide services to  
11:38:37 10 people. This is what we're supposed to be doing and all  
11 of these, the public funding pro bono work are critical  
12 to what we need to do to push this forward to get to the  
13 point of having a civil Gideon or a right to counsel or  
14 right to effective assistance of counsel for all people  
11:38:56 15 fighting for the necessities of life, a roof over their  
16 heads, their physical safety, the well-being of their  
17 families, their livelihoods.

18 We in the courts feel particularly dedicated to  
19 this effort. I want to recognize our Administrative  
11:39:13 20 Judge here in the Seventh Judicial District, Craig Doran,  
21 who is sitting right there -- standing right there. If  
22 it's Monday, we're in the Seventh Judicial District.  
23 Tuesday, the Second. But thank you, Craig, for all of  
24 your wonderful assistance and for your support.

11:39:42 25 These hearings have in the past had testimony

1 from statewide elected officials Attorney General  
2 Schneiderman, Comptroller DiNapoli, Cardinal Dolan,  
3 business leaders, leaders of the Bar, education leaders,  
4 big banks, landlords testifying to the need for civil  
11:40:06 5 legal services for the poor, and if we don't get those  
6 services, we not only hurt people's lives but we hurt the  
7 bottom line of our state, that our economy, the strength  
8 of New York benefits from civil legal services for the  
9 poor, our Task Force estimates for every dollar invested  
11:40:27 10 in civil legal services \$6 are returned to the state in  
11 decreased social service costs, incarceration costs and  
12 more federal dollars are flowing into the state.

13 So it is very, very important that these  
14 hearings be held, that we promote attention to this issue  
11:40:46 15 and that we recognize the special responsibility that we  
16 in the judiciary and the profession and our communities  
17 around the state are to provide people with the  
18 assistance they need, to really have the essentials of  
19 life. It's the most, certainly for the judiciary and I  
11:41:08 20 know I speak for Justice Scudder, for Judge Prudenti, for  
21 Judge Doran, for all of us, this is the most important  
22 thing we do, which is to provide equal justice for every  
23 single person who comes into our courts.

24 So I'm going to take one speaker out of order  
11:41:28 25 and then we're going to go straight to the Mayor of

1 Syracuse right after that. But the first speaker is  
2 going to be Sandra Parker, the President and CEO of the  
3 Rochester Business Alliance.

4 Sandra, do you want to come forward?

11:41:45 5 MS. PARKER: Thank you for accommodating my  
6 schedule.

7 CHIEF JUDGE LIPPMAN: It's our pleasure. Thank  
8 you for all of your assistance.

9 MS. PARKER: Well, good morning. I'm Sandra  
11:41:58 10 Parker, Chief Executive Officer of the Rochester Business  
11 Alliance, the region's chamber of commerce representing  
12 2,000 employers in the Finger Lakes area. When I learned  
13 that the focus for the Civil Legal Services Hearing in  
14 Rochester was on education, I felt it important that the  
11:42:15 15 business community provide testimony.

16 Our public policy agenda includes three primary  
17 areas of focus. These include: Economic development,  
18 healthcare and urban education.

19 Many have questioned why the business community  
11:42:31 20 is concerned about urban education. The response is  
21 really quite simple. The 28,000 students of the  
22 Rochester City School District represent our future  
23 workforce. They must have the necessary skills and  
24 talent to meet our labor force needs. Given the abysmal  
11:42:49 25 results coming out of the City School District with a

1 less than 50 percent graduation rate, there's a lot that  
2 must be done.

3 There are many aspects to ensuring that kids  
4 receive a good education that prepares them for the  
11:43:02 5 workforce. Civil Legal Services providers do many things  
6 that help kids get a good education.

7 These include: Representing kids with  
8 disabilities to get them an appropriate education which  
9 will lead them to be able to have a fulfilling life  
11:43:17 10 commensurate with their abilities;

11 Structural work which focuses on the value of  
12 the community's economic diversity in schools and  
13 increasing interdistrict transfer opportunities like the  
14 urban suburban program;

11:43:31 15 Advocating for the expansion of quality early  
16 education programs for preschool children.

17 The City School District has identified school  
18 attendance and not having kids move between schools  
19 unnecessarily as critical to educational success. Here,  
11:43:49 20 again, Civil Legal Services make a real difference in  
21 whether kids experience or avoid things that will be  
22 disruptive to their education.

23 For example: CLS represents families and  
24 tenants in foreclosure prevention working to keep  
11:44:05 25 families living in the same home and thereby avoiding

1 kids missing school or changing schools midyear because  
2 the family is displaced;

3 Representing families to ensure access to  
4 healthcare coverage to ensure kids with health needs can  
11:44:19 5 get appropriate treatment;

6 The work in lead poisoning that has led to city  
7 and county policies that cut the incidents of childhood  
8 lead poisoning by over 87 percent over 10 years resulting  
9 in more than one thousand children each year not having  
11:44:36 10 their IQs reduced by lead poisoning and enabling them to  
11 arrive at school better able to learn.

12 The Rochester Business Alliance will continue  
13 to focus on improving educational outputs in the future  
14 with time and resources. This issue, however, will take  
11:44:53 15 the energy of the entire region. Civil Legal Services is  
16 a much needed partner to the community efforts on this  
17 issue. Thank you for giving me the opportunity to  
18 express these views.

19 CHIEF JUDGE LIPPMAN: Sandra, let me ask you  
11:45:07 20 one question. In the simplest form, why is Civil Legal  
21 Services for the poor important to the business  
22 community? You know it seems a little counterintuitive.  
23 People understand that businesses are there to make a  
24 profit. What makes -- why is it that you care about this  
11:45:28 25 issue.

1 MS. PARKER: Well I think one of the reasons is  
2 that by enabling people in the entire community to  
3 receive quality, fair legal representation, I think  
4 that's important for the community to be viewed as a  
11:45:45 5 place where businesses want to come and grow. I think if  
6 we had disparities among the kind of legal advice or lack  
7 of legal advice, that a portion of the community  
8 received, we would have -- we would encounter a lot of  
9 issues I think that would not make this region a very  
11:46:06 10 attractive one for businesses.

11 CHIEF JUDGE LIPPMAN: In difficult economic  
12 times if people fall by the wayside, lose their jobs,  
13 family life is disrupted --

14 MS. PARKER: It impacts everybody.

11:46:18 15 CHIEF JUDGE LIPPMAN: -- it does not help the  
16 businesses, community or our society.

17 MS. PARKER: That's right.

18 CHIEF JUDGE LIPPMAN: Anything else? Thank you  
19 for coming.

11:46:25 20 MS. PARKER: Thank you very much.

21 CHIEF JUDGE LIPPMAN: We next have a trio of  
22 really top elected officials. I'm going to ask the Mayor  
23 to come up first. We're so delighted to have you. One  
24 of the outstanding municipal leaders in our state,  
11:46:52 25 someone who is not afraid to speak her mind and someone

1 who has been a fighter for equal justice and for what's  
2 right in her hometown of Syracuse and around the state.  
3 Nothing gives us more pleasure, Mayor Miner, than having  
4 you here with us today.

11:47:13 5 MS. MINER: Thank you, Judge Lippman. You are  
6 of course always welcome in Syracuse, but now I'll make  
7 sure you'll have a personal guide with those kind words.  
8 I want to thank you and your fellow judges and  
9 Mr. Miranda for taking time out of your busy schedule to  
11:47:31 10 plan and call attention to this vital issue.

11 I was pleased to travel from Onondaga County to  
12 Monroe County today to talk about how access to civil  
13 legal services can promote family stability and often how  
14 that is intricately related, as Ms. Parker said, to  
11:47:52 15 children's schooling and ultimately to the stability of  
16 our communities. So in my limited opportunity to speak I  
17 want to focus on the core issue of housing where family  
18 stability begins and ends.

19 First let me say that in Onondaga County we are  
11:48:09 20 proud of our legal community and in deed the fact that if  
21 people -- lawyers forget that pro bono is part of their  
22 DNA, there are several members of our august Bar  
23 Association who remind them daily, if not monthly, and  
24 it's really a privilege to stand shoulder to shoulder  
11:48:29 25 with them to talk about and advocate for this issue.



1           As a way of context let me tell you a little  
2 bit about the city that I proudly represent. We are the  
3 fifth largest city in New York State. We have tremendous  
4 pockets of poverty. In the last week, the US Census  
11:48:48 5 Bureau told us that we rate 23rd in the country for  
6 having the number of poorest children.

7           In contrast to that, we are home to a rich  
8 cultural diversity, a burgeoning population of new  
9 Americans, Syracuse University and several topnotch  
11:49:04 10 hospitals. We are seeing record development and signs of  
11 urban renewal in our downtown and across our  
12 neighborhoods. We were named a "Smarter Cities" by IBM  
13 for our proactive and innovative approach on addressing  
14 vacant properties and neighborhood development.

11:49:22 15           In the face of these exciting new developments  
16 though, the people that I represent experience tremendous  
17 challenges. Many of our families and children live in  
18 grinding poverty. Thirty-eight percent of our City  
19 School District families scrape by with household incomes  
11:49:38 20 below \$10,000. 2010 Census data reports that New York  
21 State and nationwide poverty rates are about 15 percent.  
22 In Syracuse, a jarring 82 percent of our City School  
23 children qualify for free or reduced price lunch. The  
24 People of Syracuse clearly have real needs.

11:49:57 25           The vast majority of children in our school

1 district when asked if they had ever visited a food bank  
2 or a soup kitchen had all responded yes. This is a  
3 poverty that has been unseen and unknown before.

4 In Onondaga County, over 424 individuals and  
11:50:16 5 families are homeless and reside in shelters and over  
6 1700 young people do not have a permanent home. There is  
7 a growing homeless population that you see on our streets  
8 and under our bridges and in our intersections and right  
9 under our noses. Many of them are young.

11:50:34 10 Family stability, or rather lack thereof,  
11 manifests itself in housing. In my city of approximately  
12 a 150,000, 6,000 landlord/tenant eviction cases were  
13 brought to City Court last year, primarily involving  
14 those living in poverty-stricken residential  
11:50:53 15 neighborhoods -- the vast majority of which are either  
16 self-represented or simply default in appearing.

17 These numbers I just mentioned make it easy to  
18 see that when faced with a legal crisis, these families  
19 do not have the financial resources or often the  
11:51:12 20 sophistication to get legal help. In addition to  
21 financial resources, issues such as literacy,  
22 transportation and knowledge of one's rights also present  
23 barriers in navigating the legal system.

24 Public funding for legal service providers is  
11:51:28 25 critical to assist these families with issues most

1 essential in maintaining a basic standard of living so  
2 parents can work, children can learn and families can  
3 become closer to achieving a quality of life.

4 Recent programming in Syracuse has increased  
11:51:44 5 the demand for free civil legal representation. As I  
6 mentioned earlier in my remarks, we have put a renewed  
7 focus on dealing with our vacancy issues. We created a  
8 Syracuse Land Bank, which came out of the IBM "Smarter  
9 Cities" notification process and through this Land Bank  
11:52:04 10 we are foreclosing on delinquent, tax delinquent and  
11 blighted properties and using water shut offs to force  
12 the arm of property owners and landlords to pay their  
13 water bills, their tax bills and to meet their  
14 responsibilities to our city.

11:52:20 15 Our city Department of Neighborhood and  
16 Business Development, in partnership with our Law  
17 Department, are referring more and more renters to  
18 Hiscock Legal Aid and I saw that you will be hearing from  
19 Hiscock Legal Aid later.

11:52:35 20 Hiscock Legal Aid provides legal assistance to  
21 low income families and individuals living in rental  
22 housing with a focus on prevention of homelessness and  
23 obtaining housing stability through early intervention.  
24 The City of Syracuse shows its commitment to assisting  
11:52:48 25 our constituents through its annual allocation of federal

1 community block grant funds to the Hiscock Legal Aid.

2 In its current contract with the city, Hiscock  
3 Legal Aid receives \$110,000 to help fund three attorneys  
4 to assist city residents with homeless prevention  
11:53:07 5 services such as landlord/tenant matters, water shut  
6 offs, relocation services, advocates for tenants.

7 Prior to that, their funding hovered between 20  
8 and \$50,000 a year. And also Hiscock Legal Aid is now  
9 part of our Housing Vulnerable Task Force.

11:53:24 10 This is all in the face of diminishing  
11 resources where we have chosen as a community to increase  
12 what is unfortunately a decreasing pie.

13 Unfortunately, there is usually a pending legal  
14 proceeding and a host of other events that have already  
11:53:41 15 transpired by the time a legal service gets involved.  
16 When given an eviction notice, many people default and do  
17 not show up to court. If these tenants do not show up to  
18 court, they are required to vacate in 72 hours. This  
19 results in families splitting up, children relocating and  
11:53:58 20 perhaps being required to attend a different school and  
21 often not knowing where they will spend the night that  
22 night.

23 This type of chaos could be avoided, or at  
24 least lessened, with proper legal representation. An  
11:54:12 25 attorney could negotiate additional time for these

1 families to move out and find new housing or assert a  
2 defense for habitability issues.

3 Eviction and relocation puts a tremendous  
4 amount of stress on our children and our families. Such  
11:54:28 5 circumstances hardly provide a living environment that  
6 helps our young people focus in school, much less excel  
7 in school. How is a child expected to do homework if  
8 they do not have a home? How can a child learn when they  
9 are worrying where they are going to sleep that night?  
11:54:44 10 And as a parent, how can you help your child with their  
11 homework or read to them when you are worried about where  
12 your family will sleep, how you will navigate a court  
13 system, which frankly is very intimidating.

14 With such a tumultuous home life, it's no  
11:55:01 15 wonder that only about 50 percent of our students  
16 graduate from high school. It's an embarrassing number  
17 that we share with the City of Rochester. Nothing is  
18 more fundamental than one's home, but there is so much  
19 instability on the family that time spent at school  
11:55:16 20 cannot clearly compensate with homes that are riddled  
21 with such chaos.

22 In Syracuse, we are fortunate enough to have a  
23 program called Say Yes to Education, a program that  
24 provides an array of social supports to help close the  
11:55:30 25 achievement gap and offers an opportunity for

1 post-secondary success with the promise of free college  
2 tuition to all City High School graduates. Syracuse is  
3 proudly the first city in the nation to implement this  
4 program districtwide. And as a part of Say Yes' holistic  
11:55:45 5 approach to closing the achievement gap, free legal  
6 clinics are available to assist families with issues that  
7 disrupt family stability. The most common issues are  
8 housing, family and divorce and immigration. The program  
9 started in 2008 with school-based drop-in clinics for  
11:56:03 10 parents to receive legal advice and be referred to  
11 ongoing legal representation.

12 In the 2011-2012 school year, the school-based  
13 legal clinic served 74 families. The following year, Say  
14 Yes partnered with the Volunteer Lawyers Project of  
11:56:22 15 Onondaga County to include community based clinics into  
16 the Say Yes program and provide free legal assistance to  
17 all Syracuse City School District students and families.

18 This partnership led to a major increase,  
19 serving 533 Say Yes families that year. Last school  
11:56:37 20 year, the program assisted 942 Say Yes families with  
21 issues such as family matters, eviction, divorce and  
22 again immigration. These free legal clinics, two at  
23 neighborhood schools and one downtown in the courthouse,  
24 are a great start but merely scratch the surface of  
11:56:54 25 addressing this demand.

1                   Interestingly, in the past two years the number  
2 of families served by these legal clinics nearly doubled,  
3 and the number of housing and eviction cases remained  
4 proportionately the same, comprising about 60 percent of  
11:57:08 5 the caseload. The need is just that compelling.

6                   And although at the local level in Syracuse we  
7 are using innovative approaches to address the problem,  
8 there are still not enough resources allocated to fully  
9 address this demand. We have seen the demand for walk-in  
11:57:25 10 legal clinics with the expansion of the Say Yes Legal  
11 Services program, and those clinics are only at 2 of our  
12 35 schools. Not having a stable place to live is  
13 disruptive to everyday life, and the repercussions carry  
14 over to every phase of your life and of our community.  
11:57:41 15 It's a threshold issue.

16                   Volunteer Legal Services certainly help, but  
17 it's not enough. We look and think about storefront  
18 legal clinics in easily accessible residential  
19 neighborhoods that could potentially close this gap, and  
11:57:57 20 we see the pilot program in Brooklyn and the Bronx of  
21 using navigators, or trained nonlawyers to help steer  
22 people to existing programs as a potential to help plug  
23 this hole in people's access to the justice.

24                   Again I thank you for coming and I applaud your  
11:58:12 25 efforts to seek creative solutions to expand access and I

1 look forward to hearing what comes out of these hearings.

2 Thank you very much.

3 CHIEF JUDGE LIPPMAN: Thank you, Mayor Miner.

4 Let me ask you a question. Now you posed a lot of very  
11:58:25 5 eloquent comments on housing, do you think in the  
6 broadest sense that anyone who is threatened with the  
7 loss of the roof over their head is entitled to an  
8 attorney?

9 MS. MINER: I do, and I have seen what happens  
11:58:45 10 when people do not get attorneys and I think part of what  
11 we have been missing as a society when we think about  
12 this, is the analysis stops with that. Well is somebody  
13 entitled to representation or not? But if they don't get  
14 representation, the problems don't stop there. They  
11:59:06 15 manifest themselves in a whole host of ways, and we end  
16 up paying for it in far often much more expensive ways,  
17 both to our society, our community and to ultimately our  
18 taxes.

19 CHIEF JUDGE LIPPMAN: And following on that,  
11:59:21 20 and I know it's a given based on what you said, but I  
21 don't think everyone realizes that this doesn't make  
22 sense financially -- forget if this is the right thing to  
23 do -- you know that everyone should be entitled, but the  
24 cost in terms of a city like Syracuse to the fabric of  
11:59:41 25 your community when people are losing their homes, it's



1 almost incalculable in terms of the well-being.

2 MS. MINER: Well we pride ourselves, both as  
3 Syracusans and as New Yorkers on our progressive history  
4 of taking care of people and thinking of ourselves as one  
12:00:01 5 society and if we turn a blind eye to the real suffering  
6 that's going on in our society, then we won't have a  
7 community. We won't have neighborhoods where people can  
8 live unless they think they need a gated community or  
9 barbed wire. People will fear walking down the streets  
12:00:17 10 because somebody may accost them because they don't have  
11 money or resources or they have been through this process  
12 where they have run out of any functional way to work in  
13 our economy. And for far too many of our children, we're  
14 seeing them not graduate. We're seeing them live in a  
12:00:38 15 world where it's very common for them to not sleep in the  
16 same bed or even a bed for months at a time and often  
17 years and what that does to the ability of that child to  
18 become an asset to our society, much less a good neighbor  
19 is devastating.

12:00:55 20 CHIEF JUDGE LIPPMAN: And, you know, I think  
21 you make so many good points. I think what people don't  
22 realize, should people be entitled to this kind of  
23 representation, if you ask people on the street if  
24 someone's liberty is at stake, should they have an  
12:01:10 25 attorney, they know from the TV programs, from -- you

1 know, first thing is you're entitled to an attorney,  
2 everyone gets it. And what I want to make clear is that  
3 testimony like yours should get people to start to  
4 realize -- and I think they are -- that if you go out in  
12:01:28 5 the street and take a survey and say, gee, do you think  
6 someone who is going to lose the roof over their head is  
7 entitled to an attorney? I think people are starting to  
8 say -- as you and I would say -- absolutely.

9 So I think it's so important that our leaders  
12:01:43 10 in our municipal and the statewide level, you know, speak  
11 out on these issues. Again I think that your testimony  
12 is important and as a leader in your city and the state,  
13 I so thank you for coming in. Do we have other  
14 questions? No. Thank you so much.

12:02:10 15 MS. MINER: Thank you again for giving me the  
16 opportunity.

17 JUDGE LIPPMAN: It's a pleasure. Thank you for  
18 coming.

19 I now ask Loretta Scott, President and  
12:02:23 20 Councilmember At-Large of the Rochester City Council.  
21 President Scott, so delighted to have you in your  
22 hometown coming to talk to us today.

23 MS. SCOTT: Thank you for inviting me. I thank  
24 you all for being here and for giving me the opportunity  
12:02:50 25 to speak to you. I also want to thank you for all of

1 your work today to acquire funds for civil legal  
2 services. The amount is generous but not adequate, and  
3 we just want to encourage you to continue pushing to get  
4 that increased, because each year it's all used which  
12:03:11 5 speaks to the extent of the need.

6 Civil legal services are critically important  
7 to the citizens that utilize them. Regrettably I have to  
8 say that Rochester holds the distinction of being named  
9 the fifth poorest city in the entire United States among  
12:03:30 10 the top 75 metropolitan areas, and the second poorest  
11 city among comparably sized cities in the top 75  
12 metropolitan areas. The City of Rochester is ranked  
13 third for the highest concentration of extremely poor  
14 neighborhoods among cities within the top 100 metro areas  
12:03:50 15 in the nation.

16 Poverty, poverty. They say that the poor will  
17 always be with us, but it doesn't mean that we should not  
18 try to alleviate those issues that are imbedded. The  
19 lack of education directly effects poverty. The  
12:04:15 20 statistics are deplorable and they speak to the true  
21 needs that Rochester residents have for civil legal  
22 services.

23 They pale in comparison to the statistics  
24 facing the school district. The Rochester City School  
12:04:30 25 District is the poorest urban district in our state, and

1 the graduation rate is an unacceptable 43 percent with  
2 only 9 percent of African-American males and 10 percent  
3 of Hispanic males graduating. As a member of Rochester  
4 City Council and the city's retired Commissioner of the  
12:04:49 5 Department of Parks, Recreation and Human Services, which  
6 is now called the Department of Recreation and Youth  
7 Services, I know full well the connection between the  
8 lack of basic essentials of life and the effect that it  
9 has on a child's ability to learn. Children who are  
12:05:05 10 hungry, homeless or victims of abuse cannot learn.

11 Mayor Miner talked about the impact of  
12 evictions and that type of fear of not having a roof over  
13 your head, we see that daily. At our recreation center,  
14 sometimes the children are there before the staff get  
12:05:30 15 there. There are issues regarding eviction without the  
16 benefit of civil legal services.

17 Our community, our neighborhoods are preyed  
18 upon. They are often the victims of unscrupulous  
19 landlords and others who take advantage of the fact that  
12:05:48 20 there's nothing they can do about it -- don't have a  
21 lawyer. We desperately need the continuation and  
22 expansion of civil legal services.

23 If we're going to impact the statistics that  
24 are mentioned, the ones that effect education and  
12:06:04 25 poverty, the underlying one, people have to have access

1 to civil legal services that help them to address those  
2 things that for many of us would simply be a daily  
3 nuisance. We just go to court and get a decision and get  
4 a judgement and go on about our way. That is not an  
12:06:22 5 option without the benefit of civil legal services for  
6 far too many people in our community.

7 In our country, if a person finds themselves in  
8 a criminal court they receive a court appointed attorney  
9 without a blink of an eye. If there was the same kind of  
12:06:41 10 enthusiasm about funding criminal services as there is  
11 about funding civil services we'd be much farther ahead.

12 If someone found themselves in court going  
13 through a home foreclosure, or dealing with domestic  
14 issues and ultimately their personal safety, or if  
12:07:00 15 they're experiencing problems with financial assistance  
16 benefits, they need to access lawyers who specialize in  
17 those matters. They need to have the right to have  
18 access to those kinds of services. It's not always easy  
19 or achievable.

12:07:16 20 We must ensure that people have access to legal  
21 services that address the root of the problems that  
22 they're experiencing; not just when they engage in  
23 illegal activities. Having an attorney advocate for them  
24 when they need help assessing -- accessing life's  
12:07:35 25 essentials, such as housing, income benefits, safety from

1 abusive situations, and access to adequate food for their  
2 family will begin to address the effects of and the  
3 underlying issues associated with poverty.

4 In Rochester, 29 percent of our families live  
12:07:56 5 at or below the poverty rate. Our community needs these  
6 services, the sobering statistic that speaks for itself.  
7 I refuse to not fight for these programs. I've been  
8 working with antipoverty efforts for the last 30,  
9 40 years. I've been working with Action for a Better  
12:08:16 10 Community, the designated antipoverty agency. We've seen  
11 progress but not enough. It's a fight that has to  
12 continue and I do so applaud and thank you all for  
13 continuing to push for that and recognizing how essential  
14 these services are to improving the lives of people in  
12:08:39 15 our community.

16 Education is a facet of it for sure, because if  
17 you can get a good education you can probably get a good  
18 job. If we can begin to address those issues and have  
19 available the legal services necessary to deal with the  
12:08:52 20 people who prey upon the poor, we will be so much better  
21 as a community. Family stability, community stability,  
22 it all adds up. When everyone does well, everyone does  
23 well. I thank you for allowing me to speak to you this  
24 morning.

12:09:09 25 CHIEF JUDGE LIPPMAN: Thank you. President

1 Scott, let me ask you a question. You know, a lot of  
2 your talk deals with poverty and how it manifests itself  
3 in different ways. I don't think people necessarily  
4 understand that so many of the problems associated with  
12:09:28 5 poverty can be alleviated by legal services. What's that  
6 connection? Do you need a lawyer? Does a lawyer get you  
7 out of poverty? How does having legal help help to pull  
8 people out of poverty or at least stop them from totally  
9 declining into being a burden on society?

12:09:52 10 MS. SCOTT: When a family's circumstance is  
11 fragile, the least barrier can push them over the edge.  
12 Sometimes something as simple as an eviction notice --  
13 it's not simple, it's traumatic -- but having options to  
14 address it, especially if the person -- the property  
12:10:14 15 owner didn't go through the right steps to impact the  
16 eviction, if people don't show up to fight it, because  
17 they don't know that they should or they don't have an  
18 attorney, that puts that family on a track toward deeper  
19 despair, deeper poverty. You cannot function well in a  
12:10:34 20 society if your life is so consumed with just living,  
21 having a roof over your head and food on your plate,  
22 especially when that is being impacted by people who  
23 don't have your best interests in mind. Having legal  
24 counsel can help to address that.

12:10:48 25 CHIEF JUDGE LIPPMAN: So your kids stay in

1 school, you can have employment or keep employment or try  
2 and get it. You don't go into government run shelters or  
3 whatever, all these things are consequences when you  
4 don't have legal representations.

12:11:07 5 MS. SCOTT: They're all consequences of not  
6 having legal representations.

7 CHIEF JUDGE LIPPMAN: Thank you. Anything  
8 else?

9 JUDGE PRUDENTI: I just have one question.  
10 Obviously you're a very positive person as well, and as I  
11 can tell -- and I totally agree with you -- that everyone  
12 can do well and that we have an obligation in our society  
13 to make sure that all of us, you know, not only have the  
14 essentials of life, but have dreams come true and  
12:11:30 15 whatever. You know, the Chief Judge is champion in civil  
16 legal services during his tenure as Chief Judge and I  
17 thank you for thanking him, but I just wanted to ask you,  
18 have you seen a difference with the direct representation  
19 that civil legal services has provided from our programs  
12:11:47 20 in your communities?

21 MS. SCOTT: I have an anecdotal lever. We have  
22 statistics about poverty and education and graduation,  
23 but some of those impacts are not measured as closely I  
24 have seen, and just because of my work and interaction in  
12:12:08 25 the community, but absolutely yes.



1 CHIEF JUDGE LIPPMAN: What we're trying to do,  
2 and I think Judge Prudenti is driving at, is we're trying  
3 to collect that information so we can go back to the  
4 Legislature and the Governor and say these are the  
12:12:21 5 people, the number of people who have been served and  
6 this is the result, so many evictions avoided, you know,  
7 foreclosures, domestic violence cases, consumer credit  
8 cases, but we thank you for coming to testify and for  
9 fighting the good fight and we're with you and we know  
12:12:41 10 you're with us.

11 MS. SCOTT: Thank you so much.

12 CHIEF JUDGE LIPPMAN: I now ask my old friend  
13 Andrew Brown to come up, Corporation Counsel of the City  
14 of Rochester, who has been such a great leader in the  
12:12:57 15 Monroe County Bar Association and someone who we also  
16 greatly respect and admire and is now working in City  
17 Government as Corporation Counsel. Mr. Corporation  
18 Counsel, lovely to have you here today.

19 MR. BROWN: Chief Judge Lippman, Judge  
12:13:18 20 Prudenti, Justice Scudder, Honorable President-Elect  
21 David Miranda. For the record, my name is T. Andrew  
22 Brown. I'm the Corporation Counsel for the City of  
23 Rochester. It's a pleasure to be here today for such an  
24 important purpose, and I commend and applaud each of you  
12:13:37 25 for your conviction to this cause.

1 I'm here on behalf of the Mayor of Rochester,  
2 Lovely Warren, today; however, I also cannot ignore other  
3 hats that I have worn in the past, one being an attorney  
4 who has practiced in the courts of New York for 30 years,  
12:13:56 5 one as a past president of the Monroe County Bar  
6 Association, and with respect to education, one that I  
7 continue to serve in, that is a Regent of the State of  
8 New York, and as you all know the Board of Regents of New  
9 York sets educational policy. So I am pleased to hear so  
10 much about education today.

11 Chief Judge, I would like to thank you and your  
12 ongoing efforts especially during this fifth anniversary  
13 of public hearings. These hearings will highlight and  
14 tackle the very important issue of funding for civil  
12:14:37 15 legal services for those most vulnerable and needy in our  
16 community as in other communities across the state.

17 I would also like to extend, on behalf of the  
18 Mayor, greetings to the rest of the esteemed members of  
19 this community who will come before you to offer  
12:14:56 20 testimony.

21 On behalf of Mayor Warren, it is my honor to be  
22 here to discuss the benefits of providing civil legal  
23 services to students and families and what kind of a  
24 difference it can make in their long term success.

12:15:15 25 Families and children in the City of Rochester

1 interact with the civil legal service system in a  
2 plethora of areas, just to name a few: Social security  
3 disability, child custody issues, truancy, PINS, juvenile  
4 delinquency proceedings, physical and/or sexual abuse and  
12:15:33 5 neglect matters, and foreclosure and eviction  
6 proceedings.

7 I want to underscore what's been said by  
8 President Scott. Recently, Rochester was ranked the  
9 fifth poorest city in the country among the top 75  
12:15:53 10 largest metropolitan areas and the poorest urban school  
11 district in New York State. In addition, Rochester has  
12 the lowest graduation rates compared to the four other  
13 largest school districts in the State of New York, which  
14 would be Buffalo, Syracuse, New York City and Yonkers.  
12:16:10 15 That's a very sad state.

16 In addition to graduation, a statistic that  
17 often goes unrecognized is readiness. Most of our  
18 students graduating from Rochester Schools are not ready  
19 for what comes next, either a career or continuing  
12:16:37 20 education. That is, to me, a vital concern.

21 These statistics translate to a very large  
22 percentage of children in the City of Rochester living in  
23 poverty. By virtue of their caretaker's economic  
24 situation, they do not have the same access to civil  
12:16:56 25 legal services because their parents, guardians or

1 caretakers way too often do not have the means to hire an  
2 attorney when and if the need arises.

3 These families are the ones who have to rely on  
4 publicly funded civil legal services. Thus, access to  
12:17:19 5 civil legal services is critical to many of the citizens  
6 of this city. That is why this is an issue Mayor Warren  
7 and her administration feels so strongly about.

8 I remind the panel that as an attorney, Mayor  
9 Warren most certainly recognizes the fundamental role the  
12:17:36 10 legal system plays in the lives of city residents and the  
11 critical importance for everyone to have equal access to  
12 justice no matter their economic status, education level,  
13 address or any other factor of their current life  
14 circumstances.

12:17:51 15 Today's hearings are important because they  
16 document and explore the very tangible consequences that  
17 flow from lack of access to civil legal services and how  
18 that has a direct impact on parents' ability to provide a  
19 stable secure home for children. A parent's inability to  
12:18:10 20 provide stability for his or her family in turn creates  
21 unstable neighborhoods and communities, which is one of  
22 the major challenges Mayor Warren has been focused on  
23 turning around since her tenure began, and even before as  
24 President of the Rochester City Council.

12:18:27 25 I think we can all agree that at some point in

1 nearly everyone's life, they or a member of their family  
2 will have some contact with or need to interface with the  
3 civil legal system. Unfortunately, for many of the  
4 children in this community and many others around the  
12:18:44 5 state, that interaction will not necessarily begin on a  
6 positive note.

7 Those interactions often wreak havoc in the  
8 lives of young people and jeopardize their physical and  
9 mental health and that of their families. The stress of  
12:18:57 10 not knowing if you'll be thrown out in the street with  
11 all your worldly possessions from night to night would  
12 make it almost impossible for students to concentrate on  
13 fractions, Shakespeare or anything else being taught in  
14 school.

12:19:11 15 Or witnessing physical abuse or being  
16 themselves the victim of any kind of abuse or neglect  
17 without recourse would not be conducive to getting a good  
18 night's sleep and being ready to tackle school the next  
19 morning. To overcome and succeed in the face of such  
12:19:27 20 adversity would be extremely difficult even for the most  
21 mentally stable person here in this room, but yet our  
22 children are asked and expected to do that day in, day  
23 out.

24 This is why in part removing all barriers to  
12:19:43 25 equal justice and finding a way to civil Gideon for all

1 New Yorkers is such a critical goal. It is equally  
2 critical for children and parents. Many parents and  
3 children navigate this complex legal system without the  
4 benefit of qualified, effective legal representation and  
12:20:00 5 are often adversely affected by not having the benefit of  
6 competent counsel.

7 Most of us can identify with the mistakes of  
8 youth that bring them into contact with the legal system.  
9 The outcome of that interaction with the court at a young  
12:20:17 10 age sets a course for a child's future either positively  
11 or negatively.

12 Having access to competent counsel can make all  
13 the difference at such a critical stage in the child's  
14 life. This is why recruiting and retaining a qualified  
12:20:32 15 public service bar is so critical to the Court's mission  
16 of equal justice for all.

17 And, Your Honor, I do agree with you, that  
18 there has to be a combination of effort. You have  
19 mentioned a number -- senior lawyers, as well as  
12:20:45 20 students, as well as practicing practitioners -- offering  
21 pro bono services. Equally important are the parents and  
22 guardians of these children having that same equal  
23 access, because if the parent is not in the home due to  
24 any number of outcomes that flow from contact with the  
12:21:06 25 civil legal system, then we know that home becomes

1 unstable and that child's life becomes unstable.

2 With qualified and competent counsel, a child  
3 can either avert life altering contact with the legal  
4 system through diversionary programs like Teen Court or  
12:21:21 5 have a more positive outcome which enables him or her to  
6 complete high school, pursue higher education, and hold  
7 meaningful jobs in the future. And that is necessary to  
8 have a vibrant community here in Rochester, as well as  
9 any other community across the state. The same holds  
12:21:38 10 true for the parents and guardians of these students,  
11 with competent counsel by their side, they usually have a  
12 much more positive outcome in the court system which  
13 translates to their ability to maintain employment, stay  
14 in their homes and provide for the well-being of their  
12:21:53 15 family.

16 The need for civil legal services funding in  
17 Rochester, as around the state, is great. When I was  
18 President of this Bar Association, Civil Legal Services  
19 was front and center. This building serves as a model  
12:22:08 20 for Civil Legal Services. There are many in this room  
21 who practice in the field of Civil Legal Services and  
22 just so happen to be among the very best and brightest  
23 attorneys in the Rochester area. They are to be  
24 applauded.

12:22:23 25 Although Rochester has several reputable legal

1 service providers, some housed in this very building in  
2 which we sit, these agencies do not have the resources to  
3 meet the tremendous needs facing our community. They  
4 never have. If we double their size, there will still be  
12:22:42 5 a great need. A small percentage of those in need are  
6 being met now and it will take considerable effort for  
7 many of us within the legal community and a larger  
8 community to bring about a change.

9 Again the Telesca Center is a national model  
12:23:02 10 providing legal services to individuals in need  
11 throughout our community. The success of its mission  
12 depends on continued support from our entire community  
13 and state. Ensuring access to equal justice is not only  
14 a moral obligation but a test of our democratic  
12:23:18 15 principles. The important work of the Telesca Center and  
16 this Task Force and you, Your Honor, leading the way  
17 should have our full and continued support. Thank you on  
18 behalf of the Mayor of the City of Rochester.

19 CHIEF JUDGE LIPPMAN: Thank you,  
12:23:32 20 Mr. Corporation Counsel. Now let me pick up on something  
21 which relates to your background and very much front and  
22 center as a leader in the Bar and in this community and  
23 in the state -- and I mentioned by the way that the  
24 former president, immediate past president of the State  
12:23:51 25 Bar, Dave Schraever is here. He's here. I'm so glad that



1 David is here, and the role that the Bar has played here  
2 locally and around the state in promoting pro bono work,  
3 and I think you said it well, that the Telesca Center is  
4 a model for our state and I believe for the country in  
12:24:18 5 terms of bringing together providers in kind of a more  
6 easier one stop shopping kind of mode where you can get  
7 the assistance that you need regardless of the area it  
8 involves, but you made the point that we don't really, no  
9 matter how much we stride to do it and we've gotten  
12:24:44 10 tremendous public resources to support our providers,  
11 it's not enough.

12 What do you see as why should a member of the  
13 Bar as representative of our great Bar Associations in  
14 this state, Monroe County, President-Elect Miranda with  
12:25:04 15 the State Bar, the New York City Bars, why is it that  
16 lawyers should be so concerned with doing pro bono work?

17 MR. BROWN: Because I think the best lawyers  
18 enter the profession for the right reasons. As lawyers  
19 we have the ability to go into court. We have licenses  
12:25:27 20 that enables us to go into court for someone else. In  
21 New York State, you cannot do that unless you are  
22 licensed. And I know that there has been talk about  
23 finding ways to enable others without law degrees to  
24 represent those most needy in the courts and I applaud  
12:25:47 25 that effort.

1 CHIEF JUDGE LIPPMAN: And the lawyers are  
2 important.

3 MR. BROWN: Lawyers are vitally important.  
4 I've been one for 30 years and I believe that it's part  
12:25:57 5 of my obligation --

6 CHIEF JUDGE LIPPMAN: Thank you.

7 MR. BROWN: -- as an attorney.

8 CHIEF JUDGE LIPPMAN: And I think all of us  
9 believe in the profession, and I know I speak for  
12:26:07 10 President-Elect Miranda and the ex-president Schraver and  
11 the leaders of the judiciary, that this is so fundamental  
12 to what our profession is all about, serving people,  
13 helping people, it's what lawyers do.

14 MR. BROWN: And we are in the best seat to  
12:26:27 15 safeguard the integrity of the legal community, including  
16 clients as a core component of that. We have an  
17 obligation to provide for those who are most in need.  
18 And in a community like Rochester where we have a high  
19 percentage of poverty, there is a great need, and I am  
12:26:49 20 grateful to have spent most of my career in this  
21 community along with lawyers who so greatly think along  
22 the lines of what I've just said.

23 CHIEF JUDGE LIPPMAN: I think the Monroe County  
24 Bar is -- fair to say -- has been a real leader in this  
12:27:05 25 area, public spirited and recognized that obligation that

1 you talk about, so I thank you for all of your work  
2 before becoming a Corporation Counsel and in your present  
3 responsibilities. Any other questions?

4 JUDGE SCUDDER: I just would like to know if  
12:27:24 5 you have read statistics or whatever. You mentioned if  
6 you could double the amount of funds, the amount of  
7 resources, it still wouldn't take care of the need, and  
8 I'm wondering would triple, would quad --

9 MR. BROWN: Your Honor, I think we can --  
12:27:42 10 there's two ways we can get at this. When we talk about  
11 civil legal services, we're talking about people who  
12 largely would not be able to go out and hire their own  
13 attorney. If we lift up that group of people and  
14 lessened the numbers in poverty that would fall within  
12:28:01 15 that qualified range, if you will, then we'll have less  
16 need. So we have to address this from the aspect of  
17 providing civil legal services for those in need, but  
18 also we have to do what we can as city and state  
19 officials to provide meaningful opportunities to people  
12:28:19 20 out there in the workforce.

21 If you can get a job, you're probably not  
22 knocking on the door of a civil legal services agency.  
23 We have way too many people who are unemployed, who have  
24 no other recourse than to seek representation through  
12:28:35 25 civil legal services agencies.

1 CHIEF JUDGE LIPPMAN: And, you know, to answer  
2 presiding Justice Scudder's question, one of the things I  
3 asked the Task Force to do this year is to try and focus  
4 on what exactly is the universe that we have to address  
12:28:53 5 and what do we need to deal with that universe and to be  
6 able to make the ideal of equal justice a reality  
7 throughout this municipality, throughout this department  
8 and throughout this state.

9 So we're trying to get our arms around  
12:29:11 10 questions like the one that the presiding justice asked,  
11 which is what is this going to take?

12 MR. BROWN: I think it's going to take a group  
13 effort and I think one of the things that I mentioned is  
14 your ability to seek legal recourse should not depend  
12:29:27 15 upon the size of your wallet and it should not depend  
16 upon your zip code.

17 Here in Rochester, we have a significant number  
18 of individuals living in poverty. If you look at where  
19 poverty is most prevalent, you'll also find greater  
12:29:47 20 incidents of injustices. That's an unfortunate reality.  
21 Those who have the least ability to retain competent  
22 counsel are most vulnerable and often suffer the most at  
23 the hands of the legal system. We are allowing it to  
24 happen. We should not be allowing it to happen. We pay  
12:30:10 25 too great a price, not simply on the individual's level,

1 but as a community.

2 CHIEF JUDGE LIPPMAN: It can't be said any  
3 better. Thank you. I appreciate it and thank you for  
4 all of your work. Thank you for your testimony today.

12:30:23 5 MR. BROWN: Thank you.

6 CHIEF JUDGE LIPPMAN: The next speaker is Van  
7 Henri White, the President and Commissioner of Rochester  
8 City School District Board of Education and Chair of the  
9 Council of Urban Boards of Education.

12:30:42 10 MR. WHITE: Good afternoon.

11 CHIEF JUDGE LIPPMAN: Delightful to see you.  
12 Tell us about what this all has to do with education.

13 MR. WHITE: First of all, let me explain, I  
14 wear multiple hats. As you correctly indicated, I'm the  
12:30:56 15 Commissioner of schools, for the Rochester City School  
16 District, which has been referred to on a number of  
17 occasions here. I'm honored to have it here and  
18 notwithstanding the distinctions that we have received  
19 regarding our poor performance, which we admit, guilty as  
12:31:07 20 charged. I also --

21 CHIEF JUDGE LIPPMAN: We're all guilty as  
22 charged.

23 MR. WHITE: I will also be the first to admit  
24 that this is a problem that occurs nationwide in urban  
12:31:17 25 districts across this country. Hat number one that I

1 wear, you referenced it, the Council of Urban Boards of  
2 Education. We represent over a hundred urban school  
3 districts throughout this country. That's 7.5 million  
4 students, 12,000 schools. And I, again, I would  
12:31:35 5 respectfully suggest in the testimony from the Mayor from  
6 Syracuse has reflected this fact, that the struggles, the  
7 challenges that we face are in fact challenges that  
8 districts, urban districts, face throughout this country  
9 and as Chair of CUBE I can affirm that.

12:31:51 10 You speak about justice gaps. In urban  
11 communities, we speak about opportunity gaps, achievement  
12 gaps and of course nationally economic gaps. I am  
13 convinced as a result of another cap that I wear as a  
14 lawyer, that these -- all these gaps can be appropriately  
12:32:09 15 bridged through effective legal services.

16 Now let me talk about that second hat that I  
17 wear that is as President of the Rochester City School  
18 District Board of Education. We are the third largest  
19 urban district in the State of New York. We enroll some  
12:32:25 20 30,000 students in grades pre-K through 12, and those  
21 families and staff and students can attest to, we are  
22 quite familiar with the economic, social and academic  
23 challenges of which we speak.

24 About 80 percent of our students, 80 plus  
12:32:45 25 percent of our students, are eligible for free or reduced

1 lunches. Fifty percent of those district school students  
2 have free or reduced lunch eligibility, because they  
3 exceed or equal 90 percent of the federal poverty  
4 guidelines. So an overwhelming number of our students  
12:33:04 5 live and struggle with poverty.

6 In addition, 8 percent of our student  
7 enrollment is made up of limited proficient -- English  
8 proficient students, which represents a real challenge  
9 for educating urban children.

12:33:17 10 And finally I must tell you that 17 percent of  
11 our district enrollment is composed of students with  
12 disabilities. Now you all know when you deal with  
13 English proficient students and students with  
14 disabilities, you are talking the legal environment.

12:33:34 15 CHIEF JUDGE LIPPMAN: Commissioner, but --

16 MR. WHITE: Yes, sir.

17 CHIEF JUDGE LIPPMAN: -- what do lawyers have  
18 to do with it? We know that schools have disadvantaged  
19 kids who need help, what do lawyers have to do with it?

12:33:45 20 MR. WHITE: Well being a lawyer myself -- let  
21 me back up a bit, my post important role is I'm a father  
22 of two district graduates so my testimony is very unique  
23 in that regard. I'm also a civil rights lawyer. I'm  
24 also a former assistant district attorney. And as  
12:34:00 25 President wearing those different other hats, I can tell

1 you that the role of attorneys is key.

2 Just consider for a moment, as people have  
3 testified already, the impact that not having a home  
4 would have on a child. Or consider the impact that

12:34:16 5 witnessing domestic violence in the home would have on a  
6 child. These are indirect services that do effect  
7 directly the need of children to have --

8 CHIEF JUDGE LIPPMAN: Appropriate classrooms  
9 and these kids have problems that are unaddressed at home  
10 or in the families or whatever it might be.

11 MR. WHITE: Absolutely. I also think it is  
12 important to step back and look comparatively. We talked  
13 a lot about the Rochester City School District, but you  
14 need to understand that concentrative poverty in a  
12:34:52 15 geographical or geopolitical context. When I was a kid I  
16 went to Brighton High School. I lived in the Town of  
17 Brighton for 10 years of my life, lived in the city for  
18 10 years of my life. Let's compare the students with  
19 disabilities and the students with limited proficient  
12:35:04 20 English skills.

21 In the Town of Brighton where I attended as a  
22 middle school kid and a high school kid, the special ed  
23 classification rate -- you want to talk about lawyers,  
24 let's talk about classification of students with  
12:35:18 25 disabilities. It's 8.7 percent. The graduation rate for



1 students with disabilities is 87 percent in Brighton.  
2 The drop-out rate for students with disabilities is  
3 2.9 percent and the graduation rate -- I'm sorry, the  
4 graduation rate, as I indicated, was 87 percent.

12:35:40 5 So immediately it is apparent that the outlying  
6 suburban districts do not have the challenges we have in  
7 the city. Now I want to tell you why that is and I want  
8 to be up front about why we have those struggles. Much  
9 of it is self-owned and the reason why I need to explain  
12:35:57 10 this to you is -- to respond to your question about why  
11 lawyers are important. We did an assessment of where we  
12 were at with special needs students and students with  
13 limited proficiency skills in English. We hired an  
14 outside contractor to look at how we were handling those  
12:36:14 15 essentially legally related services. This is what the  
16 Council for Great City Schools said about our district.

17 The district -- and I quote, The district  
18 appears to lack clear written policies and procedures  
19 pertaining to the identification, evaluation, placement,  
12:36:26 20 and provision of procedural safeguards for students with  
21 disabilities. As a result, as expressed by interviewees,  
22 staff often had a limited knowledge of legal requirements  
23 regarding special education, especially those included in  
24 the Individuals with Disabilities Education Act of 2004.

12:36:46 25 The report also said, and I quote, An

1 inconsistent understanding of procedures for  
2 manifestation-determination phase of a special ed hearing  
3 required for students was often missing in district  
4 procedures.

12:37:00 5 To answer your question, we need competent,  
6 capable, experienced attorneys, yes indeed, to challenge  
7 us to be better and to provide for the law.

8 CHIEF JUDGE LIPPMAN: To interface with the  
9 education bureaucracy --

12:37:14 10 MR. WHITE: Absolutely.

11 CHIEF JUDGE LIPPMAN: -- to represent these  
12 kids.

13 MR. WHITE: Exactly. I can give you another  
14 example. I happen to participate in a weekly radio show  
12:37:21 15 and a parent called in and said, hey, listen, my son was  
16 suspended. And I asked the parent, I said, did you  
17 appeal that decision? As you know, the law allows a long  
18 term suspension decision to be appealed. And the parent  
19 said to me, why would I do that? And I said, because we  
12:37:35 20 would have sent you a letter telling you you have the  
21 right to appeal. And he said, I never got such a letter.  
22 So I said, send me the letter that you got. And sure  
23 enough, it said nothing about his rights under New York  
24 State Law to appeal.

12:37:48 25 The moral of this story is we need advocates,

1 some of them will be internal, but many of them will be  
2 external to tell us where we are wrong so that we can be  
3 right. I can also tell you that there are outside  
4 lawyers who help us do this in another indirect way. We  
12:38:09 5 must acknowledge that there are lawyers who are  
6 contributing their time in ways that don't directly  
7 relate to challenging what we do or don't do in the  
8 district. We must give kudos to lawyers for learning.  
9 These are folks who step out and help and encourage young  
12:38:22 10 people to value education. I cannot overstate the  
11 importance of not just looking at this from a litigation  
12 point of view but also from a supportive point of view.  
13 How do we encourage young people as lawyers to aspire to  
14 a comprehensive education?

12:38:40 15 But as a civil rights lawyer, I am compelled to  
16 tell you, notwithstanding my role as president of the  
17 board of education, that sometimes that help must and  
18 surely be in the form of agitation or litigation. We  
19 must encourage people to represent children with  
12:38:56 20 disabilities, because otherwise it won't happen. We must  
21 continue to encourage lawyers to work on structural  
22 deficits within the district.

23 The Empire Justice clinic is an excellent  
24 example to that. The Title IX softball case in Batavia  
12:39:12 25 is another example of that. And finally the Cohn Fellow

1 at the Empire Justice clinic, as I understand it, is  
2 doing work on LGBT work, essential to understanding what  
3 is going on in our schools and protecting the rights of  
4 all our children.

12:39:28 5 In my capacity as Chair of CUBE, I would also  
6 encourage you to not forget the legion of lawyers, many  
7 of them sitting in this room today, who serve as in-house  
8 counsel to districts throughout this state. Law firms,  
9 some of them represented here today because I know many  
12:39:45 10 of them, provide adequate and comprehensive legal advice  
11 to school districts about what their responsibilities are  
12 as school education leaders.

13 The Rochester School District, CUBE and the  
14 National School Board Association, of which I represent,  
12:40:00 15 we value the work of these legal service providers. They  
16 are making a difference in the lives of our children and  
17 in our schools. We take our hats off to them and we  
18 would encourage you to continue to do what you're doing  
19 and more to support and encourage the expansion of these  
12:40:19 20 activities and services throughout our city, our state  
21 and our nation. Thank you.

22 CHIEF JUDGE LIPPMAN: Thank you. And thank you  
23 for connecting the dots for us, between the education  
24 community and the need for legal services providers, pro  
12:40:35 25 bono work and the need for lawyers to interface, to help

1 you, to help the students, to -- it's so fundamental to  
2 -- what can be more fundamental for our society than  
3 education. What we're trying to explain to everyone as  
4 important as education, as important as housing, as  
12:40:56 5 important as hospitals, is legal services for those  
6 people in need, because they're so interrelated and I  
7 think your testimony so demonstrates that. Any other  
8 questions? Thank you so much, really appreciate it.

9 MR. WHITE: My pleasure.

12:41:15 10 CHIEF JUDGE LIPPMAN: I'm going to ask the  
11 three clients that we have here today to come up together  
12 and sit at the table and they're going to tell us their  
13 stories as to what legal services has been to them.

14 So Julie Longmore, Michael Farnsworth and  
12:41:31 15 Eileen Kleps, please come up to the front table. And  
16 Julie is the client of the Hiscock Legal Aid Society  
17 accompanied by Susan Horn; Michael Farnsworth, client of  
18 the Western New York Law Center, accompanied by Kate  
19 Lockhart; and Eileen Kleps, client of Western New York  
12:41:57 20 Law Center, accompanied again by Kate Lockhart. So let's  
21 start with Julie. Tell us your story.

22 JULIE LONGMORE: Thank you for having me here  
23 today. The Hiscock Legal Aid Society is able to provide  
24 civil legal services for so many people unable, through  
12:42:24 25 life circumstances, to pay for themselves -- is

1           incredible. Because I am here today, vibrant, positive  
2           and moving forward dynamically with my life because of  
3           the assistance they provided.

4                        They provided me with the opportunity to get a  
12:42:37 5           divorce and ultimately leave an abusive marriage. I did  
6           not have the financial means to hire an attorney.

7                        For so many people, especially women, trying to  
8           exit an abusive relationship, a really big problem is the  
9           financial piece. The financial controls that often exist  
12:43:03 10          in an abusive relationship keep a person trapped. Money  
11          is needed to start a new life, but also to hire an  
12          attorney, pay the retainer and afford the continuing  
13          legal costs. At the rate I was going, it was going to  
14          take a very long time as I tried to squirrel away money.

12:43:24 15                      Civil Legal Aid Services also helped navigate  
16          the complicated requirements of all the custody  
17          arrangements, housing provisions, protection orders and  
18          all the other legal pieces that I needed to have a new  
19          abuse-free life.

12:43:42 20                      Domestic violence profiles similarly across all  
21          demographic groups. It happens in all neighborhoods,  
22          irrespective of income levels and education levels  
23          actually. It can happen to anyone at any time and this  
24          explains why Civil Legal Services provides much needed  
12:44:05 25          help. The assistance is one most needed. It helps to

1 free those whose lives are constrained by fear and  
2 economic controls.

3 I was trapped in a situation of wanting to get  
4 out but not having the financial means. I was pretty  
12:44:26 5 miserable. I was hurting. I was crushed and crumpled  
6 and I didn't know where to turn. And then I was made  
7 aware -- through the Vera House in Syracuse, I was made  
8 aware of the Hiscock Legal Aid Society because I got a  
9 free legal consultation with Vera House. And after yet  
12:44:48 10 another violent incident, that left me tattered and torn,  
11 I did contact them.

12 It was determined that I was eligible for Legal  
13 Aid due to being reliant on my husband's income. I went  
14 into the offices and met with Christie Van Duzer and she  
12:45:06 15 so patiently, respectfully and kindly listened to my  
16 story, and she photographed the very large bruise on my  
17 leg. It was determined that as I had no direct access to  
18 the family funds, I was eligible for civil legal  
19 services.

12:45:24 20 One of the staff attorneys, Stacey Schliffer,  
21 validated the abuse and she asked me to record incidents  
22 of it from over the years and this formed the basis of  
23 the divorce.

24 Senior Attorney Bryn Lovejoy-Grinnell of  
12:45:40 25 Hiscock Legal Aid, she worked so dynamically on my case

1 through to the final divorce decree and filed motions as  
2 necessary to complete the process.

3 And I can only stress how important it was to  
4 me then and even to this day to have the words Domestic  
12:45:57 5 Violence Project clearly mentioned on every  
6 correspondence that came through Hiscock Legal Aid  
7 Society. It was so very validating of everything I had  
8 been through.

9 To my part, the very first time my husband hit  
12:46:13 10 me was very soon after we were married, I remember  
11 thinking it was an episode, it was a mistake and that it  
12 wouldn't happen again. But in those first few months of  
13 marriage, there were many awful incidents that  
14 established a pattern behavior that repeated and  
12:46:28 15 continued and countless times over the years -- punches,  
16 kicks, bites, throttling and deliberately targeted  
17 injuries. There were cruel, harsh, demeaning and  
18 disparaging words. And many layers of abuse occurred,  
19 including alienation from friends and family. This  
12:46:49 20 leaves you very isolated, it leaves you without vital  
21 support systems.

22 This is where the civil legal services that  
23 were provided are so very important and I will forever be  
24 grateful for this. And I'm very glad to provide the  
12:47:06 25 information today. Thank you for listening and I look



1 forward to continuing to work to provide support and help  
2 for my son so he doesn't become another generation of  
3 abuser and I will speak to anyone who will listen about  
4 this. Thank you so much.

12:47:23 5 CHIEF JUDGE LIPPMAN: Thank you so much. I  
6 think that nothing more graphically describes what this  
7 is all about when we talk about how legal services can  
8 change people's lives. What would you have done without  
9 the help of legal services?

12:47:41 10 JULIE LONGMORE: I would probably still be  
11 there and in fact at the rate the injuries were going, I  
12 might not even be here and that's something to be  
13 considered always.

14 CHIEF JUDGE LIPPMAN: Fair to say it changed  
12:47:55 15 your life?

16 JULIE LONGMORE: Absolutely.

17 CHIEF JUDGE LIPPMAN: Thanks so much. I  
18 appreciate it.

19 Michael Farnsworth.

12:48:02 20 MICHAEL FARNSWORTH: First off thank you for  
21 coming here and let me come here to tell my story. My  
22 name is Michael Farnsworth and my wife Dawn can't be here  
23 today, because we have twin babies that are sick at home  
24 and we didn't want to get everybody else sick.

12:48:26 25 I have to speak about the excellent

1 representation I got from Western New York Law Firm.  
2 That center, through the OCA funding, was just  
3 tremendous. We were in danger of losing -- we were going  
4 to lose our house, and there was no doubt that was what  
12:48:49 5 was going to happen, because I had never done this  
6 before. I had no idea where to go, who to turn to or  
7 anything.

8 I'm an Army vet. I was in Vietnam and no one  
9 would listen and which didn't seem to matter to anyone.  
12:49:11 10 Right now, currently I am disabled. I broke my back in  
11 '02 where I was working for a company and also for the  
12 World Trade Center cleanup -- I was at that cleanup at  
13 Staten Island. I was one of the equipment operators  
14 separating debris. That was with the FBI. Everybody was  
12:49:40 15 there. I think you all know about that.

16 There was many different places I worked. I  
17 was in the environmental field for 37 years. I traveled  
18 all over the United States cleaning up hazardous waste.  
19 The equipment operator was my main thing.

12:50:01 20 I was really making some good money. We never  
21 had any problems. Things were going good. After I broke  
22 my back, I stayed home for a year and a half in a body  
23 cast and healed. I didn't do any surgeries and so I went  
24 back to work rather than trying to do something different  
12:50:22 25 and taking the easy way out so to speak. So I was forced

1 into retirement by my doctor.

2 At first I was turned away, but I talked to  
3 Wells Fargo, which is our mortgage company, and I was  
4 able to talk to them every step that I took and I  
12:50:40 5 informed them of everything that was going on and we were  
6 having trouble paying the mortgage obviously because my  
7 income was no longer there. My wife had to go to work  
8 and she could only work for minimum wage. She was not --  
9 she just had a school education. She worked for the  
12:50:57 10 Salvation Army in Batavia, New York. It took -- when I  
11 signed -- I tried to go up to disability myself without  
12 any representation.

13 This was a first for me, the first time that I  
14 had legal representation, but he took part obviously of  
12:51:19 15 the settlement, but it took two years, and I was talking  
16 to Wells Fargo, but every time -- I never talked to the  
17 same person twice, and they were calling me from four,  
18 five times a day from different states. We have  
19 computers, you would think they could talk to each other.

12:51:37 20 CHIEF JUDGE LIPPMAN: You would think.

21 MICHAEL FARNSWORTH: You would think and it  
22 just made our lives so miserable.

23 CHIEF JUDGE LIPPMAN: But the lawyer made a  
24 difference?

12:51:50 25 MICHAEL FARNSWORTH: They made the complete

1 difference, because I tried it the first time and was  
2 denied immediately. So I had to go get legal  
3 representation and of course they take a percentage which  
4 is fine with me and it worked. It worked out great. The  
12:52:03 5 judge knew -- I had to go in front of a judge and I told  
6 them everything and they reviewed all my paperwork and  
7 within five days that was approved, fully approved, fully  
8 disabled, because I just couldn't do it anymore. I'm  
9 trying to cut this short as you can see.

12:52:32 10 The lender, of course, was what I call beating  
11 me up. There were times that they would -- I'd be  
12 sitting in my chair and they would come to my front door  
13 and stick something to the door and run off the porch and  
14 I wouldn't even know it was there.

12:52:47 15 CHIEF JUDGE LIPPMAN: You didn't know what to  
16 do with it either.

17 MICHAEL FARNSWORTH: I had to contact Wells  
18 Fargo and I would be like, okay, which one do I contact?  
19 I've got 14 names and three hundred numbers. So I just  
12:53:00 20 would call an eight hundred number and get a different  
21 person again of course and explain everything over and  
22 over and over and told them that I would pay them once my  
23 social security would kick in, because I was very  
24 confident that it was going to work due to the lawyer  
12:53:16 25 telling me that this is -- this case is a very easy

1 no-brainer type case. It's simple. It's all right here.

2 And Western New York Law Center, I was told by

3 that lawyer, because he knew my financial situation was

4 in dire straits so to speak, he informed me of Western

12:53:40 5 New York Law. So I talked to them and then we went in

6 for a conference and they right off the bat were looking

7 at me going I don't understand why they're doing this to

8 you. This just doesn't make sense. So they looked into

9 it for me and they took me on as a client and without

12:53:58 10 them, I would say we would be -- the six of us and our

11 family would be homeless at this time. They would have

12 took our home. They were constantly, constantly -- I had

13 nothing more to tell them other than what I was being

14 told. So I tried to keep them as much up-to-date as I

12:54:19 15 could and they acted like they really didn't care. They

16 didn't want to hear it. They didn't want to hear

17 nothing. Even when I told them I was going to get my

18 social security and I could pay them back, they didn't

19 want it. They completely said no. We don't want that.

12:54:34 20 We want you to pay now. How can I pay now? My wife is

21 making 7.50 an hour. We're just barely eating.

22 So we went through the modification. First it

23 was a trial modification for three months. So once I

24 started getting my social security, I had no problem

12:54:56 25 making those payments and ever since then I have not

1 missed a payment. We made our mortgage payments.

2 We've had a little snafu. We have a set of  
3 twin 14-year-old girls and my stepdaughter just left us  
4 with -- they're going to be a year in October -- another  
12:55:19 5 set of twin girls. So I've got one-year-old girl twins  
6 and 14-year-old girl twins and that is quite a nightmare.  
7 It's a lot of work. I say nightmare, but they're great.  
8 They're precious.

9 CHIEF JUDGE LIPPMAN: You have to deal with the  
12:55:44 10 twins, but lawyers are here to help you deal with the  
11 other legal service problems. They might be able to help  
12 you with the twins too.

13 MICHAEL FARNSWORTH: But they're very demanding  
14 and everyone knows that children are demanding. This  
12:56:04 15 happened after.

16 CHIEF JUDGE LIPPMAN: But you as a nonlawyer  
17 didn't now how to deal with it.

18 MICHAEL FARNSWORTH: I had no idea. I tried  
19 and tried. I kept telling them I'll pay you, I'll pay  
12:56:16 20 you.

21 CHIEF JUDGE LIPPMAN: You needed someone to  
22 talk their language.

23 MICHAEL FARNSWORTH: Yes, which is still  
24 foreign to me.

12:56:22 25 CHIEF JUDGE LIPPMAN: No, thank you. I believe

1 your story so explains to everyone else what this means  
2 to human beings who just need someone who can deal with  
3 these kinds of problems that are foreign to you.

4 MICHAEL FARNSWORTH: Yes, foreign to me. I had  
12:56:38 5 no idea which way to turn -- up, downside, sideways. I  
6 was frustrated. I'm getting four, five calls a day from  
7 different people, different states, and I'm like this is  
8 technology, why don't you guys talk?

9 CHIEF JUDGE LIPPMAN: Thank you for telling  
12:56:55 10 your story. Give our best regards to your wife. You  
11 have a day off that you're here telling your story so  
12 this is good. But thank you so much. It is very  
13 instructive for all of us.

14 MICHAEL FARNSWORTH: Western New York, New York  
12:57:15 15 Law Group, thank you.

16 CHIEF JUDGE LIPPMAN: Thanks. I think it's not  
17 untypical of people who not only come to them for help,  
18 legal service providers, the kind of providers that are  
19 here in this building at the Telesca Center, and it's a  
12:57:28 20 wonderful thing for human beings and their family.

21 MICHAEL FARNSWORTH: You work very hard  
22 yourself and you have a human heart, you know.

23 CHIEF JUDGE LIPPMAN: Thank you again for  
24 telling everyone.

12:57:39 25 All right, Eileen Kleps.

1 MARY ELLEN WILBER: Your Honor, I would like to  
2 speak for Eileen. Eileen is a little nervous and  
3 sometimes a little forgetful. My name is Mary Ellen  
4 Wilber. I'm honored to be Eileen's power of attorney.  
12:57:58 5 So I'll read from her statement and add what I need to  
6 add.

7 I'm hear today because I assisted Eileen and  
8 Eileen has some memory issues related to dementia due to  
9 her HIV/Aids. I'm honored to speak for her and represent  
12:58:11 10 the great work that the Western New York Law Center did  
11 for homeowners through the OCA funding.

12 Eileen had paid her mortgage consistently since  
13 she had switched to Wells Fargo in 1999. She fell behind  
14 in 2012, and she was only a few months behind, Your  
12:58:33 15 Honor. She was maybe three months behind when she called  
16 me saying she simply had forgotten payment and literally  
17 she was three months behind and it's common with people  
18 that have dementia, and I had been her power of attorney  
19 once Eileen and I had realized that she was having some  
12:58:51 20 problems with her memory, and we went to Volunteer  
21 Lawyers Project, another tremendous program funded, and  
22 we got assistance in for me becoming her power of  
23 attorney to assist her with different legal issues that  
24 she would have.

12:59:07 25 So when I contacted the lender, who happened to



1 be Wells Fargo, immediately when we noticed that things  
2 were going on with her payments, and I tried to make  
3 arrangements immediately to make her current, well they  
4 didn't want to hear that. They really didn't want to  
12:59:26 5 make any arrangements to make her current even though she  
6 was three months behind. We informed them right away and  
7 I was immediately referred to the foreclosure department,  
8 and so I started to try to work with them. They wouldn't  
9 accept payments even though they said, oh, send us a  
12:59:43 10 payment and then that was sent back to Eileen.

11 I sent them my power of attorney. They  
12 mysteriously didn't receive the fax, all those things  
13 happened. And for nine months I submitted every single  
14 form to them and sometimes double forms would be  
01:00:00 15 submitted to them and I, you know, kept submitting these  
16 forms, contacting them and similar to the gentleman over  
17 here, multiple calls to multiple people and just getting  
18 the general runaround.

19 And I am a very astute person and have handled  
01:00:18 20 legal situations before and so when I submitted the  
21 paperwork and got very frustrated, I just kept getting  
22 really frustrated, really getting crazy, and I was at  
23 wits' end and after going really insane with them, I just  
24 said that's it. I called the Western New York Law  
01:00:38 25 Center. I was familiar that they did great work for

1 people. I knew that I needed to have a lawyer for her.  
2 You know, for Eileen.

3 CHIEF JUDGE LIPPMAN: There comes a point you  
4 can't deal with it yourself.

01:00:50 5 MARY ELLEN WILBER: You can't. I'm not a  
6 lawyer. I might be intelligent, but you need a lawyer.  
7 You need that power of a law center. You need the voice  
8 of the legal system, because just being a regular Joe  
9 does not hold a lot of weight when you're talking to  
01:01:04 10 someone like Wells Fargo. It was just not working. You  
11 get three or four different people and you're getting  
12 frustrated and I have a life. You know, I wanted to go  
13 on vacation. I wanted to do things and you just get  
14 crazy.

01:01:18 15 So I called the Law Center in July of 2013. I  
16 worked with the office, talked to Kate, talked to the  
17 other attorneys there and tried to get a modification, a  
18 trial modification. We did have a few issues, because  
19 they tried to put a lien on the property, but as the  
01:01:37 20 other gentleman, Mike, said they would come to Eileen's  
21 house and stick little papers on the door.

22 We too live in Batavia and I've got to applaud  
23 you guys, because us people in the rural communities, we  
24 usually get the short end of the stick, but with the law  
01:01:51 25 centers, really the state does a good job helping the

1 rural communities.

2 So they put the wrong address -- they would go  
3 to Walnut Street instead of Walnut Place, and I would  
4 have to correct them all the time. So the Law Center  
01:02:06 5 helped with that. They made sure that they got the right  
6 address. They made sure papers came to my house, because  
7 with her issues of memory problems, I would tell them  
8 send papers to me and they would never send them to me in  
9 all those nine months. They refused even though they had  
01:02:23 10 the power of attorney. They would do that often, send  
11 one to her, and not send one to me, or send one to me and  
12 not her.

13 So with the Law Center, they straightened  
14 things out and we got things straightened out. They gave  
01:02:37 15 us a permanent loan modification. We did the trial  
16 payments. Those went smooth. Everything went perfect  
17 once we got the Law Center involved. What was great,  
18 because I was suspicious about the high rate of interest,  
19 the Law Center worked it out, got it from 10.75 to 5.15,  
01:02:59 20 which you know --

21 CHIEF JUDGE LIPPMAN: All the difference in the  
22 world.

23 MARY ELLEN WILBER: Absolutely, Your Honor.  
24 When I questioned them, what's this rate? How come  
01:03:08 25 everyone else is paying this low rate? The Law Center

1 did the trick though. Because they weren't listening to  
2 me, they listened to the attorney. So they got her  
3 payment reduced from 618 to 525.

4 You know, this is a woman who worked her whole  
01:03:22 5 life, was on social security and social security  
6 disability. You know, she worked. But, you know, when  
7 you're getting that, you're still at poverty level. It's  
8 unfortunate when you are at poverty level and you worked  
9 your whole life, you still need the Law Center, because  
01:03:38 10 she could not afford an attorney. Even though you work  
11 your whole life, when you're on low -- you are at poverty  
12 level, you need the Law Center.

13 So they set up the automatic payments, which we  
14 tried to do before, but they wouldn't do. But we have a  
01:03:55 15 payroll deduction, automatic payment, and the lender --  
16 I'm going to tell you -- until we got the Law Center,  
17 they did not respect Eileen. They did not respect myself  
18 and until we had the power of the Law Center behind us we  
19 got no respect.

01:04:12 20 CHIEF JUDGE LIPPMAN: Thank you.

21 MARY ELLEN WILBER: I'm extremely grateful,  
22 because without agencies like the Law Center, and I have  
23 done this work for 30 years by myself in the rural  
24 communities and you guys, the funding from the state,  
01:04:29 25 makes a difference for people that fight in the rural

1 communities, because our voice is silent especially with  
2 Aids and the stigma, nobody respects us. So thank you.

3 CHIEF JUDGE LIPPMAN: So Legal Services really  
4 changed this whole thing?

01:04:46 5 MARY ELLEN WILBER: Yes. Legal Services helps  
6 people tremendously especially when there's stigma behind  
7 it. Poverty is one stigma. With poverty and disease,  
8 compounds the stigma a hundred percent and I give her  
9 credit, because I said are you willing to step forward  
01:05:01 10 and come to this hearing and she said absolutely, so  
11 thank you.

12 CHIEF JUDGE LIPPMAN: We're proud of all of you  
13 for coming in and telling your story. I think it so  
14 helps to try and the people that understand what it means  
01:05:16 15 to have legal representation when you're dealing with the  
16 fundamentals of your life, things we're all entitled to.  
17 So thank you. It was really helpful and we greatly  
18 appreciate it.

19 MR. MIRANDA: I have a question.

01:05:32 20 CHIEF JUDGE LIPPMAN: Sure, President-Elect  
21 Miranda.

22 MR. MIRANDA: Thank you. I thank each of you  
23 for your very compelling and personal stories and for  
24 taking the time to be here. This is what this is all  
01:05:43 25 about and this is why we're doing this. Let me ask you,

1 you each were fortunate in some ways to have found your  
2 way to Legal Services, can you provide us any advice on  
3 how we can do a better job of making sure that others  
4 that are in your situation can find their way to the  
01:06:00 5 Legal Services that you obtained? Is there anything that  
6 we could do better to make sure that you don't have to  
7 wait so long?

8 MARY ELLEN WILBER: The Pennysavers. Put your  
9 information out there in anything that's not expensive.

01:06:18 10 CHIEF JUDGE LIPPMAN: Well the Pennysaver is a  
11 good thought, because it gets to a lot of people.

12 MARY ELLEN WILBER: Honest. I know because of  
13 the work I've done all these years, but anything that's  
14 free to the public, internet, little tags on social  
01:06:31 15 media, I mean we do that. I've served five governors and  
16 I'm on everything, our Facebook for hepatitis and HIV,  
17 they're on every Facebook, Twitter accounts. There's  
18 little logos, I put you guys on every Twitter and every  
19 Facebook.

01:06:47 20 CHIEF JUDGE LIPPMAN: That's important in  
21 today's world.

22 EILEEN KLEPS: But then you have the people  
23 that don't want to come out with the medical problems.  
24 It's a small city. Everyone knows everyone, so they  
01:06:59 25 don't come out of the wood, you know? And if they don't,

1 we can't help them.

2 MARY ELLEN WILBER: So maybe social media.

3 MICHAEL FARNSWORTH: Advertising the Pennysaver  
4 is a good idea. I get mine and I go through it.

01:07:17 5 MARY ELLEN WILBER: And they're free to the  
6 people and our local Pennysaver reaches 25,000 people.

7 CHIEF JUDGE LIPPMAN: I think that's a great  
8 idea. Any other questions? Thank you all. I appreciate  
9 you coming in.

01:07:41 10 Our last witness is Commissioner M. Josh  
11 McCrossen, Wayne County Department of Social Services.

12 MR. McCROSSEN: Somewhere it says the last  
13 shall be first.

14 CHIEF JUDGE LIPPMAN: Somewhere it does say  
01:08:02 15 that, Commissioner.

16 MR. McCROSSEN: Thank you for having this  
17 hearing and inviting me. My name is Josh McCrossen,  
18 Commissioner of the Wayne County Department of Social  
19 Services. For those of you who aren't familiar with the  
01:08:17 20 lay of the land, Wayne County is the county immediately  
21 to the east of Monroe.

22 I appear today before you to share information  
23 with you about the continued high unmet need for civil  
24 legal services for low income residents both of Wayne  
01:08:33 25 County and the surrounding Finger Lakes region. I also

1 will share with you the information about ways in which  
2 we in Wayne County collaborate with the Office of Court  
3 Administration's grantee, which for us is Legal  
4 Assistance of Western New York, known as LawNY, which is  
01:08:50 5 the primary provider of legal services in our area.

6 By way of background, my life's work has been  
7 spent either directly providing services, or overseeing  
8 the provision of human services, to economically  
9 disadvantaged people and other vulnerable populations in  
01:09:08 10 primarily rural settings.

11 I presently serve as the Commissioner of the  
12 Wayne County Department of Social Services and have been  
13 in that position since February of 2000, in which  
14 capacity I oversee, among other programs, our county's  
01:09:23 15 Child Protective Services, our Child Support Enforcement,  
16 our Foster Care Services, Temporary Assistance, Medicaid  
17 Preventive Services for Children, Protective Services For  
18 Adults and Safety Net assistance. I also oversee a  
19 number of contracts for services from other agencies,  
01:09:44 20 including LawNY.

21 Prior to assuming this position at DSS, I  
22 served as the executive director of Catholic Family  
23 Center in Wayne County from 1980 until 2000. In that  
24 position, I oversaw a broad range of human services  
01:09:59 25 programs, including services to prevent teenage pregnancy



1 and to strengthen family units. I began the PINS program  
2 in Wayne County and I actually continue to fund it to  
3 this day. I started as a one-person operation in Wayne  
4 County. I was able to grow the services to ten full-time  
01:10:20 5 staff by the time I left.

6 But that service growth is not indicative of a  
7 service rich environment. Per capita, far more funding  
8 and far more services are available in metropolitan areas  
9 than in rural areas. In addition, rural families face  
01:10:40 10 the barrier of little or no public transportation and  
11 often have to travel long distances to access what  
12 services may be available, at a not inconsiderable cost.

13 I know the focus of today's hearing is on  
14 education and school law issues, the impact of providing  
01:11:00 15 civil legal services to students and their families and  
16 what a difference it makes in their success, but I would  
17 like to begin by discussing civil legal services  
18 generally, and at the end focus my remarks on education  
19 and school law issues at hand, with a particular focus on  
01:11:18 20 Wayne County and other rural areas.

21 I, together with the attorney in charge of our  
22 in-house legal department, our director of income  
23 maintenance and other agency leaders, meet regularly with  
24 LawNY executive director, the managing attorney of the  
01:11:37 25 LawNY Geneva office and the LawNY staff member who

1 conducts outreach in Wayne County with regard to the  
2 Supplemental Nutrition Assistance Program, or SNAP, which  
3 is formerly Food Stamps.

4 During these meetings, which we schedule on a  
01:11:53 5 quarterly basis, we exchange information about new  
6 developments in the programs that we offer. We also  
7 discuss and often resolve policy matters of the type  
8 which, in the past, may well have led to litigation, with  
9 such resolutions having to be determined by the courts.  
01:12:11 10 Rather than assume a litigious posture with each other,  
11 we emphasize the commonalities of our concerns and  
12 attempt to work together to resolve situations to the  
13 benefit of our mutual clients, as much as possible.

14 I have been made aware of your initiative to  
01:12:32 15 help abate the high unmet needs for civil legal services  
16 among low income New Yorkers, and I can attest to the  
17 fact that, during the years of this initiative, LawNY's  
18 presence in Wayne County has grown and the number of  
19 low-income people that LawNY has been able to serve has  
01:12:49 20 increased.

21 My colleagues there have shared with me that  
22 the number of cases closed for Wayne County residents  
23 grew from 620 in 2010 to 843 in 2013, a 36 percent  
24 increase over the course of four years. The number of  
01:13:08 25 people benefitting from the services provided in these

1 cases grew from 1449 in 2010 to 1854 in '13, an increase  
2 of 30 percent over that same four years.

3 LawNY's enhanced presence in Wayne County today  
4 now includes a number of programs which we effect mutual  
01:13:31 5 referrals back and forth of our mutual clients:

6 A homelessness intervention project, through  
7 which low-income people who are homeless or at risk of  
8 homelessness receive information, advice and  
9 representation, if needed, with the goal of stabilizing  
01:13:49 10 them in safe and permanent housing;

11 A disability advocacy project, through which  
12 low-income people who are unable to work because of a  
13 physical or mental impairment receive the assistance they  
14 need to document their medical condition so that they can  
01:14:06 15 qualify for federal disability benefits from the social  
16 security administration;

17 A nutrition outreach and education project,  
18 through which low-income people who qualify for benefits  
19 from the SNAP program receive assistance in the  
01:14:23 20 application process;

21 A project to provide seniors over the age of 60  
22 with civil legal services, often in matters regarding  
23 access to healthcare;

24 A foreclosure prevention project;

01:14:37 25 And an employment law advocacy project, which

1 my department helps to fund.

2 In addition, our county funds LawNY to provide  
3 mandated representation to low-income adults in Family  
4 Court proceedings. Yet despite the enhancements to its  
01:14:59 5 service delivery system that LawNY has been able to  
6 implement in these recent years, the demand for its  
7 services still outstrips its ability to provide them.

8 Please note:

9 The poverty population in Wayne County, those  
01:15:14 10 under 100 percent of the federal poverty level, stood at  
11 10,449 in 2013, which is 11.3 percent of Wayne County's  
12 total population;

13 The number of people at or below 200 percent of  
14 the poverty level were at 26,262, constituting 28 percent  
01:15:35 15 of the county's total population;

16 The number of foreclosures filed in Wayne  
17 County increased from 2012 to 2013 by 82 percent from 126  
18 to 229;

19 And as of June 2014, the number of people in  
01:15:55 20 Wayne County receiving Temporary Assistance stood at  
21 1,166, 1.3 percent of our residents. And August 2014 saw  
22 a year over year growth of 5.9 percent of individuals  
23 receiving that assistance. The number receiving SNAP  
24 benefits stood at 10,943, which was 11.8 percent of our  
01:16:19 25 residents. These numbers have not come down appreciably,

1 indicating the loss to our neediest residents have not  
2 been touched by whatever economic improvement may have  
3 occurred in New York State.

4 In calendar year 2014, the number of people  
01:16:37 5 enrolled in Medicaid in Wayne County averaged  
6 approximately 14,000. It's a number which is 35 percent  
7 higher than our 2007 figures.

8 These numbers portray a community still  
9 suffering economic problems which result in increased  
01:17:00 10 reliance on governmental supports. With the belief that  
11 school success is one of the prime paths out of poverty,  
12 the Department is committed to trying to make sure that  
13 those students from our poorest families are given the  
14 supports they need to become economically independent.

01:17:22 15 To this end, my agency provides TANF funds to  
16 LawNY to provide representation to low-income families  
17 needing assistance on issues such as the development of  
18 individual education plans, discipline issues, such as  
19 suspensions or expulsions, and bullying issues.

01:17:59 20 Advice, advocacy and information are necessary  
21 for low-income children in rural areas such as Wayne  
22 County, and elsewhere in New York State, to help ensure  
23 that children with disabilities receive an appropriate  
24 education as defined by each child's academic, physical,  
01:18:22 25 mental, emotional and social needs. If we can be

1 successful in this endeavor, we better prepare them to be  
2 productive members of our community.

3 Students not only need an understanding of how  
4 to access particularly community, state and federal  
01:18:42 5 resources, but their parents also need an understanding  
6 regarding the range of degree options in New York State  
7 and the changing New York State curriculum requirements.

8 In Wayne County alone, we have eleven school  
9 districts. According to the New York State Education  
01:18:59 10 Department, in the 2012-13 academic year, there were  
11 14,319 students in those school districts. Of those,  
12 12.2 percent had a diagnosed disability. In addition,  
13 42.7 percent were economically disadvantaged.

14 Yet, in Wayne County, in 2013, LawNY served  
01:19:30 15 only 18 families. Those were families with school law  
16 problems and throughout its seven offices, which serve a  
17 total of 14 counties, they served only a total of 52  
18 families. Each of those figures is clearly just a small  
19 portion of the total which need those services. It is  
01:19:56 20 not the case that we believe that schools do not care  
21 about these students; however, resources are limited,  
22 limited for us all, which leads to a greater demand and  
23 competition for those who do exist. In the great  
24 majority of cases, low income families cannot compete  
01:20:22 25 effectively due to their own resource limitations. The

1 attempt here, small though it may be, is to level the  
2 playing field.

3 With unfettered demand for services in such as  
4 basic areas -- housing, income and health issues --  
01:20:44 5 LawNY, and likely most all providers of civil legal  
6 services must triage cases. Consequently, a very basic  
7 need involving the education of children is relegated to  
8 lower priority areas. In so doing, we plant the seeds of  
9 future difficulties. We address acute needs rather than  
01:21:14 10 root causes. And only if additional resources are made  
11 available can we hope to effectuate a shift in this  
12 paradigm.

13 I want to thank you for conducting these  
14 hearings on civil legal services in the Fourth  
01:21:32 15 Department. I commend you on the thoughtful process that  
16 you go through to assess the scope of the unmet needs for  
17 these services. And I do look forward to reading the  
18 report -- I have to admit for the first time -- that will  
19 be issued containing recommendations about your next  
01:21:52 20 steps.

21 CHIEF JUDGE LIPPMAN: Thank you, Commissioner.  
22 I appreciate it and I gather the thrust of what you've  
23 laid out for us and the problems in Wayne County is we  
24 need more money to do more legal services and not just  
01:22:11 25 touch a small part of the need.

1 MR. McCROSSEN: One of the real benefits here,  
2 as far as I'm concerned, is that we have worked  
3 cooperatively with the provider of civil legal services  
4 in the county. We work closely with them. It doesn't  
01:22:28 5 mean we always agree.

6 CHIEF JUDGE LIPPMAN: But if the provider had a  
7 lot more resources, it would be more helpful?

8 MR. McCROSSEN: Absolutely.

9 CHIEF JUDGE LIPPMAN: Thank you so much.

01:22:35 10 MR. McCROSSEN: Thank you.

11 CHIEF JUDGE LIPPMAN: So this concludes our  
12 hearings. We've heard today from local officials: The  
13 Mayor of Syracuse, from the Rochester Legislature, from  
14 the Corporation Counsel of Rochester, we've heard from  
01:22:57 15 the education community as to what legal services means  
16 and why it's important to us, we've heard most  
17 effectively from clients themselves as to what legal  
18 services has meant to them and to their lives, and we've  
19 heard from the business community, the Department of  
01:23:18 20 Social Services, and I think everyone recognizes one  
21 basic clear truth, which is without civil legal services  
22 available to poor people, the people of limited means,  
23 you're not only talking about people who have no  
24 resources whatsoever, you're talking about average people  
01:23:40 25 who have real problems and need a helping hand and don't

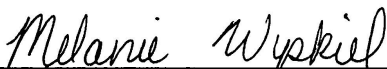


1 know how to do it without having someone who's educated  
2 in dealing with legal problems.

3 If we don't do that, again there's such a  
4 tremendous cost to our community, to our society, but I  
01:24:02 5 think it's clear that for every dollar invested in legal  
6 services so much more, or our estimate of 5 to \$6 are  
7 returned by \$1's investment and look at the investment in  
8 legal -- in human lives and you see the effect, the  
9 impact of legal services can be and this combination of  
01:24:25 10 publicly funded civil legal services and pro bono work as  
11 represented by all the really tiring figures from the Bar  
12 that have -- that are here and are with us in New York  
13 State together that's what's necessary to make, again I  
14 would say, the ideal of equal justice be a reality to  
01:24:51 15 each and every person in our state.

16 So we're going to take the results of this  
17 hearing and our other three hearings. We will put it  
18 into a report by the Task Force, by Helaine Barnett,  
19 which will then -- we will base it to make our annual  
01:25:09 20 request to the Legislature for assistance. So thank you  
21 so much. Thank you for having us in Rochester. It was a  
22 delight to be here. I appreciate it.

23 **(Certified to be a true and accurate transcript.)**

24   
25

**Official Court Reporter**

**APPENDIX 9:**

**Transcript of the Second Department Hearing  
Held on September 30, 2014**

1 SUPREME COURT OF THE STATE OF NEW YORK  
2 - SECOND DEPARTMENT -

-----X

3 THE CHIEF JUDGE'S HEARING

4 ON CIVIL LEGAL SERVICES,  
5

6 -----X

7 26 Central Avenue  
8 Staten Island, New York  
September 30, 2014

9 B E F O R E:

10 HONORABLE JONATHAN LIPPMAN,  
11 Chief Judge

12 HONORABLE A. GAIL PRUDENTI,  
13 Chief Administrative Judge

14  
15 HONORABLE RANDALL T. ENG,  
16 Presiding Justice Appellate Division, 2nd Dept.

17  
18 GLENN LAU-KEE, ESQ.  
19 President of the New York State Bar Association

20  
21  
22  
23  
24 ROSEMARY M. PFISTER, CSR, RPR  
25 BETH CICERO, CSR, RPR  
OFFICIAL COURT REPORTERS

## Judge Lippman's Opening Address

1                   CHIEF JUDGE LIPPMAN: Morning, it's a pleasure  
2 to see all of you.

3                   It's a pleasure to be out here in Staten Island  
4 in this beautiful courthouse that any day now, really any  
5 day, right, Judge McMahon, any day, right?

6                   JUDGE McMAHON: Any day.

7                   CHIEF JUDGE LIPPMAN: We will be occupying,  
8 but, today we have an exploratory occupation for this  
9 morning and I'm very pleased, as are my co-panelists, who  
10 I'll introduce to you.

11                   To my right is Presiding Justice Randall Eng.

12                   To my far right is the President of the State  
13 Bar Association, Glenn Lau-Kee. And, to my immediate  
14 left is the Chief Administrative Judge of the State  
15 Courts, A. Gail Prudenti.

16                   We are all delighted to be here. This is the  
17 third of our civil legal services hearing this year. We  
18 hold a hearing in each of the four Appellate Departments.

19                   The purpose of the hearing is to; one, focus  
20 interest on civil legal services for the poor which is  
21 such a crisis in our city, here out in Staten Island, in  
22 our State and in the Country.

23                   Second, the results of these hearings form the  
24 requests that we make to the legislature for funding for  
25 legal services for the coming year.

## Judge Lippman's Opening Address

1           It's also from these hearings that we also get  
2           our recommendations from our passports as to what new  
3           initiatives we might take in civil legal services.

4           So, the hearings are very important because,  
5           fundamentally, there's a justice gap in New York City and  
6           around the Country that basically is between the finite  
7           legal resources available, the legal services and the  
8           desperate need by the poor and people of limited means to  
9           have legal representation in matters effecting the  
10          necessities of life; the roof over people's heads; their  
11          physical safety; their livelihoods; the well being of  
12          their families.

13          We have people who really can fall off the  
14          cliff in difficult economic times without the services of  
15          a lawyer, without legal representation.

16          Legal service providers in this Country, in the  
17          City as a whole and in the State, I would say turn away  
18          three out of four people who come to them seeking  
19          assistance in legal matters.

20          There are 2.3 million people who come into the  
21          Courts every year without representation in New York  
22          State.

23          I do believe that the Task Force that we've  
24          appointed to enhance civil legal services in our State  
25          headed by Helaine Barnett -- Helaine is right over there

## Judge Lippman's Opening Address

1 in the second row -- has done a terrific, spectacular job  
2 in helping to organize these hearings and in helping to  
3 find ways to deal with this justice gap.

4 In attendance from the Task Force are Hon. Fern  
5 Fisher, the Deputy Chief Administrative Judge for New  
6 York City and our Access To Justice heads from throughout  
7 the State of our Access To Justice program. Adriene  
8 Holder is here in the third row right there, Adriene.

9 Barbara Finkelstein, who played such a great  
10 role in organizing these hearings with Denise Kronstadt.  
11 Sitting right next to her is Raun Rasmussen; right there  
12 is Debbie Wright.

13 So, we have a good showing from the Task Force  
14 and they've been terrific.

15 Christine Fecko is here, the general counsel to  
16 IOLA.

17 When people are not able to get representation,  
18 it's at such a tremendous cost to our society and our  
19 communities.

20 We estimate that for every dollar that we  
21 invest in civil legal services, we get \$6 returned to the  
22 State in less social service cost, incarceration cost,  
23 more federal dollars flowing to the State. It is  
24 essential that we focus on this issue as a State and as a  
25 society.

## Judge Lippman's Opening Address

1           The reason why the judiciary and the leadership  
2           and the Bar in our State hold these hearings is because  
3           it is within our constitutional mission as the judicial  
4           branch of government.

5           It is ours to maintain the constitution of the  
6           government to foster equal justice. This is what we do.  
7           This is our purpose for the people and the Bar of our  
8           state.

9           It is so fundamental to what it means to be a  
10          lawyer and President Lau-Kee in the State Bar and all of  
11          the respective Bar Associations here on Staten Island and  
12          around the State recognize this ultimate obligation and  
13          responsibility as lawyers to help others and to serve  
14          people; this is what lawyers do.

15          This mission that we all have is not tangential  
16          to the work of the Courts; it is basic and fundamental.

17          As a recognition of the role of the judiciary  
18          in this effort, the legislature has passed a resolution  
19          asking us to hold these hearings and to report back on  
20          the needs for this year and each year to close the  
21          justice gap; and that's exactly what we're doing. The  
22          results of this hearing will inform the requests that we  
23          make to the legislature.

24          I would note that the New York template that  
25          we've developed to adjust this gap comprises basically

## Judge Lippman's Opening Address

1 two very fundamental pillars. One is public funding of  
2 legal services.

3 This year we have \$70 million in public funding  
4 for civil legal services; \$55 million that go directly in  
5 grants from the Court system to legal service providers,  
6 and another \$15 million that we give to IOLA for them to  
7 give out grants because the IOLA interest rates have  
8 become so low that they went from \$36 million in funding  
9 each year to about \$8 million. So, we give them  
10 \$15 million from the judiciary to continue their own  
11 grants and their own good work. So that really involves  
12 this funding and re-prioritization of what's important in  
13 our State and our society.

14 We believe legal services for the poor is as  
15 important as housing and education and hospitals and all  
16 the other things that our society holds dear. We thank  
17 the legislature and the executive branch for producing  
18 that funding. You know, they've been terrific and  
19 recognized the importance again of this issue.

20 The second pillar of our program is pro bono  
21 work by the Bar. We have been reaching out to different  
22 groups. We had the state Bar, Empire State Counsel  
23 Program, we have the Court System's Lawyer Emeritus  
24 Program that reaches out to baby boomers. We have a new  
25 set of rules for corporate counsel. We allow corporate



## Judge Lippman's Opening Address

1           counsel, not admitted to the Bar in New York, to still  
2           practice when they do pro bono work in New York.

3                       We have the lawyer for a day program that Judge  
4           Fisher has been so instrumental in.

5                       We recognize and the Bar recognizes how  
6           important that work is because with all the funding that  
7           we have, in a little while we're going to also have  
8           testimony from the Chair of the City Council Committee  
9           Legal Service. The council chipped in with funding.

10                      With all the funding that we get, there isn't  
11           enough money in the world to be able to do the job  
12           without having the good work of the lawyers in this  
13           State, and they're terrific. They've done terrific work.  
14           It is so important that we have that voluntary  
15           contribution from the Bar.

16                      So, as we move towards a civil Gideon where  
17           some day there may be a right to representation in civil  
18           cases that there is in criminal, based on the landmark  
19           Supreme Court case Gideon versus Wainwright. In civil  
20           representation, even in matters involving essentials of  
21           life, there is no such constitutional floor that provides  
22           that each person is entitled to representation.

23                      We believe that the past hearings have moved us  
24           towards that goal, towards our right to counsel, towards  
25           effective representation for people, finding necessities

## Judge Lippman's Opening Address

1 of life, whether by policy, by statute, by constitution.

2 We have to get people who are in the midsts of  
3 the greatest crises in their lives. We have to be able  
4 to provide representation.

5 So, these hearings in the past years have  
6 provided testimony from state-wide public officials, the  
7 Attorney General, the Comptroller, from Cardinal Dolan,  
8 from business people, from legislative leaders, from  
9 providers, from clients from every direction testifying  
10 to the great needs why we need more legal assistance and  
11 really trying to make the point that not only is it the  
12 right thing to do, the moral, the ethical thing to do to  
13 help those in need, but also it's good for the bottom  
14 line of our community and our society; that our community  
15 will not prosper if we have people who again are falling  
16 to the wayside, who can't go to our local stores, have  
17 money in the banks, have a place of residence that's  
18 secure.

19 Unless people have all of those things and kids  
20 are being educated, it's not good for anybody and not  
21 good for our society.

22 So, I welcome you to these hearings.

23 I want to stress how important this is to the  
24 judiciary and to the lawyers in our State recognizing  
25 that this is our specialist on stability.



1 de Blasio has made a spectacular choice for him to be the  
2 Commissioner of the Human Resources Administration.

3 So, I welcome you, Commissioner, and thank you  
4 for all your efforts in the past in the particular issue  
5 of legal services for the poor.

6 Again, you're a great leader of the Legal Aid  
7 Society. I know you will be just as spectacular leader  
8 of the Human Resources Administration.

9 So, I commend Mayor de Blasio. I commend the  
10 Mayor on the choice of the Commissioner.

11 And, you're on.

12 COMMISSIONER BANKS: I should leave now right.

13 CHIEF JUDGE LIPPMAN: Yes, enough.

14 What are you doing for us lately? Go ahead.

15 COMMISSIONER BANKS: Thank you very much for  
16 your kind words.

17 Judges, Deputy Administrative Judge, Presiding  
18 Justice Eng, President Lau-Kee, great to see you in a  
19 different context.

20 I would be happy to come in and say we need  
21 more funding for various things, but I come here to  
22 support your efforts in allocating money for civil legal  
23 services.

24 As you know, HRA is the largest social services  
25 agency in the United States with a budget of 9.7 billion

1 dollars, serving 3 million people a day in a whole range  
2 of very critical needs. In a sense, the clients that we  
3 serve are exactly the clients that you have been so  
4 concerned about in terms of providing civil legal  
5 services.

6 Civil legal services here are so important to  
7 the Mayor that the programs that had been a patchwork in  
8 the City have all been consolidated at the Human  
9 Resources Administration.

10 So in the past, there were some amounts of  
11 funding at the Department of Housing Preservation and  
12 Development known now as the Youth Community Development  
13 and such upcoming developers as the Department of  
14 Homeland Services.

15 All these services have been brought together  
16 under one roof to essentially give a home in the City of  
17 New York for civil justice support and civil legal  
18 services support because its such an important service  
19 for our clients.

20 HRA is anxious for change, equality, preventing  
21 homelessness. Legal services are critical in that  
22 effort. You have my testimony for the record. I know  
23 that brief witnesses are favored, so I'm going to make a  
24 few points from that testimony.

25 The consolidation involves bringing together

1       \$21 million based on civil budget funding. That includes  
2       an additional \$7 million that we added in the baseline  
3       for civil eviction funding, including the \$6 million we  
4       just put into the budget for our agency in September.  
5       That's in addition to the important support that the City  
6       Council added and Councilman Lancman spoke about last  
7       week, the chair of the committee spoke about it as well.

8               Those are part of our program as a full and  
9       great City Council and a major part of our consolidated  
10      streamline effort to ensure that we have the dollars that  
11      are targeted officially to provide the resources that are  
12      needed.

13              The old adage, an ounce of prevention is worth  
14      a pound of cure is so true in providing the civil legal  
15      services that we do in the area in anti-eviction  
16      services.

17              We know essentially we are providing all kinds  
18      of assistance to a very targeted group with children and  
19      other New Yorkers that would end up in a shelter.

20              Part of the Mayor's program is to address the  
21      record homelessness that confronts us, in addition to  
22      providing permanent housing and other assistance.

23      Prevention is a critical component and legal services is  
24      in the forefront of that. So that's why we added dollars  
25      to that and we're setting up a new program modeled on the

1 council side for senior citizens who are targets and at  
2 risk. For example, people who are in family shelters as  
3 a result of evictions, providing high risk shelter  
4 systems without adverse outcomes of that kind of  
5 proceeding. So, we're targeting services there.

6 At the same time, we also know this hearing is  
7 very focused on the content and importance of services  
8 that legal services provides in disaster type of  
9 settings.

10 I know from my own experience at the Legal Aid  
11 Society following September 11th and following Sandy,  
12 they are in the front lines of providing that kind of  
13 assistance critical to homeowner loss, jobs are needed,  
14 unemployment assistance, need the independent kind of  
15 safety net services that legal services can provide.

16 I mean, your focus on the essentials of life is  
17 our focus in the legal services that we are supporting at  
18 the Human Resource Administration because they are so  
19 critical to subsistence income, roof over heads, access  
20 to education. Education is critical and things our  
21 clients need.

22 Legal services can be part of the solution for  
23 the problems our clients have. We look forward to a  
24 partnered legal services program with you.

25 I would also note that one of the important

1 values of the funding that you prioritized is to have a  
2 well-trained seasoned staff in place.

3 There is nowhere more highly illustrated in the  
4 wake of disaster when you need experienced, well-trained  
5 staff to be in place.

6 So, our priority for funding, we're certainly  
7 looking forward to have that kind of assistance available  
8 as well as address any urgent issues such as health care.

9 So, we fully support your effort and we look  
10 forward to continue doing our part in the City's Human  
11 Resources Administration. In our community, we will make  
12 a difference on a day-to-day basis for children and  
13 adults.

14 CHIEF JUDGE LIPPMAN: Let me ask you,  
15 Commissioner, I think you mentioned evictions and  
16 additional money being put into providing services to  
17 people's families and what they are facing.

18 You know, with all that we've done, with all  
19 the monies we tried to provide through the State  
20 Legislature, the monies that you're putting out there,  
21 the effort to obtain counsel, it seems like such an  
22 intractable problem. Despite all of that, the  
23 overwhelming numbers of people facing eviction in the  
24 City to not have representation.

25 Where do we go on this issue? It's such a



1           fundamental -- I see eviction support and foreclosure as  
2           the two things that are the most graphically illustrated,  
3           the fundamentals of life.

4                       We know that on the foreclosure side, we see  
5           some progress with the amount of representation that we  
6           have in the State Legislature's Bill that is providing  
7           for the modification conferences. I see some movement.

8                       On the eviction side, is it possible, will  
9           there come a day when people facing the loss of their  
10          homes to eviction will be represented and are there  
11          things -- I know there are, I know we're all doing it --  
12          what are things, short of full representation, that can  
13          help people facing eviction?

14                      COMMISSIONER BANKS: I think there are a range  
15          of things that we can address and we should address.

16                      I recall Joe Strassberg's testimony at the  
17          first hearing that you held as President of the Rent  
18          Stabilization Association. He focused on the range of  
19          cases that end up in court because of problems with the  
20          delivery of basic public benefits.

21                      As the head of the agency now, it is to get a  
22          lot of those benefits and resources that we're working on  
23          to ensure that the adverse incapacity doesn't resolve in  
24          eviction. So we don't get to that point.

25                      We know from data when we evaluated it, that

1 23 percent of people applying for shelter in New York  
2 City had an HRA case closing or sanction before applying.  
3 So the reform is to be focused on that. I'm trying to  
4 stress that problem.

5 Beyond that, there are a range of cases in  
6 which it's a dispute and the presence of legal services  
7 can make a difference between keeping a roof over your  
8 head and being evicted, as we tried to do in putting the  
9 additional dollars into the budget this year, increasing  
10 the baseline funding from 14 to 21 million with 7 million  
11 on anti-eviction services, focus on the most adverse  
12 services within the essentials of life.

13 One can say all the essentials of life in --

14 CHIEF JUDGE LIPPMAN: Focus on it with legal  
15 representation per se.

16 COMMISSIONER BANKS: We know that focusing and  
17 targeting representation to a select kind of cases, we  
18 can make a difference because that's the group of cases  
19 producing high range.

20 Families with high shelter history, when  
21 they're faced with eviction, are more likely to enter  
22 shelters after eviction than other families. So we very  
23 much focus on those cases.

24 Senior citizens are a group of people that my  
25 target resources would like to address their needs as

1 well as part of the consolidation, all of this at HRA,  
2 gives us this flexibility.

3 CHIEF JUDGE LIPPMAN: Put resources where most  
4 basic needs are?

5 COMMISSIONER BANKS: Yes.

6 CHIEF JUDGE LIPPMAN: Let me ask you one other  
7 question.

8 You have been involved in this effort that  
9 we've had in New York State since the beginning to  
10 provide the public funding. You've been with us.

11 From what we talked about, what should we as  
12 we're talking about now in your new role, target?

13 Who are we talking about when we say, "must  
14 have legal services"? We must do everything we can to  
15 try to get them legal services.

16 Where do we go from here, Commissioner? I asked  
17 the Task Force, I think you know this, is in New York  
18 City, what should we aspirationally look to do?

19 Whether you call it civil Gideon, people vying  
20 for the essentials of life, where are we going? What  
21 should we aspire to and how do we get there and in what  
22 timetable?

23 I know that's a huge question, but what's going  
24 through your head as to where you are now? You follow  
25 these hearings, you've been at virtually every hearing

1 over the last years. Where are we and where do you think  
2 we should be going in the broadest strokes?

3 COMMISSIONER BANKS: I think you're going in  
4 exactly the right direction.

5 I think that the original targeting of  
6 essentials of life cases was an important first step in  
7 New York City's template for how to determine which are  
8 the priority cases.

9 I think the dollars that have been put at the  
10 State level dollars, put in at the City level, together  
11 are beginning to move us toward the goal of meeting that  
12 need.

13 CHIEF JUDGE LIPPMAN: I remember someone saying  
14 in the Task Force -- have been saying, essentials of life  
15 are 200 percent the poverty level, is that right?

16 COMMISSIONER BANKS: From what we see in the  
17 front lines in the clients coming into our offices,  
18 that's the right targeting, but the magic ingredient is  
19 resources.

20 The combination of State dollars you've been  
21 putting, the City resources, now we're putting together  
22 advances further down the line with more emphasis. New  
23 York has a template for doing this, that great progress  
24 has been made over the last several years and more needs  
25 to be made.

1 I think New York will give examples to other  
2 States having set this procession in motion.

3 I think the annual hearing gives you an  
4 opportunity to look at what we knew are these, the right  
5 essentials of life needs, the emphasis of a well-trained  
6 staff, more components of this.

7 Ultimately, what we're trying to do through our  
8 targeting of services is we're all going to see a lot  
9 about what it means to target particular groups for  
10 priority representation beyond what legal services would  
11 normally prioritize in these very different cases.

12 Once we begin to do what the Task Force did so  
13 actively in their reports to you, cost benefits --  
14 clearly, putting in more dollars in anti-eviction is  
15 related to what happened to -- what happens when a person  
16 is evicted, an ounce of prevention is worth a pound of  
17 cure.

18 No price can be put on the human cost, trauma  
19 to children, human services.

20 CHIEF JUDGE LIPPMAN: Your point about cost  
21 benefit analysis is very -- we tried to do that, the Task  
22 Force in a number of key areas to show this is the best  
23 investment that our government and our society can make.  
24 Again, not only because of the human beings that you  
25 help, but, because it's our society, our economy, our

1 community at the same time.

2 COMMISSIONER BANKS: I think the focus of cost  
3 benefits has an important long-standing effect. We'll be  
4 announcing a series of reforms with respect to our  
5 employment services.

6 One issue is there are large numbers of people  
7 who have been subjected to sanctions, case closings who  
8 really should be getting assistance to get some  
9 supplemental security assistance.

10 So much work has been done as you and the Task  
11 Force brought those federal dollars into the community,  
12 not to mention the support for the individuals, the  
13 savings of local government.

14 We're really going to highlight that kind of  
15 approach who has its roots and work to be done.

16 PRESIDING JUDGE ENG: New York is blessed with  
17 an enormous resource and that is 15 law schools, 11 of  
18 which are in the Metropolitan Area, four upstate and key  
19 urban centers.

20 Our Court is involved, of course, in approving  
21 student practice orders.

22 I'm wondering if you might have some  
23 suggestions regarding the best use of students under  
24 supervision in rendering the kind of services we need and  
25 what kind of supervision do they actually need from your

1 experience with the Legal Aid Society and your present  
2 position?

3 COMMISSIONER BANKS: Well, that's a great  
4 question. It can take me all morning. I know I don't  
5 have all morning.

6 I think that from my experience, the Legal Aid  
7 Society was always that if you start off with a massive  
8 supervision for staff attorneys, that you'll be well  
9 situated to put a proper system of supervised law  
10 students in place; that some flexibility needs to be  
11 given to Legal Aid providers to build upon the  
12 supervision structures in place, staff to law students.

13 I think sometimes when you look at the  
14 situation, as legal services programs are supervised, law  
15 graduates prior to admission, you have the same issue  
16 with regard to supervising law student dichotomy, how  
17 practices are written to set up two separate systems.

18 And, really, the same approach could pertain to  
19 law graduates as law students. A little more flexibility  
20 to legal services will be helpful.

21 CHIEF JUDGE LIPPMAN: Just to total it up with  
22 Presiding Justice Eng, we know we have a lot of students  
23 who attend the fifty hour program for pro bono scholars.

24 I think it very apropos to say that they have  
25 the supervision that they need because I don't accept for

1 a second the idea that law students are unable to provide  
2 really effective assistance to people in need of legal  
3 services. But they do need to have guidance and  
4 supervision, so I think it's very important.

5 COMMISSIONER BANKS: Apropos where we go into  
6 substitute for staff attorneys model pro bono services,  
7 law students, all the other things that you've been a  
8 leader in expanding are all parts of the solution, get to  
9 the goal we want to reach in terms of meeting the needs  
10 of low income people representation.

11 CHIEF JUDGE LIPPMAN: Thank you, Commissioner,  
12 delight to have you.

13 (Whereupon, Beth Cicero replaced Rosemary  
14 Pfister as the Official Court Reporter at this time.)

15 (Continued on next page.)  
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1 CHIEF JUDGE LIPPMAN: We are now going to have  
2 Leroy Frazer, Jr., who is the Chief of Staff to District  
3 Attorney Thompson, come up and testify.

4 We have a history at our hearings on civil legal  
5 services to have some of the district attorneys from around  
6 the state. We have had District Attorney Vance, District  
7 Attorney DiFiore from Westchester County, District Attorney  
8 Rice from Nassau to testify.

9 There is a relationship between civil legal  
10 services for the poor and the work of our district attorney  
11 offices, and we are delighted to have you. Again, I think  
12 the district attorney is someone who has come onto the scene  
13 in Brooklyn and doing a terrific job. So please, you are  
14 here to represent him today.

15 MR. FRAZER: Good morning. I bring you both  
16 greetings and sincere apologies from District Attorney  
17 Thompson. He intended to be here this morning, although due  
18 to an unforeseen emergency, he was unable to make it, so he  
19 ordered me -- asked me to come and give his testimony for  
20 him.

21 So thank you, Chief Judge Lippman, Justice Eng,  
22 Chief Administrative Judge Prudenti and State Bar  
23 Association President Lau-Kee. I am pleased to be here  
24 today to offer my perspective on the dire need for civil  
25 legal services for low income New Yorkers.

1           The general public would assume that the Kings  
2 County District Attorney's office is only concerned with  
3 prosecutions and with helping victims navigate the criminal  
4 justice system. My office handles over a hundred thousand  
5 cases a year, but for many of the crime victims we see,  
6 their troubles don't end with a guilty verdict. For victims  
7 of domestic violence, elder abuse, elder fraud, immigrant  
8 fraud and unscrupulous landlords, civil legal assistance is  
9 vital.

10           Domestic abuse victims need a lawyer so they can  
11 keep custody of their children and arrange safe  
12 circumstances for visitation. Without legal counsel,  
13 particularly vulnerable victims like people with  
14 disabilities, may find themselves at risk of losing their  
15 kids to abusive partners because they are perceived to be  
16 less capable of parenting.

17           Civil attorneys also help with housing and  
18 landlord-tenant issues and human rights relief when a  
19 domestic violence victim is in danger of losing a job due to  
20 missing work or during a pending court case.

21           When victimization does not rise to the level of  
22 a criminal matter, we have to refer people to a civil  
23 attorney. Too often, people are either turned away due to  
24 insufficient funding or have to wait such a long time that  
25 they may be effectively precluded from getting assistance.

1           My office has a Family Justice Center with four  
2           legal providers: Sanctuary for Families, Urban Justice  
3           Center, South Brooklyn Legal Services and Her Justice.  
4           Also, Day One works with teen victims of domestic violence,  
5           and JASA, Jewish Association of Services for the Aged,  
6           provides support for the elderly clients seeking Family  
7           Court orders of protection against abusive intimate partners  
8           and their adult children.

9           There is a burgeoning demand at the Family  
10          Justice Center for civil legal assistance. If this option  
11          becomes scarcer, vulnerable people will stay in dangerous  
12          relationships even longer, exposing children to a greater  
13          risk of injury.

14          For many victims of domestic violence, the  
15          criminal justice system may not always be optimal. Seeking a  
16          civil protection order in Family Court may be a better  
17          alternative. Research clearly demonstrates that one of the  
18          key components in reducing domestic violence is ensuring  
19          that victims have civil legal remedies and services.

20          Civil attorneys play a crucial role in assisting  
21          victims of intimate partner abuse and human trafficking who  
22          may be eligible for U-Visas and T-Visas, which are conferred  
23          on non-citizens who suffered substantial abuse in a crime  
24          and assisted in the prosecution of a case.

25          Immigration attorneys work closely with our

1 office in getting certifications of a victim's helpfulness,  
2 which begins the process of U-Visa and T-Visa applications.  
3 So far this year, our office has approved 145  
4 certifications.

5 Civil legal assistance is vital to low income  
6 homeowners victimized by mortgage fraud and to apartment  
7 dwellers being forced out of rent-controlled or rent  
8 stabilized buildings.

9 As far as immigrant fraud, we have a new unit  
10 prosecuting those who prey on newcomers, but many require a  
11 lawyer to aid them in filing civil lawsuits against the  
12 individuals or businesses who have harmed them in ways that  
13 do not amount to criminality. Many victims will need an  
14 immigration attorney to untangle the mess caused by empty  
15 promises of a Green Card or an attorney to sue an employer  
16 for unpaid wages.

17 We can't guarantee restitution with a conviction.  
18 And if there is greater access to competent legal help to  
19 get them through the complex immigration process in the  
20 first place, there would not be so much fraud and abuse in  
21 the immigrant community.

22 So speaking from a law enforcement standpoint,  
23 providing funding for these services for low income  
24 New Yorkers can greatly improve their lives, and by turn,  
25 improve their communities and help decrease crime.

1           Finally, as prosecutors, we seek to ensure  
2 justice and fairness for all. It is equally vital there is a  
3 perceived fairness in the civil courts, as in the criminal  
4 justice system. When a citizen cannot afford to retain an  
5 attorney and has to represent him or herself in Civil Court,  
6 they're clearly at a disadvantage, and their experience in  
7 doing so may leave them with a negative view of the courts.  
8 What follows are negative perceptions of lawyers, judges and  
9 the legal profession as a whole.

10           We must do all we can to make sure the public  
11 has faith in our judicial system, and guaranteeing  
12 representation in the civil arena will go a long way toward  
13 fulfilling that goal.

14           Thank you for pursuing access to justice for the  
15 state's neediest citizens.

16           CHIEF JUDGE LIPPMAN: Thank you. I appreciate  
17 your testimony. You'll give the District Attorney our thanks  
18 for that testimony.

19           Let me just ask you one question. I think you've  
20 very much made the link between a lot of people saying why  
21 is the District Attorney or his representative testifying at  
22 a hearing on civil legal services. I think you have hit it  
23 in every regard.

24           Let me ask you one more conceptual question. You  
25 know obviously since Gideon versus Wainwright, we have the

1 constitutional right to representation in criminal cases.  
2 And I talked a little bit in my introductory comments about  
3 we are not there on the civil side; that there is no civil  
4 Gideon as of yet.

5 Do you think it's possible that someone  
6 intimately involved with the criminal justice system, that a  
7 problem in a civil case could be as traumatic to an  
8 individual as the very loss of liberty itself in a criminal  
9 case? Can you equate the two when you talk about legal  
10 representation?

11 MR. FRAZER: Yes, sir, I think we can. I think  
12 that often times -- well, I could think of an instance or  
13 instances where an individual is so harmed as a result of  
14 what takes place in a civil arena that it may lead to them  
15 losing their home, losing their livelihood and therefore,  
16 losing civil liberties that we all share.

17 CHIEF JUDGE LIPPMAN: No. I agree. I want them  
18 to hear it from somebody from the criminal side: Yes, you  
19 know the consequences of not having an attorney can be as  
20 great, and in some instances greater, than the very loss of  
21 liberty. Any other questions? No?

22 CHIEF ADMINISTRATIVE JUDGE PRUDENTI: No. Thank  
23 you.

24 CHIEF JUDGE LIPPMAN: Thank you so much. Thank  
25 you. Great to see you.

1 MR. FRAZER: Thank you.

2 CHIEF JUDGE LIPPMAN: The next witness will be  
3 Councilman Rory Lancman, who is the chair of the new City  
4 Council Committee on Courts and Legal Services.

5 I know Councilman Lancman from his service up in  
6 Albany in the legislature. He had a great interest in  
7 judicial issues at that time, and I know him as someone who  
8 is extremely reform minded, forward looking, a reformer in  
9 the best sense of that word and someone vitally interested  
10 in the success of the justice system.

11 So we welcome you, Councilman, and we are so  
12 pleased that Speaker Mark-Viverito has created this  
13 committee that you are heading now on legal services. I  
14 think it is a recognition of the importance of that issue to  
15 the City council. We welcome you and it is a delight to see  
16 you.

17 COUNCILMAN LANCMAN: Thank you, Judge. It is  
18 great to be here.

19 Chief Judge Lippman, Judge Prudenti, Judge Eng,  
20 Mr. Lau-Kee. It is really an honor to be here, I might add,  
21 in the council district of my colleague, Debie Rose, who I  
22 think you might be hearing from.

23 CHIEF JUDGE LIPPMAN: We will.

24 COUNCILMAN LANCMAN: We all do observe certain  
25 protocols, your Honor.

1 CHIEF JUDGE LIPPMAN: I know. We do. Go ahead.

2 COUNCILMAN LANCMAN: As chair of the Council's  
3 Committee on Courts and Legal Services and as a  
4 representative of a Queens district within the Second  
5 Department, I am particularly happy to testify in today's  
6 hearing.

7 I know you heard testimony last week at the  
8 First Department hearing from Council Speaker Melissa  
9 Mark-Viverito. Today I want to amplify her call for  
10 expanded legal services. Providing counsel when basic human  
11 needs are at stake is both the hallmark of compassionate  
12 government and a sound investment of our money as tax  
13 payers.

14 As a member of the State Assembly in 2010, Judge,  
15 I had the distinct privilege of being present at your  
16 inaugural and, if I may say, rousing Law Day speech when you  
17 announced the Task Force to Expand Access to Civil Legal  
18 Services in New York. Commitment to ensure legal  
19 representation which, as you put it, relates to the basic  
20 human needs of our population: Shelter, sustenance,  
21 personal safety, health or child custody.

22 I remember that speech vividly. I was sitting  
23 next to Helene Weinstein, the terrific chair of the  
24 Judiciary Committee in the Assembly, and I remember  
25 remarking to her how surprised I was at the forward and



1 aggressive vision that you presented that day. It wasn't  
2 what one usually hears from a Chief Judge, and we were all  
3 very, very inspired.

4 CHIEF JUDGE LIPPMAN: Thank you. Appreciate it.

5 COUNCILMAN LANCMAN: Let me applaud the Task  
6 Force's success in moving so far towards achieving the  
7 mission that you envision and that you articulated, which  
8 includes an impressive increase of state funding of civil  
9 legal services of tens of millions of dollars over four  
10 years, which I know very well have not been four years of  
11 otherwise expanding state budgets. It really is an  
12 extraordinary achievement.

13 We in the city make every attempt to treat civil  
14 legal services as the funding priority that it must be. As  
15 you heard last week from the Speaker, council funding  
16 increased 76 percent from fiscal year 2014 to 2015. Of  
17 course, we urge the State Legislature to follow our lead in  
18 next year's budget cycle.

19 We in the City fund large citywide providers like  
20 the Legal Aid Society, Legal Services of New York City, the  
21 New York Legal Assistance Group, but we also fund legal  
22 services through community based organizations such as CAMBA  
23 in Brooklyn, housing conservation coordinators on the West  
24 Side and the Northern Manhattan Improvement Corporation. We  
25 are always on the lookout for innovative funding

1 opportunities that will serve hard to reach populations and  
2 emergent legal needs.

3 We have made significant concentrated investments  
4 in keeping low income New Yorkers in their homes to avoid  
5 having to rely on the costly shelter system, and I was very  
6 excited to hear Commissioner Banks' testimony this morning  
7 about HRA's efforts to target legal services towards  
8 New Yorkers who are most at risk of losing their homes and  
9 entering the shelter system at tremendous cost to city  
10 taxpayers, in stopping domestic violence through empowering  
11 women via legal representation and in maintaining vibrant  
12 families and communities through immigration services and  
13 deportation defense. The millions we spend on these  
14 services saves tens, potentially hundreds of millions of  
15 dollars in shelter costs, incarceration and in public  
16 benefits.

17 It is very, very important that the Task Force  
18 continue, as you have, to emphasize the benefits to  
19 taxpayers of providing adequate civil legal representation  
20 as we as elected officials make the case to our communities  
21 that these are programs that are worthy of funding with  
22 their hard-earned tax dollars.

23 Here in the Second Department, following the  
24 onset of the foreclosure crisis in 2008 and Superstorm Sandy  
25 in 2012, Council-funded legal services organizations have

1 made a critical difference in the lives of struggling  
2 Staten Islanders, Brooklynites and Queens residents. We are  
3 especially proud of how effective these services have been.

4 For example, the New York Legal Assistance Group  
5 reported as of September 1, 2014, it's Storm Response Unit  
6 had recovered \$15 for every dollar spent on representation.  
7 Attorneys advocated effectively with federal, state and  
8 local recovery programs and agencies as well as insurance  
9 companies and contractors and, when necessary, in housing  
10 and bankruptcy court.

11 Thanks in significant part to your work at the  
12 state level as well as city funding, Legal Aid Society  
13 attorneys have been providing foreclosure defense services  
14 for several years now, including crucial review of  
15 foreclosure documents so that families are not unjustly  
16 dispossessed by unscrupulous loan services.

17 Queens in particular has been referred to as  
18 Ground Zero for the subprime lending crisis here in New York  
19 State, including parts of my district, and I have seen how  
20 valuable this legal representation has been to people in  
21 danger of losing their homes.

22 The Council's newest initiative announced last  
23 week by Speaker Mark-Viverito is the Unaccompanied Minor  
24 Initiative, which designates one million dollars in city  
25 funding and leverages an additional \$900,000 in private

1 foundation funding to provide counsel for undocumented  
2 immigrant youth. Due in large part to increased violence in  
3 Central America, the number of unaccompanied immigrant  
4 refugee children and teenagers journeying to New York has  
5 risen dramatically this year. Unrepresented, these youths  
6 were four times more likely to be deported back to the  
7 violence they escaped than if they have counsel.

8 Just yesterday, my committee had its first  
9 hearing together with the Immigration Committee and City  
10 Council on the unaccompanied minor services and New York  
11 City's efforts to assist these children. The bulk of the  
12 conversation was about providing legal services to these  
13 kids so they have the opportunity to assert their valid  
14 legal claims to stay in the United States.

15 One thing that might make its way to your  
16 attention, Judge, is the conversation I had with the City's  
17 immigration commissioner, Nisha Argarwal, regarding  
18 including the Family Court or representation from Family  
19 Court on the Mayor's Task Force for Unaccompanied Minors.  
20 Because probably the most common claim that the minors are  
21 asserting to be able to stay in the United States is to seek  
22 special immigrant juvenile status which first requires a  
23 determination in Family Court of abuse, neglect or  
24 abandonment. So we'd like to see Family Court have a more  
25 formal involvement in the Mayor's Task Force dealing with

1 this issue.

2 Beyond providing direct legal representation, we  
3 believe there's an important role for providing legal  
4 information and basic information about individual's legal  
5 rights. We have funded the Housing Court Answers Program  
6 and Legal Information for Families, which helps litigants  
7 understand landlord-tenant and family law issues and  
8 formulate effective arguments to make on their own behalf  
9 before those courts.

10 We are committed to working with you on these  
11 and similar models that facilitate access to justice. We  
12 hope to begin a discussion soon about more accessible  
13 unbundled services and information for debtors in civil  
14 court, many of whom are victims of aggressive credit card  
15 companies and medical billing schemes that leave valid  
16 defenses available to them, but unvindicated if they don't  
17 have access to counsel.

18 We are also eager to collaborate and leverage the  
19 talents of the New York area law schools and their clinical  
20 programs. Not only do they prepare new lawyers for practice,  
21 they too help fill the justice gap. From The Workers  
22 Cooperative Law Project at the City University of New York  
23 Law School to the Youth Re-Entry Clinic at Brooklyn Law  
24 School to the Consumer Justice for the Elderly Clinic at  
25 St. John's, in my district, our law schools boast many

1 dozens of clinical offerings and are increasingly meeting  
2 the legal needs of low income and ordinary New Yorkers.

3 I myself, when I was in law school, represented  
4 unemployment insurance applicants in something called the  
5 Unemployment Action Center. And while I cannot say that the  
6 clients that I represented had the most experienced counsel  
7 available to them, they certainly had zealous  
8 representation. It was a great way for me, as a law student,  
9 to learn how to be a real lawyer, so-to-speak.

10 So ultimately, we view the justice gap as a  
11 surmountable challenge we in government owe to both indigent  
12 New Yorkers who rely on publicly funded civil legal services  
13 as well as to better-off New Yorkers whose tax funds the  
14 majority of the public services to make the requisite  
15 investment and to close the gap for dignity's and  
16 efficiency's sake.

17 I thank you for your time today, and I join your  
18 efforts to secure the requisite funding necessary to make  
19 equal justice a reality for all New Yorkers.

20 CHIEF JUDGE LIPPMAN: Thank you, Councilman. We  
21 greatly appreciate the efforts being made by the Council, by  
22 you, by the Speaker to focus on this area.

23 One question I'd like to raise for you. You talk  
24 about a lot of different models to provide legal assistance.  
25 One of the things we are doing -- and we'd love for you, for

1 the Council to be involved with -- we now have a program  
2 using non-lawyers to help with the assistance of legal  
3 services. It is a program called a Navigator Program that  
4 actually allows non-lawyers to get into the courtroom with  
5 litigants. Not to argue a case as a lawyer but to provide  
6 moral support, provide information, to answer questions the  
7 judge may have.

8           It's based on an English model that in  
9 Great Britain, a lot of the legal services provided are done  
10 through non-lawyers under the theory that a non-lawyer who  
11 focuses on a particular niche can provide great, great  
12 assistance, as opposed to maybe a lawyer generalist who is  
13 not into that particular -- like the Housing Council that  
14 the federal government supports.

15           And President Lau-Kee knows. The Bar has been  
16 active with us in looking at this model. We think it is an  
17 interesting, new emerging area that can provide help to  
18 close the justice gap, because our view is we look at every  
19 possible avenue. I think it is an area we'd love to have the  
20 collaboration of the Council on.

21           COUNCILMAN LANCMAN: Yes, Judge, I'd love to work  
22 with you on that and try to develop that line of thought. I  
23 mean, let's be honest. The vast majority of the legal work  
24 is, to a certain extent, routinized. We have all had the  
25 pleasure of working with very capable paralegals at some

1 point in our career who know a particular aspect of the law,  
2 whether it's personal injury, housing or what have you.

3 CHIEF JUDGE LIPPMAN: Right.

4 COUNCILMAN LANCMAN: And most of these legal cases  
5 for people who are poor and without legal representation,  
6 they are losing these cases and they are losing their  
7 claims. Not for want of a lawyer who is capable of coming  
8 up with a brilliant and legal theory or doing spectacular  
9 cross-examination, but the basic filing of papers.

10 I mean, Judge, I felt when I was in the Assembly,  
11 one of your remarkable achievements was, if I remember  
12 correctly, as a matter of rule, you require the banks to  
13 prove they actually owed the notes they were suing to  
14 foreclose on.

15 So much of the legal services that poor people  
16 require don't need to be acquired by Clarence Darrow. They  
17 just need to have their ducks in a row, their I's dotted and  
18 T's crossed.

19 CHIEF JUDGE LIPPMAN: I think the Bar recognizes  
20 and we recognize that no stone is going to be left unturned.  
21 The other thing I point out before I ask if anybody else has  
22 any questions, is in the consumer credit area. In addition  
23 to foreclosure, we very much tightened the rules on consumer  
24 credit cases to ensure that the creditors -- which often  
25 with these things, they buy a lot of debt at one time and



1 they don't have the backups that demonstrate that there is a  
2 good claim.

3 So in addition to wanting to get some  
4 representation in the consumer credit area, we have just  
5 recently changed the rules. It is another area I think your  
6 committee might look at. Consumer credit is such a big area  
7 for people in the legal aid system.

8 COUNCILMAN LANCMAN: It is. For those of you who  
9 have gone through Civil Court to get to Supreme, you know  
10 the Civil Court docket is clogged with these consumer credit  
11 cases. I think in Queens, the trial dates that people are  
12 being offered are so far into the future --

13 CHIEF JUDGE LIPPMAN: And so many of them get  
14 default judgments that aren't based on much.

15 COUNCILMAN LANCMAN: Right.

16 CHIEF JUDGE LIPPMAN: That's how we feel. It is  
17 our responsibility to make sure there's documentation to  
18 support --

19 COUNCILMAN LANCMAN: Right. So enhancing the  
20 court's own internal rules, as well as providing people who  
21 aren't necessarily lawyers but know which documents need to  
22 be presented.

23 CHIEF JUDGE LIPPMAN: Exactly.

24 COUNCILMAN LANCMAN: And if they are not there,  
25 someone needs to raise their hand.

1 CHIEF JUDGE LIPPMAN: Exactly.

2 COUNCILMAN LANCMAN: Would be very, very helpful.

3 CHIEF JUDGE LIPPMAN: Exactly.

4 Justice Eng?

5 PRESIDING JUSTICE ENG: Thank you. First, I'd  
6 like to thank you on a personal level for your dedication  
7 and service. My parents remain your constituents in Queens,  
8 and they are, of course, very happy with the effort that  
9 you've made in the areas that we have discussed.

10 But you made a point before about the  
11 dissemination of information. It seems to me that so much  
12 could be avoided by the dissemination of information. We  
13 have seen these aggressive anti smoking anti-addiction  
14 campaigns. Perhaps a vigorous educational program involving  
15 things like predatory lending, contractor scams. Things like  
16 that might head some of these off over here and before they  
17 find the way to the courts. I am wondering what your  
18 thoughts are regarding efforts in that area.

19 COUNCILMAN LANCMAN: I think that's an excellent  
20 point, Judge. I remember in the Assembly during the subprime  
21 lending crisis, part of our efforts, a big part of our  
22 efforts, was reforming the legal process for people who  
23 found themselves in foreclosure. But we also directed  
24 resources to nonprofit organizations, neighborhood  
25 organizations that could counsel people as they were

1 purchasing a home or refinancing so that they would walk  
2 into a transaction with some knowledge about what to be  
3 aware of and what to stay away from. And that an ounce of  
4 prevention was worth many pounds of cure.

5 If we could identify and target the same way HRA  
6 is identifying where to direct legal services for people who  
7 find themselves at that point in the process, so-to-speak,  
8 if we could similarly target educational resources to people  
9 who can stay out of trouble before they find themselves in  
10 court, I think that that would be money very, very well  
11 spent.

12 THE COURT: President Lau-Kee?

13 MR. LAU-KEE: Thank you very much. As practicing  
14 lawyers, we are looking again at the Navigators Program as  
15 being something that has a lot of possibilities. Just so  
16 you know, we are also working on looking at how lawyers deal  
17 with this. Lawyers have very strong ethical constraints,  
18 and we are just sorting out now what lawyers' obligations  
19 are when you unbundle the services, how does that really  
20 work. So this is something that we are looking into, and as  
21 we keep our eye on the Navigators Program and how that's  
22 working and evaluated and find the possibilities, we hope  
23 that we will have a role in trying to leverage all these  
24 efforts.

25 COUNCILMAN LANCMAN: I would urge as you proceed,

1 we proceed together, because I think it is very important.  
2 The Council can have a big role in that.

3 CHIEF JUDGE LIPPMAN: We agree. We want to  
4 engage community services organizations and advocacy  
5 organizations that know their communities very, very well  
6 and can make sure that the program efforts are  
7 linguistically, culturally, socioeconomically attuned to the  
8 communities we are trying to help so that we don't create  
9 something where there is an opportunity for people to be  
10 exploited.

11 We see, for example, in the immigration arena  
12 where there is proliferation. Non-lawyers -- or at least it  
13 had been a particular problem in the past but still ongoing  
14 -- where you had non-lawyers providing services and/or  
15 purporting to provide services and they were really  
16 exploiting their community.

17 So if with the power and the comprehensive  
18 authority of the judicial system and the legislative branch  
19 we could do that in a way that's structured and has rules  
20 and engages the communities directly, I think it could be  
21 very, very successful.

22 I think one of the things we have to do that I  
23 spoke to President Lau-Kee about, we have to still look at  
24 our practice of law, statutes and regulations; what is it,  
25 what is the practice of law. And as you say, draw the right

1 lines so that we don't have people being taken advantage of.  
2 And yet we use all the other resources that are out there  
3 that might give people legal assistance.

4 COUNCILMAN LANCMAN: Certainly. Look, it has to  
5 be put to the Bar. If you are not going to be able to --  
6 either because of the nature of your practice or you're  
7 going to be unwilling to put in the number of pro bono hours  
8 that it would take to meet this vital, arguably  
9 constitutional need, then you can't resist every reasonable  
10 effort to allow non-lawyers to perform functions that  
11 traditional lawyers have provided. Because we have to get  
12 at the problem.

13 CHIEF JUDGE LIPPMAN: I think we are very much  
14 collaborating on how to get this done. Because it is really  
15 a problem that we see in so many types of cases; like  
16 housing evictions, consumer credit, child support,  
17 particular areas where ninety some odd percent of the people  
18 are unrepresented. So how do you get them help if we cant,  
19 for whatever the reason, are unable to provide legal  
20 representation. We've got to be able to, again, draw lines  
21 and figure out how we do this. Judge Prudenti?

22 CHIEF ADMINISTRATIVE JUDGE PRUDENTI: I just  
23 wanted to take the opportunity for a minute, Chief Judge, to  
24 thank Councilman Lancman for mentioning the Unaccompanied  
25 Minor Initiative and to let him know that the Office of

1 Court Administration, with Judge Fisher's help and  
2 Judge Edwina Richardson Mendelhson, we have established  
3 practices and protocols for applications for special  
4 juvenile immigrant status. We'd love to share them with you.  
5 We'd love to work with you. Please don't hesitate to call  
6 upon us.

7 COUNCILMAN LANCMAN: Terrific. Absolutely. The  
8 Chief Judge used the word collaborative.

9 CHIEF JUDGE LIPPMAN: We look forward to  
10 collaborating with the committee. Great to have you as the  
11 chair of the council's committee. Thank you, Councilman.  
12 Appreciate it.

13 COUNCILMAN LANCMAN: Thank you.  
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1 CHIEF JUDGE LIPPMAN: Now we have the pleasure  
2 of having another leader from the New York City Council  
3 that is the Honorable Debbie rose.

4 Debbie is the majority leader for New York City  
5 Council District 49, pretty much around this neck of the  
6 woods.

7 COUNCILWOMAN ROSE: Yes, right across the  
8 street.

9 CHIEF JUDGE LIPPMAN: Okay, good to see you,  
10 Councilwoman, delighted.

11 COUNCILWOMAN ROSE: Good morning.

12 CHIEF JUDGE LIPPMAN: Good morning.

13 COUNCILWOMAN ROSE: First up I want to say I am  
14 indeed honored to be able to present testimony before the  
15 Chief Justice and such a distinguished body of jurist.

16 I really would like to thank my council member  
17 Rory Lancman for taking up the leadership of our legal  
18 committee with something that's been determined by the  
19 City Council as a very important issue.

20 So, I say good morning to everyone.

21 My name is Debbie Rose. I do represent the  
22 49th District which is comprised of the North Shore of  
23 Staten Island in the New York City Council and you are,  
24 in fact, in my district.

25 CHIEF JUDGE LIPPMAN: I know it, I feel it.

1 COUNCILWOMAN ROSE: I'd like to congratulate  
2 you, Judge Lippman, and the Task Force for the tremendous  
3 work you have done to expand access to our justice system  
4 for all New Yorkers; conducting these hearings, producing  
5 reports on civil legal needs of New Yorkers and including  
6 millions of dollars for the provision of civil legal  
7 services in the budget of the Office of Court  
8 Administration for the last four years. These are  
9 extraordinary accomplishments.

10 CHIEF JUDGE LIPPMAN: Thank you.

11 COUNCILWOMAN ROSE: We have not witnessed these  
12 previously.

13 Second, I'd like to thank you for inviting me  
14 to testify today before this august tribunal on the civil  
15 legal needs of Staten Islanders, a topic of great  
16 importance to me, a legislator, and to the thousands of  
17 Staten Islanders in need who are my constituents.

18 I'd like to present to you today a snapshot of  
19 my district and the documented legal needs of my  
20 constituents.

21 In my District, you may not realize it, but  
22 Staten Island is a microcosm of the gorgeous mosaic of  
23 almost 500,000 least populous borough of New York City,  
24 however, it is the fastest growing borough in New York  
25 State with a larger population than the City of Atlanta.



1           People who have moved to this area because of  
2           the less expensive rents, easy access to Manhattan and  
3           they have filled our neighborhoods to the limit.

4           The area I represent, the North Shore of Staten  
5           Island, is the boroughs oldest most densely populated  
6           area and it was established by the Indians back in 2100  
7           B.C.

8           My North Shore has the boroughs most ethnically  
9           diverse population.

10          It's oldest infrastructure and its densest  
11          housing.

12          The Park Hill section of my district is  
13          affectionately known as "Little Liberia" and has the  
14          largest Liberian population outside of Africa.

15          The neighborhood of Tompkinsville has the  
16          largest Sri Lankan population outside of Sri Lanka.

17          Indeed, the North Shore is home to many  
18          immigrants from African countries; Central and South  
19          American countries, India, Albania, China and Poland.

20          While much of New York City has recovered from  
21          the great recession from 2008 through 2009, it has not  
22          been an even recovery and the need for legal services for  
23          those still struggling to get by has remained stubbornly  
24          high.

25          For example 22.2 New Yorkers turned to food

1 stamps to get by in 2013, up 14.9 percent from 2008.

2 Unemployment was 7.3 in 2008 and today  
3 7.9 percent.

4 The percentage of those living below poverty  
5 went from 18.4 percent in 2008 to 20 percent in 2012.

6 Civil legal service attorneys provide critical  
7 services to thousands of these low-income residents every  
8 year, serving as a lifeline to many that, without their  
9 assistance, would otherwise have nowhere else to turn.

10 As an elected official, I know the provision of  
11 civil legal services not only saves lives but saves money  
12 as well.

13 When someone does not have representation in  
14 our complex legal system, they are often unsuccessful or  
15 they give up out of frustration. Their unmet legal needs  
16 invariably take a toll on our local government and on the  
17 taxpayers; from housing to medical care to education, the  
18 long term costs of unrepresented individuals in our legal  
19 system touch all aspects of the community.

20 More than 3 million New York City residents  
21 have incomes below 200 percent of the federal poverty  
22 level. Yet 800 of the 800,000 lawyers in New York City  
23 are dedicated to providing legal services to the poor.

24 As a result this lack of funding for civil  
25 legal services, the Chief Judge's Task Force has

1 consistently found that less than 20 percent of the legal  
2 needs of low income New Yorkers are being met.

3 Sadly, this is confirmed by my constituent  
4 services staff's time and, again, we struggle to find the  
5 assistance for my constituents, a certain kind of  
6 resources for low-income Islanders.

7 The need for legal services for Staten Island  
8 is large.

9 Last year the two major providers of free legal  
10 services on Staten Island, Legal Services NYC and Legal  
11 Aid Society handled 3,010 cases, assisting over 10,138  
12 people.

13 The main areas they handled include housing,  
14 immigration, disaster relief and domestic violence which  
15 I will further discuss in my testimony.

16 But, I would really be remiss if I did not at  
17 least briefly mention other areas that we have seen in  
18 the need for medicaid health care benefits, especially  
19 for domestic violence victims, bankruptcy, consumer  
20 credit and credit areas championed by New York City and  
21 the stop credit check discrimination Bill A-57 because  
22 they are so critical for people who loss their jobs  
23 and/or become unemployed during the recession and are  
24 still struggling to get by.

25 Family law where there's virtually no legal

1 assistance for women who are not in domestic violence  
2 situations but struggle with child custody and payee  
3 issues.

4 Reentry to help people try to integrate into  
5 their community is especially important as there is so  
6 much information out there as to what happens when  
7 someone transitions from jail back into the general  
8 population is entitled to.

9 Meeting the legal needs of limited English  
10 language proficient clients disability rights which helps  
11 low income disabled children and adults get social  
12 security disability benefits saves the City and State  
13 millions of dollars.

14 Education law because we receive more and more  
15 calls from parents seeking help for their student in  
16 disciplinary proceedings and in implementing IAP.

17 Elder law, particularly in the area of elder  
18 abuse which advocates in my district have said is  
19 experiencing a sharp rise in numbers.

20 Employment law, another area championed by the  
21 City Council in legislation which I was pleased to  
22 sponsor such as the pregnancy discrimination bill,  
23 unemployment discrimination, bail; because in this  
24 difficult economy we are in, we are all in, we have  
25 experienced an increase of people being denied job

1 opportunities for improper reasons.

2 Then there is still the foreclosure prevention,  
3 because, according to recent reports the epicenter of the  
4 U.S. foreclosure crisis is shifting away from States like  
5 Florida and Arizona to New York and New Jersey with  
6 foreclosure filings in New York City increasing  
7 30 percent in 2013.

8 And, its reached a three year high of 15,993.  
9 The parent representation because in the North Shore of  
10 Staten Island it has been documented that we have the  
11 highest percentage of children being taken away from  
12 their parents in all of New York City.

13 Prevention of low income housing -- I'm sorry,  
14 preservation of low income housing because we have a  
15 crisis of the lack of affordable housing on the North  
16 Shore, an area which is a high priority for the City  
17 Council and the de Blasio Administration.

18 Then there is unemployment insurance benefits  
19 which then become the lifeline for people who lost their  
20 jobs.

21 For the purposes of my testimony, I will focus  
22 in depth on the housing, immigration, domestic violence  
23 and disaster assistance.

24 Housing: Most housing problems on Staten  
25 Island stem from a critical lack of affordable housing on

1 the Island which make tenants fearful of losing their  
2 home and thus, more vulnerable from abuse from the  
3 landlord.

4 Addressing the affordable housing crisis in New  
5 York City is an important issue.

6 Who better to address these issues than our  
7 civil legal services attorneys who have been in the  
8 trenches fighting for housing rights.

9 The landlord/tenant issues we see commonly in  
10 my office include the lack of apartment repairs and  
11 rodent and insect infestation. In SROs in Staten Island,  
12 the tenants are experiencing poor maintenance, dangerous  
13 and unsanitary living conditions.

14 Increasingly, we are seeing discrimination  
15 claims related to the refusal to rent to HIV/AIDS  
16 constituents who receive housing benefits.

17 The civil legal services funding does much to  
18 help address this imbalance.

19 Our constituents also in special housing have  
20 problems not just in the press for many months now  
21 documenting their problems, but our tenants work through  
22 the NYCHA system for repairs and concerns regarding their  
23 apartments.

24 Serious concerns common amongst my constituents  
25 are mold remediation because of the lack of repairs to

1 grow mold is a constant issue and it's a health and  
2 safety issue.

3 Appliance and repair/replacement, major  
4 equipment repair such as elevators, people who have  
5 disabilities I'm very sensitive to, those who cannot gain  
6 access to their apartments because elevators are out of  
7 repair for extended periods of times and safety and  
8 security concerns.

9 When NYCHA is slow to respond, legal assistance  
10 can make a tremendous difference.

11 For example, we have a constituent with  
12 constant mold issues. After two years we were able to  
13 have the building inspected and the cause of the mold was  
14 identified. The heating system had not be cleaned for  
15 years.

16 On their own, constituents are not often able  
17 to achieve results or and navigate the complicated NYCHA  
18 system.

19 Section 8: There are many basement apartments  
20 on Staten Island approved for Section 8 despite the fact  
21 they are not legally approved rentals.

22 When NYCHA inspects the apartment and finds an  
23 apartment uninhabitable, they discontinue the payment of  
24 the Section 8, the Section 8 payment, after which tenants  
25 are sued by landlords for non payment and evicted.

1           It is also common for landlords to demand  
2 additional money from Section 8 tenants, which they often  
3 pay, for fear of losing an affordable apartment.

4           In these and many other instances, legal  
5 assistance can make the difference between a home and  
6 homelessness for countless low-income New Yorkers.

7           The need of the immigrants in my district  
8 include federal issues such as naturalization,  
9 citizenship and deportation. But, also they include  
10 State Court issues such as discrimination based on  
11 immigrant status, particularly in the area of housing.

12           And, low income, immigrants, victims of  
13 domestic violence are particularly vulnerable to  
14 oppression, exploitation and abuse because of their  
15 immigration status.

16           Moreover, a lack of legal immigration status  
17 deter victims from reporting crimes or assessing civil  
18 legal services.

19           Immigrants also often lack proper employment  
20 credentials and are, therefore, more susceptible to  
21 exploitation by employers and lack access to health care  
22 and other essential benefits. Language barriers also  
23 impede access to justice.

24           The legal, economic and social barriers faced  
25 by immigrants in all of these areas can seem



1 insurmountable without effective tools, support and  
2 advocacy from civil legal service attorneys.

3 Domestic violence is a serious public health  
4 crisis in my District.

5 In 2013, there were 9,549 domestic incidents in  
6 the precincts in my council district. That's roughly 26  
7 incidents everyday.

8 The Mayor's Office to combat domestic violence  
9 reports 56 percent of felony assaults which occur in my  
10 District were domestic violence related.

11 Overall, the Richmond County D.A.'s Special  
12 Victims Bureau has reported that 22 percent of the 13,000  
13 crimes every year on Staten Island are domestic violence  
14 related.

15 Studies suggest access to legal services is  
16 critical in helping victims escape from abusive  
17 relationships and could decrease this number of victims  
18 by as much as 21 percent.

19 I don't need these statistics to inform you of  
20 this crisis in my community because I hear from  
21 constituents everyday. Just yesterday morning I received  
22 an email from a constituent pleading for help from a  
23 spouse who had isolated her and made her completely  
24 dependent on him.

25 In order for her and others like her to

1       successfully separate from abusive relationships, they  
2       must utilize multiple diverse legal procedures, including  
3       securing orders of protection against their abusers,  
4       navigating complicated family law, waging child care  
5       difficulties, custody disputes and accessing safe  
6       housing.

7                Additionally, many domestic violence victims  
8       are financially dependent on their abuser and need  
9       assistance accessing public benefits and other supports  
10      so that they can support themselves when leaving an  
11      abuser.

12               Staten Island, as you know, was a big victim,  
13      hard hit by Super Storm Sandy which wreaked havoc  
14      especially on Staten Island.

15               Twenty-four Staten Island residents died as a  
16      result of the storm which is the largest death toll of  
17      all the boroughs.

18               Approximately 16 percent of the borough was  
19      inundated with flooding, approximately 75,000 residents.

20               The North Shore which many people didn't  
21      think -- didn't acknowledge suffered substantial damage  
22      from Hurricane Sandy, massive power outages, hundreds of  
23      downed trees and power lines.

24               Our businesses were primarily very hard hit,  
25      especially along Richmond Terrace and Bay Street.

1           Disaster survivors have complex legal needs in  
2           the wake of Sandy, legal service attorneys provided  
3           invaluable information on school transfers,  
4           transportation, and immigration and family matters  
5           related to lost documents. They required help filing  
6           FEMA disaster assistance, unemployment insurance claims,  
7           replacements of medication, assessment of health care  
8           needs, and assistance in obtaining food stamps and public  
9           assistance.

10           Ongoing advice on a variety of housing related  
11           subjects will be crucial including landlord/tenant  
12           relations, public housing, Federal Section 8 homeowner  
13           issues and foreclosure.

14           In addition, recovery could not have moved  
15           forward without small business assistance, including help  
16           obtaining loans provided by free of charge by legal  
17           service attorneys.

18           The Universal Declaration on Human Rights  
19           states the following:

20           Everyone has the right to a standard of living  
21           adequate for the health and well being of himself and his  
22           family, including food, clothing and medical care and  
23           necessary social services, and the right to security in  
24           the event of unemployment, sickness, disability,  
25           widowhood, old age or other lack of livelihood in



1                   We appreciate the testimony. I think you laid  
2                   out the breath of the problem so well, especially out  
3                   here on the Island.

4                   Let me ask you a question in relation to legal  
5                   services here on Staten Island.

6                   Is there good communication providers?

7                   Do you know when people come in where to send  
8                   them? Is there a power back and forth between the  
9                   providers?

10                  I know you need more resources, but with what  
11                  you have, are you able to tap into them to get people  
12                  help?

13                  COUNCILWOMAN ROSE: We have a wonderful  
14                  relationship with our legal services here.

15                  If it were not for them, many of the  
16                  constituent issues that we have in my office everyday we  
17                  would not be able to address.

18                  We are heavily reliant on our legal services to  
19                  help our constituents negotiate the legal waters and to  
20                  resolve their issues.

21                  The problem is that there are just not enough  
22                  resources.

23                  CHIEF JUDGE LIPPMAN: We know.

24                  COUNCILWOMAN ROSE: And they are overwhelmed.  
25                  They are overwhelmed. They do an excellent job with the

1 resources that they have, but, the need is so much  
2 greater as I laid out.

3 CHIEF JUDGE LIPPMAN: You did.

4 COUNCILWOMAN ROSE: In every, every area, there  
5 is a need for my constituents to access legal services.

6 CHIEF JUDGE LIPPMAN: I think you set it out so  
7 well.

8 I think people don't realize that almost every  
9 conceivable problem that comes up in a community has some  
10 relevance to the legal system and needs representation or  
11 someone who talks the language of whoever your dealing  
12 with, whether its the education bureaucracy or a landlord  
13 or whatever it might be. There's one more question.

14 Do you think one of the issues we had at the  
15 beginning of this endeavor that we kept to is that we set  
16 the bar at 200 percent of poverty level, does that mostly  
17 capture most of the people?

18 I know even the average middle class person has  
19 problems navigating the justice system, getting the  
20 representation, but in terms of civil legal services, the  
21 funding that we do get, does that capture most of the  
22 people in the most desperate need, 200.

23 COUNCILWOMAN ROSE: Yes, I believe it does.  
24 But, there are still a number that go under the radar  
25 because they're undocumented.

1 CHIEF JUDGE LIPPMAN: Yes, of course.

2 COUNCILWOMAN ROSE: They are afraid to come  
3 forward.

4 CHIEF JUDGE LIPPMAN: We find them to give them  
5 hope.

6 COUNCILWOMAN ROSE: So, it's very difficult to  
7 say that that's the finite number.

8 CHIEF JUDGE LIPPMAN: Right, there's no hard  
9 and fast rule.

10 COUNCILWOMAN ROSE: It's very general, a good  
11 range.

12 CHIEF JUDGE LIPPMAN: Any questions?

13 May I just say that I also had a lot of  
14 dealings with the navigators. I think that you point on  
15 what is bringing them into the system.

16 I'm so glad. It's important for us to get the  
17 feed back.

18 COUNCILWOMAN ROSE: We had to utilize them in  
19 medical -- in the medical area where found people having  
20 difficulty with their benefits or having been unemployed  
21 and/or losing their benefits and being told that they no  
22 longer have coverage.

23 And, we've had issues where people have  
24 actually had coverage were entitled to certain benefits  
25 but were not given those benefits.

1                   And it was through the navigators working with  
2                   them at in all the early stages bringing them in, telling  
3                   them what paperwork they have to have and making calls  
4                   that we were able to have successful outcomes.

5                   So, I would like to see that program extended  
6                   when you look at its resources.

7                   CHIEF JUDGE LIPPMAN: Great. Thank you so  
8                   much.

9                   The City Council is very well represented  
10                  today.

11                  Thank you so much.

12                  (Whereupon, Beth Cicero replaces Rosemary  
13                  Pfister as the Court Reporter at this time.)

14                  (Continued on next page.)

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CHIEF JUDGE LIPPMAN: Reverend Doctor  
Demetrius S. Carolina.

REV. DR. CAROLINA: Good morning.

CHIEF JUDGE LIPPMAN: Pleasure to see you today.

REV. DR. CAROLINA: My pleasure. Thank you so  
much. I am pulling out night glasses because my eyes work  
at will.

CHIEF JUDGE LIPPMAN: Okay.

REVEREND DR. CAROLINA: Good morning and thank you  
for inviting me to address the Chief Judge and this  
distinguished panel of experts with regard to expanded  
access to civil legal services in New York.

I am executive director of the Central Family  
Life Center, which seeks to improve the lives and  
environment of Staten Islanders. Our program runs the gamut  
of serving low income Staten Islanders. Our anti-gun  
violence program, 49 Strong, is based on the Cure Violence  
model that uses credible community members, some of which  
have been involved in the criminal justice system and have  
turned a new leaf to identify potential violence in the  
community and to interrupt it at its root.

As part of that model, the City Council funded  
wraparound services, which includes mental health hospital  
legal services that are provided by the Legal Aid Society.

1 We also have a Re-Entry and Recidivism Prevention Program  
2 that supports our Cure Violence work which promotes strong  
3 interpersonal and familial relations, community engagement,  
4 economic self sufficiency and healthy living for accused and  
5 formerly incarcerated participants.

6 Our afternoon literary and tutoring programs  
7 serve a diverse population of students from nearby  
8 communities, many of whom speak English as a second  
9 language. We also have seniors programs in our center where  
10 we host instruction, outings, events and where seniors come  
11 and can gain access in terms of information on health,  
12 wellness, voting, housing and legal issues.

13 I am here today to testify to the importance of  
14 funding the civil legal services program and the need to  
15 increase funding to ensure that low income populations on  
16 Staten Island have access to legal services.

17 Staten Island is New York City's most under  
18 represented and often forgotten borough. We are connected  
19 to the rest of the boroughs by either ferry or bridge. We  
20 often feel isolated from the other boroughs. As a result,  
21 before, during and after Hurricane Sandy, we have had a lack  
22 of services on the Island available to our residents,  
23 especially low income residents of color.

24 Our low income residents are affected by the same  
25 issue as other low income New Yorkers such as poor

1 conditions in their apartments and eviction proceedings, as  
2 you've heard, difficulties in making payments to banks in  
3 order to keep their homes or victims of predatory lending  
4 from their mortgages and access to benefits such as public  
5 assistance, food stamps or health benefits like Medicaid and  
6 Medicare.

7 Staten Island has a large immigrant population  
8 community where individuals not only need assistance with  
9 navigating the federal immigration process, but in keeping  
10 their families together, they have a tremendous need for  
11 civil legal assistance. Our low income residents are  
12 equally confused by courts and other bureaucracies, as are  
13 other New Yorkers. And yet, yet issues of poverty and social  
14 justice inequity are exacerbated on Staten Island because we  
15 are isolated from the other boroughs often.

16 As a result, the need for civil legal services on  
17 Staten Island is heightened. We are grateful for the  
18 assistance provided by the civil legal services  
19 organizations on the Island, but it is not nearly enough to  
20 serve the low income communities. Hurricane Sandy struck  
21 the northeastern region on October the 29th, 2012,  
22 destroying homes and apartments, triggering massive power  
23 outages and flooding subways, stores and office buildings.  
24 The storm affected almost 300,000 New Yorkers and took 49  
25 lives. It damaged over 27,000 homes, leaving 2.1 million

1 people without power immediately after the storm.

2 About 16 percent of Staten Island was inundated  
3 with flooding, impacting approximately 75,651 residents.  
4 After Hurricane Sandy hit, several legal service  
5 organizations began providing disaster relief and legal  
6 assistance at shelters for homeless and displaced residents  
7 at the disaster centers and at community based organizations  
8 on Staten Island.

9 Many were concerned and confused about their  
10 access to federal benefits, insurance claims, housing and  
11 jobs. The poor were hardest hit by the storm. Legal  
12 service organizations, including the Legal Aid Society and  
13 Legal Services NYC helped desperate families whose lives  
14 were shattered by the storm to access benefits and programs.  
15 They have also greatly helped families with legal disputes  
16 that arose out of the devastation caused by the storm.

17 Two years after the storm, however, there are  
18 still many areas on Staten Island that have yet to be  
19 served. Low income residents of color on Staten Island are  
20 still trying to pull together their limited resources in an  
21 effort to rebuild communities. Without the expansion of the  
22 Legal Aid Society or other legal service organizations,  
23 those areas will remain underserved. An expansion of legal  
24 services for poor Staten Islanders is gravely needed so that  
25 needful support can be provided for underserved areas that

1 were mostly affected by the storm. The City Council,  
2 through its Task Force to Combat Gun Violence, identified a  
3 neighborhood in Staten Island that had a high rate of gun  
4 violence. The City funded the Central Family Life Center to  
5 bring to that neighborhood a Cure Violence model, which  
6 identifies and interrupts gun violence at its root.

7 As part of this City Council's program, we also  
8 receive wraparound services which include legal services  
9 from the Legal Aid Society. Through the Legal Aid Society's  
10 Community Development Project, which helps non-profits and  
11 small businesses, the center was able to fill to capacity  
12 and develop 49 Strong, saving lives, which is our anti-gun  
13 violence project.

14 Through the provisions of legal services, our  
15 nonprofit was able to better address social economic and  
16 social justice needs in the community through the Cure  
17 Violence initiative. The legal services offered by the  
18 Legal Aid Society also continued to help our community  
19 members who have been greatly affected by violence.

20 While the target area that our Cure Violence  
21 Project has focused on and received great assistance, our  
22 neighborhoods and communities and Staten Island have not yet  
23 received the same benefits. The nature of Staten Island is  
24 such that one area affects other areas, and that can be seen  
25 through crime and violence. Our communities are

1 interconnected, and the assistance from the City Council has  
2 addressed only a small piece of a much larger issue on  
3 Staten Island.

4 All Staten Islanders affected by violence need  
5 resources, especially civil legal services in order to  
6 repair their communities. More civil legal services are  
7 needed to be able to assist all low income Staten Islanders.  
8 Our isolation and lack of access to services exacerbate the  
9 need of the low income people of color in our particular  
10 borough.

11 We ask that you do not forget about Staten Island  
12 in your provisions of legal services for the poor, and  
13 instead, expand civil legal services to low income  
14 Staten Islanders. Thank you so much for this opportunity.

15 CHIEF JUDGE LIPPMAN: Thank you, Doctor, for  
16 coming in. Let me ask you the same question I asked  
17 Councilwoman Rose. Do you have enough access to providers?  
18 In other words, you know where to go when you have a  
19 problem. It's not a question of we don't have enough  
20 resources there, but the communication is good between the  
21 center and the providers?

22 REV. DR. CAROLINA: I would say we have phenomenal  
23 access to the services that we now presently have and that  
24 the relationship between the central --

25 THE COURT: Good, strong?

1           REV. DR. CAROLINA: Extremely strong. And they  
2 may very well also tell you that they get tired of our  
3 calls, because we consistently rely on them for various  
4 needs.

5           CHIEF JUDGE LIPPMAN: Let me ask you another  
6 question. If they don't come in to you, do they know where  
7 Legal Services is? Is it only through the middle man,  
8 so-to-speak, that they are able to find their way over  
9 there? Do people know where to go for Legal Services in  
10 Staten Island if they didn't come in to your particular  
11 program?

12           REV. DR. CAROLINA: I would argue that many are  
13 aware of Legal Services because of the work that they are  
14 doing, as the councilwoman has stated, you know, over 30,000  
15 interactions. However, our program does provide certain  
16 clientele with information about access to Legal Services  
17 that they may not otherwise be aware of.

18           CHIEF JUDGE LIPPMAN: I think we need the middle  
19 people. Don't get me wrong. But I wonder whether the  
20 average person just out there when they have a problem, if  
21 they are not going to some center or community organization  
22 or the council person's office, knows it exists, and I guess  
23 it's uneven. A lot of the people do and some don't.

24           REV. DR. CAROLINA: Some don't. Cultural people go  
25 where they are most comfortable, familiar with. And having

1 this information then allows us to then point them in the  
2 right direction.

3 CHIEF JUDGE LIPPMAN: Right. I know exactly.

4 Any questions? No?

5 Thank you, Reverend Doctor. Thank you for your  
6 work.

7 REV. DR. CAROLINA: Thank you.

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1 CHIEF JUDGE LIPPMAN: Thomas Cunsolo, President  
2 of the Staten Island Alliance.

3 MR. CONSOLO: Thank you, your Honors.

4 I'd like to really say how I appreciate you  
5 guys giving us a chance with organizations to testify  
6 here today.

7 CHIEF JUDGE LIPPMAN: Delighted to have you.

8 MR. CONSOLO: I gave you a written statement,  
9 but I do want to touch on a couple of things.

10 CHIEF JUDGE LIPPMAN: Sure.

11 MR. CONSOLO: In 2008 I had a problem with my  
12 home. I had to face foreclosure myself.

13 If it wasn't for legal services, I wouldn't  
14 have a home over my head today.

15 So, they were very instrumental for me keeping  
16 a roof over my head.

17 Since Super Storm Sandy hit, what we've seen  
18 are the grassroots organizations, people at the poverty  
19 level were here, 2008 they moved here. Now, since the  
20 storm, they're here.

21 We can see in the next coming years when the  
22 flood insurance hits.

23 CHIEF JUDGE LIPPMAN: Yes.

24 MR. CONSOLO: In 2015, 2016 and it doubles from  
25 200,000 to 400,000, the problems that are going to arise

1           then are going to be worse than what it is today.

2                       So, we feel that there is a need for this  
3           service and we need a lot more of it. That's what we're  
4           here to say today.

5                       CHIEF JUDGE LIPPMAN: I think you know the  
6           point, particularly with the grassroots organizations, we  
7           have to find ways to have our political leaders and  
8           governmental leaders understand the depth of the problem.

9                       I think, particularly, it's difficult out on  
10          Staten Island when the other witnesses said you're a  
11          little bit removed from the rest of the City, the  
12          tendency is to kind of forget the need is too great out  
13          here.

14                      And, I think it's very important that  
15          organizations like your's and the leaders of the  
16          different communities out here on the Island make sure  
17          that, again, our political government leaders across the  
18          City and State get it. Because, you know, there are so  
19          many priorities in our society and the City of New York,  
20          and, I think that sometimes we felt in the endeavor that  
21          we've been undertaking, that there's not quite an  
22          understanding of how essential civil legal services are  
23          to the average person.

24                      Forget the people just at the poverty level to  
25          the middle class person, the people just getting along

1           having a job, you hit a legal problem like they want to  
2           foreclose on you, the bank wants to foreclose on your  
3           house, who do you go to, what do you do?

4                     The legal service provider, generally, as you  
5           indicated in your statement stands between you and  
6           something which would devastate the individual, that  
7           family, and it's so important.

8                     MR. CONSOLO:   Because a regular homeowner  
9           doesn't understand the legal terminology, you could just  
10          get so far without that.

11                    CHIEF JUDGE LIPPMAN:  You don't understand that  
12          language.

13                    MR. CONSOLO:  You don't understand their  
14          language unless it's in laymen's terms and it's never put  
15          in layman's terms.

16                    CHIEF JUDGE LIPPMAN:  I say this not in a  
17          critical way, whoever holds the mortgage, I think what  
18          happens is they have their own protocols.

19                    You call, you get 16 different answers; you get  
20          a voice mail and you need someone who can get into the  
21          belly of the beast that looks at the language of the  
22          bank, whatever the bureaucracy you're dealing with.

23                    MR. CONSOLO:  That's correct.

24                    CHIEF JUDGE LIPPMAN:  I think we need this  
25          money desperately.

1                   We're doing everything we can to increase the  
2                   public funding, but, I think it's so good that you're  
3                   here.

4                   I think it's so good that all of the voices  
5                   here on the Island and the rest of our City and the State  
6                   be heard. I think I said this before, that this is as  
7                   important as the money we give to housing, to hospitals,  
8                   to schools.

9                   Legal representation is so critical in almost  
10                  everything that people in our society care about, the  
11                  problems they confront everyday.

12                 MR. CONSOLO: To answer the question that you  
13                 gave before, the testimony before me, it is hard for a  
14                 regular person to --

15                 CHIEF JUDGE LIPPMAN: Find a place to go.

16                 MR. CONSOLO: When we formed The Alliance, we  
17                 were able to get the information out.

18                 CHIEF JUDGE LIPPMAN: I think you performed a  
19                 great service.

20                 On top of that, we were talking about in  
21                 yesterday's hearing we did in Rochester, the problems are  
22                 not that much different. Believe me, some of the notices  
23                 that you get from different institutions, whatever they  
24                 are, have something that you say, gee, if you have a  
25                 problem, you know there are these people who help you

1 with legal problems and you can call them; and, just  
2 maybe, maybe, maybe they can be the ones who will solve  
3 your problem.

4 MR. CONSOLO: Correct.

5 CHIEF JUDGE LIPPMAN: So thanks so much for  
6 coming in.

7 Presiding Justice Eng.

8 PRESIDING JUSTICE ENG: Have you been able to  
9 acquire in-house legal money, Staten Island Legal  
10 Services?

11 MR. CONSOLO: We literally had them in the  
12 house with us.

13 Since the storm, so many times they've been out  
14 there on their own, not even legal services.

15 This storm devastated the Island like nothing  
16 you've seen before. The way legal services came out for  
17 the Island, if it wasn't for them, I don't know where we  
18 would be right now to tell you the truth.

19 CHIEF JUDGE LIPPMAN: I think that's a story  
20 that we hear from all of the areas devastated by Sandy.

21 The next two witnesses are also going to  
22 address that issue.

23 ADMINISTRATIVE JUDGE PRUDENTI: If you had some  
24 difficulties, did you know where to go for legal  
25 services?

1 MR. CONSOLO: No, it took me four years of  
2 fighting by myself before I found the legal services when  
3 I did.

4 Before I found them, I thought I had the  
5 solution, going back and forth with the banks, came up  
6 with a plan. But, I could see the plan was running out.  
7 I had no legal aspect on how to fight that plan when it  
8 runs out.

9 CHIEF JUDGE LIPPMAN: We heard the same  
10 testimony in Rochester yesterday from people in similar  
11 situations. They started to try to deal with it and it  
12 just never quite made it happen.

13 MR. CONSOLO: What they do to you, they drive  
14 you insane to tell you the truth.

15 CHIEF JUDGE LIPPMAN: There has to be a point  
16 with all the legal services, to have a level playing  
17 field.

18 MR. CONSOLO: Exactly.

19 CHIEF JUDGE LIPPMAN: They're not doing what  
20 they're supposed to be doing, but you need someone who  
21 understands it.

22 MR. CONSOLO: Legal services puts you on a  
23 level playing field, without them, it wasn't even for  
24 sure.

25 (Whereupon, Beth Cicero replaced Rosemary

1 Pfister as the Official Court Reporter at this time.)

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(Continued on next page.)

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1 CHIEF JUDGE LIPPMAN: Scott Primiano, the  
2 President of the Insurance Advocates, Flood Direct National  
3 Insurance Program and Steven G. Leventhal, Esq., Access to  
4 Justice Program Chair; Nassau County Bar Association;  
5 Leventhal, Cursio, Mullaney and Sliney.

6 Scott, do you want to start?

7 MR. PRIMIANO: Good morning. I am Scott  
8 Primiano, President of The Insurance Advocates, an insurance  
9 brokerage and flood insurance specialty firm located in  
10 Amityville, New York.

11 It is an honor to present testimony today and to  
12 share a summary of the street level experiences encountered  
13 by homeowners and communities in Nassau and Suffolk Counties  
14 that continue to this day as a result of Superstorm Sandy.

15 Since October 29, 2012, members of our team have  
16 worked closely with the Touro Law School Disaster Relief  
17 Clinic, New York Rising Field Offices and a myriad of  
18 community based non-profit organizations to provide pro bono  
19 guidance and hands-on assistance to those struggling to  
20 process their insurance claims, apply for assistance and  
21 return home.

22 We began to provide our work expecting to provide  
23 a few hours of pro bono assistance and advocacy each day for  
24 a few months. Almost immediately, our efforts to help  
25 became a full-time, seven-day per week mission and remain so



1 to this day, working with over one hundred families still  
2 displaced or living in varying degrees of dilapidation.

3 We find the roads to proper indemnification and  
4 assistance clogged by complicated bureaucracy compromised by  
5 devious contractors and inundated with crafty storm chasers  
6 attempting to make money on the backs of our victims by  
7 providing false hope and empty promises of assistance.

8 Most vulnerable and most likely to be victimized  
9 by the system and those who prey on it are the elderly,  
10 uneducated, disabled and impoverished. Unlike those who  
11 have savings to fall back on, qualify for loans, have ample  
12 cash flow and are savvy enough to advocate for proper  
13 settlements, these segments of our community haven't the  
14 time, availability or resources necessary to successfully  
15 represent and protect their interests.

16 The common threads in all their stories are  
17 summarized as follows:

18 The insurance claims process. Filing a flood  
19 insurance claim necessarily requires a proper valuation of  
20 damage. During a catastrophic event such as Sandy, insurance  
21 adjusters are flown in from all corners of the country to  
22 evaluate the damage and open the claim. Often arriving  
23 prior to the full extent of the damage being realized by  
24 either the adjuster, homeowner or the tenants, the claim is  
25 opened with an understanding that undocumented damage can

1 and should be added to the claim at a later date. While  
2 more than a simple cursory inspection, it is far from a  
3 precise evaluation, as this initial visit by the claim  
4 adjuster is most often hurried and hectic. They have  
5 multiple homes to see in a very short period of time.

6 The adjuster has multiple properties to review in  
7 any given day, and the claimant is still in shock from the  
8 event and wondering how they are going to eat, sleep, wash,  
9 get to work and pull their family back together.

10 Unfortunately, this common scenario sets the stage for an  
11 undervalued and underpaid claim.

12 As more damage becomes apparent and missing items  
13 are noticed, claimants are required to provide documentation  
14 to substantiate the additional request in the form of  
15 receipts for additional work done, photographs, contracts  
16 with contractors, along with their estimates.

17 To abide, the claimant must then pay up front to  
18 have the damage repaired or replaced, hire a contractor that  
19 requires a down payment, and in the event of a dispute with  
20 the adjuster, choose between hiring an attorney, public  
21 adjuster or self-advocating their claim. Those with  
22 resources and the ability to wait out the elongated process,  
23 eventually end up with a more favorable settlement. Those  
24 who are more desperate and can't afford to hire anybody or  
25 even attract their attention nearly always fall victim to

1 settling for less. It is here pro bono legal representation  
2 and advocacy is most needed.

3 We had heard about the grant programs that are  
4 available, and although their intentions are fabulous and  
5 the people working behind the scenes are trying to do the  
6 best thing with what they have, they are also challenging  
7 for the group that I am talking about.

8 So in an attempt to fill the gap highlighted  
9 above and to provide help to those without any or proper  
10 insurance, federal state and local grant programs have been  
11 established. Though well-intended, these program are very  
12 limited in scope and often come with participation  
13 requirements that are unachievable for those at, near or  
14 below the poverty rate.

15 Local or community based programs most often  
16 appear immediately following a catastrophe and are mainly  
17 focused on blankets and bananas. This help is essential and  
18 much appreciated, however, it is not lasting and tends to be  
19 implemented rather randomly and haphazardly.

20 State programs take much longer to evolve and  
21 require an extraordinary level of documentation, time and  
22 patience to successfully participate in. Additionally, the  
23 programs currently in place, such as New York Rising, Build  
24 It Back and the Acquisition Program require the participants  
25 to incur significant up-front expenses, to pay for surveys,

1 environmental tests, architects, contractors and inspections  
2 prior to grants being released. Amounting to over \$10,000,  
3 these fees are simply not affordable and the process for  
4 applying too complicated for the vast majority of those who  
5 most need the help. They simply give up.

6 Federal programs such as FEMA assistance SBA  
7 loans all require pre-qualification and come with mandates.  
8 FEMA will replace a heating and hot water system but  
9 requires a homeowner to purchase maximum flood insurance  
10 limits and doesn't address other damage to the property.  
11 SBA loans require good credit scores and sufficient income.  
12 Our clients don't qualify. Residential assistance requires  
13 a homeowner to find a place to live, come up with a down  
14 payment and move there. Because of demand, rental  
15 properties are extremely difficult to find and very  
16 expensive. Our clients can't begin to qualify.

17 Though the intentions of the these programs are  
18 good and assistance welcome, they are designed with the  
19 average flood victim in mind and assume too much about the  
20 participants' ability to qualify for and comply with program  
21 requirements. Only by working with a pro bono advocate or  
22 attorney can a client break through to policy makers, be  
23 heard and have adjustments or exceptions made.

24 The last category is storm chasers. This is  
25 something that's been heard about in the press, certainly,

1 but I don't think the scope of the problem is clearly  
2 evident to everybody.

3           This breed of contractor, public adjuster and  
4 assistance provider feeds off the most impoverished and  
5 vulnerable homeowners and tenants who can't find or qualify  
6 for the help they desperately need. They show up at every  
7 catastrophic event, unlicensed and unaccountable, promise a  
8 quick, easy fix to whatever sufferings their victim is  
9 encountering. Promises range from removing mold and fixing  
10 a roof to getting more insurance or grant money. The  
11 victims of these scams are asked to provide a modest down  
12 payment and often sign a one-sided contract. Filled with  
13 hope that help has arrived and prayers might be answered,  
14 our victims scrape together what little money they have and  
15 sign on.

16           Then a nightmare ensues. Contractors disappear  
17 or does partial work before demanding more money to finish  
18 the job. The public adjuster attaches the already existing  
19 claim without ever presenting a claim for additional money  
20 or even contacting the insurance company. The private  
21 advocate makes a few calls, declares it is what it is and  
22 moves on.

23           In the absence of legal representation, an  
24 already bad situation becomes profoundly worse. One could  
25 argue that they should know better and should always

1 maintain a buyer-beware frame of mind. Our experience has  
2 shown under normal circumstances, our clients do know  
3 better. However, faced with a catastrophic loss and fading  
4 hope, desperate people will do desperate things.

5 Unfortunately, the scenarios presented are not  
6 incidental or mere anomalies. Instead, they are trends in  
7 commonalities. Those who can afford legal representation  
8 and legitimate advocacy can and do navigate the bureaucracy,  
9 receive better insurance settlements and avoid becoming  
10 victims of storm chasers. They can also afford to wait out  
11 the process with the knowledge that however annoying and  
12 frustrating it may be, dislocation is a temporary condition.  
13 Those who do not have access to proper representation and  
14 guidance end up hopeless and forlorn. As we have seen in  
15 other major storms such as Katrina, their displacement  
16 becomes permanent and their daily subsistence tenuous.

17 It has been two years since Sandy ravaged our  
18 communities, and for those two years, the only true hope our  
19 clients have had is being provided by the pro bono network  
20 of attorneys and legitimate advocates.

21 CHIEF JUDGE LIPPMAN: Thank you for your  
22 testimony. I think it lays out the continuing problem a lot  
23 of people kind of are not so close to; think everything's  
24 gone away and no more issue.

25 Let me ask you a question for the future. I

1 think we struggled through the individual pain and  
2 suffering, certainly from our perspective of legal  
3 assistance. The great work done by providers, great work  
4 done by pro bono attorneys who jumped into the breach to try  
5 and deal with it.

6 What happens the next time? What do we have to  
7 do to be better prepared certainly from our perspective of  
8 this legal representation issue? What do we have to do?  
9 Not that we are close to being out of the woods.

10 MR. PRIMIANO: Right.

11 CHIEF JUDGE LIPPMAN: But let's look forward.  
12 What do we have to do next time to be prepared so people,  
13 certainly in the area of legal assistance, get the help they  
14 need?

15 MR. PRIMIANO: That's a great question. What we  
16 all learned I think throughout this process is proper  
17 assistance for catastrophic events is a three-legged stool.  
18 There is the insurance component, there is the legal  
19 component and then there is the contractor or construction  
20 component. I think we piecemealed it together this time.  
21 Collectively.

22 CHIEF JUDGE LIPPMAN: By the seat of our pants.

23 MR. PRIMIANO: Exactly right. And not  
24 pro-actively. After the fact.

25 CHIEF JUDGE LIPPMAN: Right.

1           MR. PRIMIANO: So in preparation for the  
2 inevitable next storm or next event, a proper understanding  
3 of the legalities of both insurance contracts, FEMA  
4 guidelines, the flood insurance policy --

5           CHIEF JUDGE LIPPMAN: No one was too conversive  
6 before all this, and you think after Katrina and all the  
7 other natural disasters --

8           MR. PRIMIANO: -- we'd know. By speaking from  
9 the insurance side, flood insurance is like the unknown  
10 policy. Nobody ever delves deeply into it. Brokers don't  
11 like it because it doesn't pay money. Nobody cares. They do  
12 care when it is too late to care.

13          CHIEF JUDGE LIPPMAN: Exactly.

14          MR. PRIMIANO: So knowing how the mechanics of the  
15 -- whether it is a grant program, whether it is an insurance  
16 policy or whether it is a construction program, knowing how  
17 they work and knowing how they should work --

18          CHIEF JUDGE LIPPMAN: How they work together.

19          MR. PRIMIANO: And how they come together. So I  
20 envision -- and this is a vision -- but I envision aid at  
21 the next storm being somebody coming into -- whether it is a  
22 building or even a trailer -- and being able to sit in front  
23 of a panel of three representatives from those areas who  
24 absolutely know the proper advice to give and what the next  
25 steps are. If we can keep our victims moving down a process



1 and a path and help them organize themselves to that path,  
2 what we are creating is hope. Every step is a step closer  
3 to home. When it is random and haphazard, we get random and  
4 haphazard results.

5 CHIEF JUDGE LIPPMAN: I think at the very least,  
6 you think a lot of these -- I don't know what to call  
7 them -- organizations or groupings of people that had  
8 developed in the aftermath of this storm, maybe in some  
9 degree stay intact so when the next thing comes, we are not  
10 reinventing the wheel each time and have some people with  
11 experience and understanding of what it's all about.

12 And the legal area, I think you are entirely  
13 right; that a lot of us, even the practitioners -- this is  
14 an area that necessarily hadn't been greatly understood or  
15 focused on. We are going to talk a little bit about that  
16 with our next witness.

17 Thank you so much. Let's go to Mr. Leventhal.  
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1 CHIEF JUDGE LIPPMAN: No one can say it better.  
2 Appreciate it. Thank you for coming.

3 Let's go to, Mr. Leventhal. Councilman  
4 Leventhal.

5 COUNCILMAN LEVENTHAL: Thank you, Chief Judge  
6 Lippman, Presiding Judge Eng, Chief Administrative Judge  
7 Prudenti, State Bar President Lau-Kee, ladies and  
8 gentlemen.

9 I am honored to appear before you.

10 I am Second Vice President of the Nassau County  
11 Bar Association and Chair of the Association's Access to  
12 Justice Committee. I am also a corporate director of the  
13 Nassau/Suffolk Legal Services Committee. But, I am here  
14 only in my capacity as Chair to the Access To Justice  
15 Committee.

16 Our Association has over 5,000 members. It is  
17 one of the largest suburban Bar associations in the  
18 United States. Next month, we will host our fourth  
19 Annual Pro Bono Fair, at which Nassau County residents  
20 will have an opportunity to consult with lawyers  
21 knowledgeable in a wide-range of legal disciplines and  
22 fluent in a variety of languages.

23 The Nassau County Bar Association Commitment to  
24 Justice for All has particularly demonstrated by the  
25 regular and frequent legal consultation clinics at which

1 our volunteer attorneys provide advice and guidance to  
2 Nassau County residents on issues regarding elder law,  
3 bankruptcy law, mortgage foreclosure proceedings, and, of  
4 course, issues related to recovery from the effects of  
5 Super Storm Sandy.

6 My testimony today will address the critical  
7 need for free legal services in a coordinated response to  
8 natural disasters. However, my focus is not limited to  
9 the surge in need that occurred in the days, weeks  
10 immediately following the Storm.

11 Instead, I address the continued need for  
12 increased access for legal service providers that is  
13 still very much present almost two years later, and,  
14 there is no end in sight.

15 Our experience in responding to Sandy has  
16 heightened our awareness of previously unforeseen  
17 problems. Many homeowners encountered obstacles in  
18 obtaining urgently needed compensation from government  
19 programs and from insurance providers.

20 Many residents are still struggling with delays  
21 in the processing of claims, and with confusing denials  
22 when claims are finally processed. For many, Federal and  
23 State disaster relief remains elusive. For some, scarce  
24 resources were expended in lawsuits brought to compel  
25 payment from agencies or insurers.

1           Nassau County is densely populated in most  
2           areas. Many storm victims were unable to find adequate,  
3           affordable, temporary housing in proximity to their  
4           homes. Many had no alternative but to use personal funds  
5           previously allocated for mortgage payments to pay the  
6           cost of temporary housing or to protect their  
7           storm-damaged home from further deterioration and to  
8           start the process of rebuilding.

9           As a result many of these, homeowners now face  
10          foreclosure.

11          To make matters worse, some unscrupulous  
12          contractors took money from storm victims and then  
13          disappeared without performing, or in other cases,  
14          without completing the work. Other contractors were  
15          unaware of new regulations regarding the elevation of  
16          homes and performed their work inadequately.

17          Many homeowners are still struggling to recover  
18          from their losses and to restore their family to normal  
19          lives.

20          Recently FEMA has requested that some  
21          homeowners refund benefits that the agency claims  
22          overpaid. We believe that some errors in payment may  
23          have occurred due to bureaucratic inefficiency,  
24          incomplete documentation and other inadvertence, all of  
25          which may have been avoided or minimized if applicants

1 had wider access to legal representation.

2 Many storm victims had never before needed to  
3 seek government assistance and had no idea where to  
4 start. Some had claims that were complicated by  
5 inadequate documentation of general transfers of  
6 ancestral homes and the need to process applications for  
7 probate or administration.

8 In some cases, the program established to  
9 provide revitalization assistance to storm-damaged  
10 communities, the New York Rising Community Reconstruction  
11 Program, has declined to release funds to homeowners in  
12 foreclosure, while the mortgagee refuses to offer loan  
13 modifications until the houses are repaired. This  
14 results in a standstill that has frustrated both sides in  
15 the foreclosure proceeding and promoted inefficiencies in  
16 the Courts.

17 The Nassau County Bar Association has been able  
18 to provided assistance to storm victims through free  
19 clinics and by collaborating with providers such as  
20 Nassau Suffolk Legal Services in a jointly sponsored  
21 landlord/tenant Attorney Of The Day Project, and the  
22 Nassau County Coalition against domestic violence in a  
23 collaborative panel of matrimonial attorneys.

24 At our clinics we engage in a form of legal  
25 triage, helping homeowners make preliminary

1       determinations as to whom they should contact, what  
2       documents will be required, whether it is likely they  
3       will be able to meet their burden of proof, and what  
4       array of options may be available to them. Through Our  
5       Bridge Over Land Divides program, known by its acronym  
6       BOLD, we arrange for the participation of attorneys  
7       fluent the Spanish, Korean, Haitian, Creole, Russian and  
8       Urdu languages, among others.

9               On September 8, 2014, the Nassau County Bar  
10       Association held it's 108th clinic.

11              In the past five years it provided assistance  
12       to more than 8,000 residents. Two years since Super  
13       Storm Sandy, we assisted over 3,500 storm victims other  
14       than foreclosure. Uncounted others over the telephone,  
15       through email and as walk-ins.

16              When disaster struck, the infrastructure  
17       already in place for our mortgage foreclosure clinics  
18       enabled us to mobilize attorneys quickly, and to deploy  
19       them at the home of the Association and also at offsite  
20       locations to assist storm victims in the most heavily  
21       devastated areas of Long Beach and Freeport.

22              However, despite these efforts and the effort  
23       of our partner-providers, Nassau County residents  
24       continue to struggle with a myriad of challenges,  
25       including private insurance denials, disputes

1 unscrupulous incompetent contractors, landlord-tenant  
2 issues, bankruptcy and problems related to the stresses  
3 placed on their families.

4 It appears now that the need will continue  
5 indefinitely and so will our free legal clinics.  
6 However, many difficult legal problems are unresolvable  
7 through clinic consultations. Legal service providers  
8 are essential partners in the relief process, working to  
9 meet the enormous need and handling litigation for  
10 eligible clients among other things.

11 In sum, there is a permanent continuously  
12 evolving need for adequately funded legal service  
13 providers as so many struggle to return home and restore  
14 their lives.

15 CHIEF JUDGE LIPPMAN: Thank you.

16 First of all, we commend the Nassau County Bar  
17 Association for all of your good deeds. Good work.

18 I think more testimony illustrates the need for  
19 a partnership between legal service providers and the Bar  
20 in it's pro bono efforts.

21 I think, working together, we can move  
22 mountains, plenty of mountains to move especially when  
23 you have a natural event like Sandy.

24 I think you've been terrific.

25 What's left to be done? I want to make clear

1           how appreciative we are of the Bar's efforts.

2                       The Nassau County residents continue to  
3           struggle. The Bar is illustrative of the good deeds of  
4           lawyers who understand there's a responsibility is fine.  
5           Everyone has to earn their own livelihood, but, they have  
6           responsibility to those who need help.

7                       COUNCILMAN LEVENTHAL: Thank you, Judge.

8                       CHIEF JUDGE LIPPMAN: Thank you both.

9                       (Whereupon, Beth Cicero replaced Rosemary  
10          Pfister as the Official Court Reporter at this time.)

11                      (Continued on next page.)

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1 CHIEF JUDGE LIPPMAN: Our last three witnesses  
2 are clients of legal service providers. I'd ask Shaun  
3 Little, client of the Legal Aid Society, accompanied by  
4 Judith Goldiner, Taiwo Osinaike, client of Legal Services  
5 NYC, accompanied by Rachel Hannaford and Diego Parra, client  
6 of Legal Services NYC, accompanied by Stephanie Taylor to  
7 come up.

8 CHIEF JUDGE LIPPMAN: When I say accompanied, I  
9 don't mean literally accompanied. They are here with them.  
10 They are going to testify on their own. Let's talk start  
11 with Shaun Little.

12 MS. LITTLE: Good morning. My name is  
13 Shaun Little. I live in Staten Island. I am a survivor of  
14 Superstorm Sandy. Before the storm, my family and I lived  
15 in AVERNE, Queens. My house in AVERNE was five feet under  
16 water during Sandy. I have lost everything.

17 Before the storm, I was a home health aide.  
18 After the storm, it was very difficult for me to find and  
19 keep jobs. I was first placed in a mass shelter with my  
20 husband, daughter, disabled son and disabled foster child.  
21 At the shelter, I ran into one of my former clients, a  
22 developmentally disabled woman who had also lost everything  
23 in the storm. The City was threatening to place her into an  
24 institution, so I took her in with my family. We were then  
25 transferred to the Manhattan Inn, a hotel in Times Square.

1           In April of 2013, I learned the City was  
2           threatening to kick me and my family and 488 other families  
3           onto the street even though we had no where to go.

4           I contacted Judith Goldiner at the Legal Aid  
5           Society. The Legal Aid Society, along with pro bono counsel  
6           Weil Gotshal, brought a suit against the City. They stopped  
7           the City from terminating the hotel payments and working  
8           with New York Disaster Interfaith Services, they continued  
9           the hotel program until all 488 families had permanent  
10          housing.

11          The Legal Aid Society helped me obtain a federal  
12          funding housing voucher. When I found an apartment on  
13          Staten Island, Legal Aid help me get furniture, moving  
14          expenses and first month rent. I now have a new job, and my  
15          children and foster child are in school. My older daughter  
16          is in college.

17          I am very grateful that the Legal Aid Society  
18          agreed to help us. Without them, my family would not have a  
19          safe place to sleep at night, and it would be very difficult  
20          for me to keep a job and for my children to go to school and  
21          college. However, I know that there are still many families  
22          who are struggling to obtain housing.

23          The Legal Aid Society is an incredible resource  
24          to New Yorkers like me who experience difficult times.  
25          Without the Legal Aid Society and other civil legal services

1 programs, families will have no where to turn when the next  
2 disaster strikes. So I am here to support continued and  
3 increased funding for civil legal services in New York.  
4 Thank you.

5 CHIEF JUDGE LIPPMAN: Thank you. I think your  
6 story demonstrates how legal services saves lives, saves  
7 families and pulls them together.

8 MS. LITTLE: Yes.

9 CHIEF JUDGE LIPPMAN: And keeps you in a time  
10 when you don't know what to do or who to go to. I think it  
11 is an inspired story. You sound good, and you've been  
12 through an ordeal.

13 MS. LITTLE: Yes.

14 CHIEF JUDGE LIPPMAN: And here you are. Thank  
15 you.

16 MS. LITTLE: I survived, yes.

17 CHIEF JUDGE LIPPMAN: Thanks so much for coming  
18 and telling your story.

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1 CHIEF JUDGE LIPPMAN: Taiwo Osinaike. Did I  
2 pronounce it, right?

3 MS. OSINAIKE: Yes.

4 CHIEF JUDGE LIPPMAN: Okay. Go ahead.

5 MS. OSINAIKE: Good morning. My name is  
6 Taiwo Osinaike. I live in East New York, Brooklyn. I would  
7 like to talk about how much Legal Services New York City and  
8 South Brooklyn Legal Services has helped me and my three  
9 children over the past two years. Being a survivor of  
10 domestic violence has made life hard in every way. When my  
11 husband left our home, it was not just an emotional problem.  
12 It became a legal problem as well when I could not afford  
13 the rent and my landlord started two evictions against me.  
14 I did not anticipate how much I would go through in order to  
15 stay in my home with my three children.

16 I am a home daycare provider. I do not make a  
17 lot of money. After my husband left our apartment, I  
18 qualified for a Section 8 subsidy, but my landlord keep  
19 delaying in signing me up. The people in the landlord's  
20 office treated me very badly. They asked me to bring in  
21 paperwork that I had already submitted. They told me my  
22 Section 8 will start but did not start. Meanwhile, I could  
23 not keep up with the rent and the bills kept piling up. They  
24 took me to court, and I did not have a lawyer, so I signed a  
25 stipulation agreeing to pay over \$8,000 because I did not

1 know my rights and I was afraid I would be put out of my  
2 home, but I did not know how I was going to get the money.

3 Then the people in the landlord's office told me  
4 that I could not run the daycare out of my home. They  
5 started another eviction case against me. I did not  
6 understand this because I was fully licensed. I reached out  
7 to Legal Services New York City because I needed a lawyer's  
8 aid. Luckily, Miss Richard Hannaford at South Brooklyn  
9 Legal Services became my attorney.

10 From the moment they got involved, things changed  
11 for the better. She made sure the landlord understood that  
12 they could not kick me out for running a daycare out of my  
13 apartment. She made sure that the stipulation I signed was  
14 not enforced. She even came with me to the landlord's  
15 office to meet with the manager about my Section 8.

16 Finally, after over a year weight, I got the  
17 Section 8 subsidy. After I got Section 8, Miss Rachel  
18 negotiated with the landlord to lower the amount of rent I  
19 owed. She got me assistance from the City and from charities  
20 to pay back the rent. It was such a relief to have someone  
21 fighting on my side. All of the stress that the landlord  
22 and my family situation caused was finally gone the day  
23 Miss Rachel told me we had paid the landlord the back rent  
24 and both eviction cases were over.

25 I know that without the help of a Legal Services

1 lawyer, I would have been evicted. I am very grateful for  
2 the assistance of Legal Services in New York City and South  
3 Brooklyn Legal Services. They helped me get through a very  
4 hard time, and now, me and my children feel happy and safe  
5 in our home. I wish that everyone in my situation would  
6 also be able to get help from Legal Services.

7 Thank you so much.

8 CHIEF JUDGE LIPPMAN: Thank you. You feel the  
9 same, that Legal Services changed your life?

10 MS. OSINAIKE: Yes. I was thinking I am going to  
11 be on the street or in the shelter. We had a very hard  
12 time, but thank God for His glory. Everything.

13 CHIEF JUDGE LIPPMAN: I think the testimony like  
14 we have from all of you, nothing could better demonstrate  
15 what legal services means to the people for facing the  
16 problems that we all face in life. Sometimes we need a  
17 helping hand. Particularly with legal issues that you are  
18 not prepared to deal with. So thank you so much for coming  
19 in.

20 MS. LITTLE: Thank you.

21 MS. OSINAIKE: Thank you.

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1 CHIEF JUDGE LIPPMAN: Okay, now we're going to  
2 ask Diego Parra, you're our last witness. We saved the  
3 best for last. Go ahead.

4 MR. PARRA: Thank you very much.

5 Good morning everyone.

6 First, of all on behalf of my family, myself, I  
7 want to thank free legal services for the help and for  
8 the change that they made in my life.

9 I'm here today to tell you why I believe more  
10 legal services are needed to support free legal services.

11 I am a client of free legal services. I am  
12 also a Board member of Legal Services in New York City.

13 In my role as client and Director, I have seen  
14 how important free legal services is for poor people. I  
15 thank that Task Force like Queens Legal Services, a  
16 branch of Legal Service NYC.

17 When I came to Queens legal services, I was  
18 very uncomfortable talking about what happened in my  
19 life. I was very scared. My immigration status was  
20 going to expire and my marriage was in trouble. I was  
21 afraid. I was going to lose my child and have to leave  
22 the United States. I was close to my deportation letter.

23 Stephanie, my lawyer, tells me to talk about  
24 everything that happened in my life.

25 At that time I was living by myself, I have

1 nobody to talk about what's happening to me.

2 I finally, on the second week, I decided to  
3 open up and told her that I had been victim of domestic  
4 violence, very bad, happens to males, problem very  
5 hurtful to express out. It is hard to believe that you  
6 go through that situation. I suffered, not only mental  
7 but physical abuse. I believe mental is stronger because  
8 it blocks you from taking actions and looking for help.

9 It was really helpful for me to talk about it.  
10 Stephanie, my lawyer, encouraged me to talk about  
11 everything happening in my life. She told me it was one  
12 year's work. She finally told me to get confidence in  
13 myself. She let me know I can continue, that in my life  
14 I can move on by myself. I began the final healing.

15 In a few years papers were filed for me to  
16 remain in the United States and fight for my child. I  
17 had two cases, one for domestic violence in family court.  
18 I was fighting for custody for my child and for my  
19 immigration status.

20 Over the next few years, I went from losing my  
21 immigration status to becoming a citizen.

22 I am now a student at Baruch College studying  
23 finance and investments with a minor in law and policy.  
24 My child is now age seven, and I am so proud to be a  
25 father. I'm proud also to give a speech to my school for



1 my situation when I was there. I've been at the top of  
2 students twice. My son, more than seven times at age  
3 seven because I make clear to him that school is  
4 extremely important for people to succeed in life.

5 Free legal services help people. They care.  
6 They help and they care. They have changed the life of  
7 the family for me and for the families of everyone who  
8 could be helped.

9 My goal is to have legal services for the whole  
10 community.

11 Not only do we have a fantastic lawyer like  
12 Stephanie but we have a whole team who also help you  
13 receive legal assistance, help with benefits.

14 If we had more lawyers like Stephanie,  
15 everyone's struggle would be so much less.

16 I want to thank my two angels in the room, they  
17 are Stephanie Taylor and Jana Morace. They gave me their  
18 hand and they walked me through the whole process and  
19 they saved my life.

20 I want to read these are words from President  
21 Obama last week who says -- give me one second this is  
22 very important -- he said: I chose him to serve as  
23 attorney general because he believes as I do that justice  
24 is not just an abstract theory, it's a living and  
25 breathing principle.

1           In this type of conversation, principles of  
2           life for the people who need it the most.

3           Thank you so much.

4           CHIEF JUDGE LIPPMAN: Thank you much.

5           Certainly, the whole purpose of this hearing is  
6           to get the people to understand this is not some distant  
7           thing that you can't touch or feel. It's something that  
8           everyone has a right to equal justice is what our society  
9           is all about. Having legal services here, it's almost  
10          like a friend or family, I think, someone you can talk to  
11          and get some help from on the very essentials of life.  
12          You have to know it's so important, so critical that  
13          everyone has a right to do, has a right to the basic  
14          essentials of life, that we all need to have.

15          I thank all of you. Our three last witnesses  
16          were so terrific. Thank you all of you for attending the  
17          hearing. I recognize that we've heard today from our  
18          government, from the Commissioner of Human Resources,  
19          from our two City Council representatives who are so  
20          terrific, from the D.A.s Office, from community leaders,  
21          from people who have worked so hard in relationship to  
22          the problems coming out of Hurricane Sandy, Super Storm  
23          Sandy.

24          All of them have a common message. I think  
25          it's legal services in that message, is that legal

1 services are critical to our community, to our society  
2 and that we can't rest, none of us can, and particularly,  
3 we in the judiciary and the legal profession understand  
4 that we can't rest until the idea of equal justice is a  
5 reality for each and every person in our community and  
6 our society.

7 And you've all helped, I think, to get that  
8 message across.

9 What we're going to do is take the information  
10 that we got from these hearings.

11 We have one more hearing left to go in Albany  
12 next week and we will digest it, make a record of it and  
13 then use it as a resource to get the additional resources  
14 everyone agrees for all people in different walks of life  
15 all over our City and State.

16 I thank Staten Island and Judge McMahon and the  
17 Judges here for allowing us to hold a hearing.

18 I think it's a perfect setting.

19 So many problems across the State as evident  
20 here in the Second Department. The testimony from Staten  
21 Island and Brooklyn and Queens and Nassau and Suffolk,  
22 these are problems we have to hit straight on.

23 Rest assured, we will continue to confront the  
24 justice gap in this City, in this State head on. You all  
25 helped us to do that.

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Thank you so much, especially to our three last witnesses.

Thank you.

(Whereupon, the proceeding closed at this time.)

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ROSEMARY M. PFISTER, RPR, CSR, Senior Court Reporter, in and for the State of New York, do hereby certify that the foregoing transcript is true and accurate to the best of my knowledge, skill and ability.

(Certification valid only when signed in blue ink)

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ROSEMARY M. PFISTER, CSR, RPR  
OJ  
SI

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BETH CICERO, CSR, RPR  
OFFICIAL COURT REPORTER  
SUPREME COURT-RICHMOND COUNTY

**APPENDIX 10:**

**Transcript of the Third Department Hearing  
Held on October 6, 2014**

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SUPREME COURT OF THE STATE OF NEW YORK  
THIRD DEPARTMENT

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THE CHIEF JUDGE'S HEARINGS  
ON CIVIL LEGAL SERVICES  
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COURT OF APPEALS  
20 Eagle Street  
Albany, New York 12207

BEFORE:

HONORABLE JONATHAN LIPPMAN,  
Chief Judge

HONORABLE LAWRENCE K. MARKS  
Deputy Chief Administrative Judge

HONORABLE KAREN J. PETERS  
Presiding Justice of the Appellate  
Division Third Department

GLENN LAU-KEE  
New York State Bar President

Colleen B. Neal  
Official Court Reporter

1 CHIEF JUSTICE LIPPMAN: Thank you all for being  
2 here, it's a delight to see you. This is the last of our  
3 four annual civil legal services hearings that we're  
4 having. We've already had one hearing in Manhattan, one  
5 hearing in Staten Island, a hearing in Rochester, and  
6 today is our fourth and final hearing of the year in our  
7 State's Capitol here in Albany.

8 Seated with me presiding at this event to my far  
9 right is Glenn Lau-Kee, president of the New York State  
10 Bar Association. Next to him is Justice Karen Peters, the  
11 Presiding Justice of the Appellate Division Third  
12 Department right here in Albany. And on my left is  
13 Lawrence Marks, the First Deputy Chief Administrative  
14 Judge who will be presiding today in the absence of Judge  
15 Prudenti. A. Gail Prudenti, our Chief Administrative  
16 Judge, will be one of our witnesses. So this is a great  
17 event that we get both Judge Prudenti and Judge Marks here  
18 with us.

19 These hearings are held because there is a  
20 justice gap in this state and in this country and the  
21 justice gap is between the finite legal resources that are  
22 available and the desperate need for legal services by the  
23 poor and people of limited means.

24 As many as three out of four people who come to  
25 our legal service providers are turned away because the

1 provider has a lack of resources. Last year 2.3 million  
2 people came to the courts of the State of New York without  
3 legal representation. These are people who in difficult  
4 times are faced with the necessities of life; legal  
5 matters involving the roof over their heads, their  
6 physical safety, the well-being of their families and  
7 their livelihood. They literally threaten to fall off the  
8 cliff, pushed to the way side in these difficult economic  
9 times without legal representation to help them.

10 It has a great cost to our society and our  
11 communities around the state, the Constitutional mission  
12 of the judiciaries that foster equal justice, and that's  
13 why we sponsor these hearings every year in association  
14 with the leadership of our Bar, the State Bar, and the  
15 local bars around the state. You have the leadership of  
16 the Judiciary and the legal profession who preside over  
17 these hearings.

18 Central to what we're doing as a judicial  
19 system, as a judicial branch of government, is the equal  
20 justice that we provide to each and every person in our  
21 state. It is not tangential to what we do, it is  
22 fundamental to what we do central to our Constitutional  
23 mission.

24 In recognition of that role the Legislature has  
25 passed a resolution asking the Judiciary and the Chief



1 Judge to hold these hearings and also asking us each year  
2 to report on the amount of financial assistance that we  
3 need in the Judiciary budget to support civil legal  
4 services for the poor.

5 To assist us in these efforts that we are making  
6 in New York to close the justice gap I've appointed the  
7 Task Force to enhance civil legal services in our state,  
8 chaired by Helaine Barnett, who is sitting in the first  
9 row. And what the Task Force does is help us prepare for  
10 the hearings, digest the testimony that we get and help  
11 and make recommendations to us in a report that comes out  
12 on December 1st at the same time that we present our  
13 budget submission to the Legislature.

14 The result has been the New York template to  
15 approach this problem that involves public funding. And  
16 we are very proud of our partners in government and the  
17 Legislature and Executive for providing \$70 million in  
18 assistance this year, \$55 million given out in direct  
19 grants by the Judiciary, and another \$15 million that we  
20 give to IOLA to give out grants given that their funding  
21 has been reduced so greatly by the low rate of interest on  
22 lawyers' escrow accounts that fund IOLA's resources. This  
23 has resulted in many, many, many thousands of clients  
24 being helped by our legal service providers.

25 Judge Prudenti is going to report in some detail

1 on what we use those monies for and the assistance that's  
2 provided. At the same time with the help of the State Bar  
3 Association we are reaching out for pro bono work on the  
4 part of the bar to complement the public funding that we  
5 get; whether it be the Empire State Counsel Program,  
6 whether it be the Lawyers Emeritus Program, whether it be  
7 our relaxation of the rules for corporate counsel who can  
8 now practice in New York even if they're not admitted for  
9 pro bono work, whether it be the 50-hour program that is  
10 required for each aspiring lawyer that wants to be  
11 admitted to the Bar, the pro bono scholar program. All of  
12 these things are designed with the help of our really  
13 outstanding Bar in New York to support pro bono work, to  
14 complement public funding.

15 And we also are taking a number of other steps,  
16 including the use of non-lawyers to assist lawyers in  
17 terms of the delivery of legal services in our Navigator  
18 program, and the new rules that we put into place to  
19 govern foreclosure proceedings and consumer credit  
20 proceedings which go to ensure that there is a level  
21 playing field on those proceedings where overwhelmingly  
22 individuals are not represented by lawyers. We are  
23 working towards the day when everyone who has a problem  
24 that needs the assistance of civil legal services relating  
25 to the various essentials of life is able to have a

1 lawyer.

2 Our past hearings over the years and this year  
3 has included the testimony from public officials, business  
4 leaders, providers, academics, judges, the bar, and  
5 clients of legal service providers. We have measured the  
6 need, we're trying to do what is the right thing to do to  
7 help those in need and also what is the best thing for our  
8 state and our economy and the well-being of a society and  
9 our community. We've undertaken studies, cost benefit  
10 analyses of the different ways that legal service monies  
11 have helped our state and we are going to see more of that  
12 today in the testimony.

13 So I welcome you all, and I particularly want to  
14 welcome today the Legal Services Corporation which is  
15 holding, with its Chair John Levi and its President Jim  
16 Sandman and the members of the board, the Legal Services  
17 Corporation is holding its quarterly meeting here in  
18 Albany, and we're honored by their presence. This is the  
19 largest single provider of legal services funding in the  
20 United States. They are instrumental in waging this war,  
21 and it really is a war, on the justice gap and how to  
22 provide essential legal services for the poor.

23 They have proven themselves over 40 years. And  
24 I am so pleased myself to be in Washington for the 40th  
25 anniversary of the Legal Services Corporation which former

1 Secretary of State Hillary Clinton spoke at, it was a  
2 great event and a testament to the great work that the  
3 Legal Services Corporation does, and they are an  
4 inspiration and certainly a beacon of hope for providers  
5 around the country. So we welcome you to the hearing.

6 I want to recognize the presence of my  
7 colleague, Victoria Graffeo, who is where? Right there,  
8 right in the middle in the back. She has been so critical  
9 to our 50-hour program, our Pro Bono Scholar Program, the  
10 corporate counsel change in our rules, and she has been a  
11 fighter for equal justice in every way and I'm so pleased  
12 that she's here today and so pleased that we can have this  
13 hearing at the Court of Appeals in Albany.

14 I mention the other members of our Task Force  
15 who are here: Fern Fisher, Lillian Moy, Camille Siano  
16 Enders, Anne Erickson, Barbara Finkelstein, Sheila Gaddis,  
17 Adriene Holder, Denise Kronstadt, Chris O'Malley, and Raun  
18 Rasmussen.

19 Let me welcome now with no further delay our  
20 first witness, she is Martha Minow who is the Dean of the  
21 Harvard Law School which some of you may have heard of  
22 around the country, one of our most prominent law schools,  
23 and we're so pleased and happy to have her with us. She  
24 has been a leader in the area of equal justice. She's the  
25 Vice Chair of the Legal Services Corporation. She

1 recognizes so well that law schools are so much a part of  
2 this battle for access to justice for all. And Harvard  
3 Law School and our law schools around the country play  
4 such an important role in shaping the values of the next  
5 generation of law students.

6 I particularly note the terrific report that she  
7 chaired for Legal Services Corporation on pro bono work,  
8 it really provided many thoughts about creative solutions  
9 to encouraging pro bono. We're honored to have her as our  
10 lead-off witness. Dean Minow, the floor is yours.

11 DEAN MARTHA MINOW: Thank you so much. And I  
12 guess to introduce myself again my name is Martha Minow  
13 and I am honored to serve both as Dean of the Harvard Law  
14 School and as vice chair of the Legal Services Corporation  
15 Board of Directors.

16 I want to thank you all for the privilege of  
17 inviting me to offer testimony here in this gorgeous room  
18 today and to be here with you, Chief Judge Jonathan  
19 Lippman, with Judge Lawrence Marks, with Presiding Justice  
20 Karen Peters, and with Glenn Lau-Kee, President of the New  
21 York State Bar Association, as you pursue your superb  
22 work. Your leadership gives me real hope about real  
23 progress in remedying the crisis in the access to justice.  
24 Your work improves the access to lawyers, legal advice,  
25 courts and justice and you change lives every day.

1           A civilization advances when what was once  
2 viewed as a misfortune becomes understood as an injustice.  
3 The justice gap is a profound injustice. The way in which  
4 we name an injustice actually gives us the chance to begin  
5 to remedy it. New York's Judiciary and this Task Force no  
6 doubt are leading the way.

7           I so admire your efforts, Chief Judge Lippman,  
8 and your leadership. This Task Force to expand access to  
9 civil justice spotlights facts and generates powerful  
10 proposals and initiatives. And as Chief Judge you found  
11 the right person in my friend, Helaine Barnett, to chair  
12 the Task Force. She is the former president of the Legal  
13 Services Corporation. She is a lifelong leader in legal  
14 services for low-income people. And she is a force of  
15 nature.

16           You each have heard the call and now powerfully  
17 amplify the note sounded so well by Judge Learned Hand in  
18 his 1951 address to the Legal Aid Society in New York. He  
19 said, "It is the daily; it is the small; it is the  
20 cumulative injuries of little people we are here to  
21 protect...if we are to keep our democracy, there must be  
22 one commandment: thou shalt not ration justice."

23           Sadly, this challenge is even more severe now  
24 than it was in 1951. We hit a historic record number in  
25 recent years in the level of people in poverty. Today

1 nearly 64 million people across this great nation 21% of  
2 Americans are eligible for federally-supported civil legal  
3 assistance because they have to make ends meet on an  
4 income of up to 125% of the poverty level.

5 The national data confirms the New York findings  
6 that fewer than 20% of all civil legal needs of low-income  
7 families and individuals are met and has been reported  
8 more than 2.3 million individuals have been unrepresented  
9 last year in the civil court proceedings here in New York.

10 Americans who cannot afford legal help routinely  
11 forfeit basic rights. Neither the facts of their  
12 situations or governing law are to blame. Lack of legal  
13 assistance is the problem. When people forfeit their  
14 rights simply because they cannot afford legal help  
15 everyone suffers. The law does not enforce itself. In  
16 civil cases, law requires litigants to proceed. Litigants  
17 need advisors and guides to the law and its agencies and  
18 courts.

19 Justice Lewis Powell, Jr., spearheaded the  
20 bipartisan commitment that built civil legal assistance  
21 for the poor. He said, and I quote, "It is fundamental  
22 that justice should be the same in substance and  
23 availability without regard to economic status." But we  
24 do not live up to that standard.

25 Eligible clients are turned away daily from

1 legal services offices. One office we at the Legal  
2 Services Corporation visited closes intake every month  
3 after only two days. Who's turned away? Victims of the  
4 financial crisis, veterans returning from the brutality of  
5 armed combat to the cruel indifference of the nation they  
6 defended, paying tenants living in buildings subject to  
7 foreclosure, domestic violence survivors at risk of new  
8 violence which we know increases with each economic  
9 downturn. Those turned away include individuals whose  
10 race, ethnicity or native language exposes them to the  
11 micro-aggression of bias and exclusions.

12 As a law school dean and Chair of the Steering  
13 Committee of Deans of the American Association of Law  
14 Schools I can report that students today in law school  
15 want to serve. Hundreds of students want to provide legal  
16 services for the poor yet they cannot pick their jobs  
17 doing so even though they would gladly accept a job which  
18 pays much less than what's available to many other  
19 lawyers.

20 Finding steady and secure funding for legal  
21 services for low-income people has been a persistent  
22 challenge. The bipartisan commitment that produced the  
23 Legal Services Corporation 40 years ago remains an  
24 inspiration, but the federal funding for LSC has  
25 declined 19% between 2010 and 2013.



1 Another key source of support, Interest on  
2 Lawyers Trust Accounts, relies on the interest on funds  
3 held by lawyers in trust for clients and strengthens  
4 justice by supporting legal services. It's a wonderful  
5 program, but the returns have fallen to record lows due to  
6 both the low interest rates and the lower deposits.

7 So unfortunately, at this time of increasing  
8 need, 56 legal services programs supported by the federal  
9 government have had to close offices since 2009. Losing  
10 an office, in a rural area in particular, can mean that  
11 the next nearest office is two days away by bus,  
12 inaccessible to a person who lacks money for the bus or  
13 for child care or for any other way to meet the need.  
14 Further reductions in federal support are likely next year  
15 and the year after that.

16 And especially in this climate I honestly know  
17 of no better or more inspiring efforts than the work of  
18 this Task Force. You have made and studied the problem  
19 and you have built remedies that are already making a  
20 difference. Over the last five years your comprehensive,  
21 creative and fruitful work has included pursuing  
22 successfully funding through the judicial budget for civil  
23 legal assistance. Your research demonstrates the  
24 devastating effects on the most vulnerable people that  
25 results from the lack of counsel in eviction, domestic

1 violence, consumer matters, and other cases involving  
2 essential needs for daily life.

3 You have shown how lack of counsel for  
4 low-income people produces delays and inefficiencies for  
5 the courts, like a broken down car in the middle of a  
6 highway. National evidence shows the same situation. In  
7 a recent survey of trial judges from 37 states, Puerto  
8 Rico, more than 60% of the responding judges report that  
9 unrepresented litigants fail to present necessary  
10 evidence, committed procedural errors, performed  
11 ineffective cross-examination, and failed to proffer  
12 evidence enforceable in the courts. Unequal justice,  
13 falling heavily on the most vulnerable, damages justice  
14 for the entire society.

15 Your Task Force has done a superb job making the  
16 case for civil legal assistance. What could be better  
17 evidence than your success in securing the \$70 million in  
18 funding annually for civil legal assistance, a sum higher  
19 than the commitments made in any other state in the  
20 nation? But I want to say that we at the Legal Services  
21 Corporation want to add wind to your sails as you seek  
22 your goal of 100 million a year.

23 The Task Force ensures steady public attention  
24 to the basic human needs of low-income clients for  
25 housing, safety, stability, access to health care,

1 education, financial resources. And you know that  
2 ensuring civil legal assistance for low-income people is  
3 not only the right thing to do, it's the smart and  
4 economical thing to do. Your path-breaking study  
5 demonstrating that for each \$1 in funding legal aid  
6 providers generate \$6 in economic benefits for all New  
7 Yorkers demonstrates the power of doing the right thing.

8 Your study also reveals that \$85 million has  
9 been saved through civil legal services for domestic  
10 violence survivors, \$116 million in preventing  
11 homelessness, and 457 million in securing federal  
12 disability, health care and other benefits for which  
13 people are qualified.

14 We all save money when we ensure that people can  
15 pay their own bills, avoid foreclosure, avoid eviction,  
16 avoid foster care placements, and obtain health care  
17 before there is a crisis, keep their children in school  
18 with appropriate services. Comporting with your own  
19 research a study in Florida estimates savings of a similar  
20 order of magnitude due to legal services responding to  
21 domestic violence and homelessness risks. A study in  
22 Nebraska showed that Legal Aid clients received  
23 \$2.5 million in parental support, alimony and unemployment  
24 awards in one year because of the help provided by their  
25 lawyers. And similar research shows how preventing

1 homelessness and domestic violence can help kids in  
2 school, reduce the risk of foster care, and improve their  
3 access to health care, healthier housing, and hence a  
4 success in life. Other states look to your leadership,  
5 your empirical studies, your unwavering commitment to  
6 justice for all, and your success in securing state  
7 funding.

8           Former Chief Judge in my State of Massachusetts,  
9 Chief Justice Margaret Marshall, strikingly observed a few  
10 years ago that no one questioned whether there should be  
11 public funding when our Commonwealth needed to hold a  
12 special election to fill the senate seat that was vacated.  
13 If funding to make elections work is unquestioned as a  
14 public duty, why not funding to keep the courts working?  
15 And the courts cannot work if a whole class of litigants  
16 cannot use them without public assistance.

17           You demonstrated that there are avenues to meet  
18 the justice gap beyond public funding, although that is  
19 essential. Those avenues include pro bono services,  
20 partnerships with law firms, law schools and companies,  
21 innovations that use technology and staffing and private  
22 philanthropy. In the work the Legal Services Corporation  
23 has pursued on pro bono we have followed closely the work  
24 of the New York Task Force and the recommendations are  
25 inspiring: Increasing the aspirational pro bono goal for

1 attorneys from 20 to 50 hours; requiring the 50-hour pro  
2 bono service before admission to the bar; and making it  
3 possible for retired lawyers to actually contribute  
4 service; and the Pro Bono Scholars Programs are all models  
5 for us all to follow.

6 We at the Legal Services Corporation are proud  
7 to collaborate. So for example, the Legal Services  
8 Corporation awarded one of our very first pro bono  
9 innovation fund grants to the Legal Assistance of Western  
10 New York, Inc., which is working alongside with other LSC  
11 grantees: The Legal Aid Society of Mid-New York, Legal  
12 Aid Society of Northeastern New York, Legal Services of  
13 the Hudson Valley, Nassau/Suffolk Law Services Committee,  
14 and Neighborhood Legal Services of Buffalo.

15 This effort, combined with the new 50 hours of  
16 pro bono work for new applicants to the New York Bar and  
17 the Attorney Emeritus Program actually has provided an  
18 exciting model I think for us all to study. The six LSC  
19 grantees are creating a new pro bono practice group across  
20 all of these organizations to coordinate pro bono  
21 opportunities among 33 offices and 9 New York law schools,  
22 including the Feerick Center for Social Justice at Fordham  
23 University School of Law, which staffs the Attorney  
24 Emeritus Program for the Office of Court Administration.

25 The six LSC grantees which provide legal

1 services to every urban, suburban, rural community outside  
2 of New York City will coordinate thousands and thousands  
3 of hours of service donated to help low-income New  
4 Yorkers. And with our initial grant, the 18-month grant  
5 of three hundred and fourteen thousand dollars, I should  
6 also say and sixty-eight dollars, this effort is the  
7 largest innovation grant that we have given. And it's  
8 followed a very competitive process designed, as our  
9 President James Sandman explains, to promote innovation.  
10 I'm encouraged to hear that the grantees actually are  
11 committed to finding funding to continue this initiative  
12 after the initial effort.

13 On behalf of the Legal Services Corporation I  
14 say congratulations and good luck to the Legal Assistance  
15 of Western New York and partners in this timely and  
16 path-breaking project, implementing ideas generated by  
17 this Task Force.

18 Partnerships of this kind can leverage the  
19 energy of new lawyers and emeritus lawyers, along with the  
20 knowledge of law school faculties and experienced legal  
21 services providers joining pro bono work with expertise to  
22 meet the needs of low-income clients. Partnerships are  
23 also at the heart of your Task Force's Annual Law School  
24 Conference which joins together all 15 of the New York law  
25 schools, the providers and representatives from the

1 private bar and the courts to focus on quality supervision  
2 of law students engaged in New York's pro bono programs.

3 Access to justice issues can be part of a law  
4 school's curriculum. I am here to say this can be done.  
5 And not only can it be done, it can be done in a way that  
6 is inspiring and meaningful. And as you have shown, it's  
7 also worth considering incorporating access to justice  
8 issues on bar exams and building summer and postgraduate  
9 opportunities for students so they can develop skills as  
10 well as serve.

11 I do believe that there is a new promise in  
12 innovative technology to tackle the justice gap. And the  
13 Legal Services Corporation held a summit on the use of  
14 technology last year to suggest five ways that technology  
15 can help meet the legal needs of low-income individuals:  
16 First, create in each state a unified digital legal portal  
17 to connect individuals who need legal advice with guides  
18 through the legal process and ways to access professional  
19 help. Second, support the creation of legal documents  
20 through digital document assembly. Third, develop apps --  
21 that is a word -- that could be used by mobile  
22 technologies to reach more people more effectively.  
23 Fourth, apply business process analysis to improve the  
24 efficiency of access to justice efforts. And fifth,  
25 develop expert systems to give lawyers and other service

1 providers access to knowledge that's rendered relevant to  
2 particularized factual situations.

3 Your Task Force is pursuing these promising  
4 directions for the use of technology. And the inventory  
5 that you called for to identify the urgent, medium and  
6 long-term technology needs of New York's legal services  
7 providers is an excellent step. Another powerful effort  
8 will be the first statewide technology summit here in New  
9 York. And the Legal Services Corporation's Technology  
10 Innovation Grant staff, which we affectionately call the  
11 TIG staff, is eager to help with that conference and with  
12 your further efforts.

13 Law schools and engineering and computer schools  
14 and corporations and corporate legal departments can also  
15 be partners in the use of technology to remedy the justice  
16 gap. Many states are finding also that public libraries  
17 offer low-income people their most obvious way to gain  
18 access to technology. So collaboration with libraries,  
19 including training programs for library staff can also be  
20 a promising initiative. In these and other ways many  
21 people who are not lawyers can play critical roles in  
22 addressing the justice gap.

23 And so we think it's completely important and  
24 valuable that your Task Force is boldly considering  
25 potential roles for non-lawyers to advance justice for



1 low-income people. I, and so many other people around the  
2 country, are following closely your study of those  
3 subjects and your Court Navigator programs in the Bronx  
4 and Brooklyn addressing consumer and housing issues. Also  
5 the upcoming pilot in online dispute resolution in  
6 consumer cases is extremely intriguing. The combination  
7 of online tools with pro bono resources can actually meet  
8 people where they are. Some teams have found that in  
9 California. And also work joining religious and civic  
10 organizations to offer legal clinics is something that the  
11 Access to Justice Commission in Tennessee is pursuing.

12 It's a privilege for all of us from the Legal  
13 Services Corporation to be here today and to see the works  
14 of the Task Force. Our Chair, John Levi, recently said,  
15 "The cracks in our civil justice system may not be as  
16 visible as those in our bridges and highways, but we all  
17 know that they exist. But because they are not as easy to  
18 see, we in the profession have a responsibility to speak  
19 up and let the country know the risk to one of the  
20 fundamental pillars of our great democracy."

21 The judges and lawyers of New York show us all  
22 what it looks like to take up this responsibility. And if  
23 the emphasis is not on us, who else will pick it up? And  
24 if it's not now, then when? At stake is the rule of law.  
25 At stakes is stability and security. At stake is the

1 climate in which businesses can thrive. At stake is  
2 secure employment for workers, families and consumers. At  
3 stake actually is the risk of unrest in a society where  
4 justice is not done.

5 My own work experience has taken me to  
6 transitional societies emerging from violent conflict, in  
7 the former Yugoslavia and Rwanda. And what I know is that  
8 if you do not pay attention to fairness of society there's  
9 no fairness for anyone. There's no peace. There's no  
10 chance of the kind of life that anyone would want to live.  
11 You cannot get or sustain economic investment without  
12 courts that operate. You cannot get or sustain economic  
13 investment without a rule of law that is enforced. And  
14 you cannot get or expect the kind of respect that this  
15 nation, this great nation, hopes to earn each year if we  
16 don't live up to the values that we say we believe in.

17 We strengthen our best selves and we avoid the  
18 worst when we are committed to justice. My old boss,  
19 Justice Thurgood Marshall, talked of the courts as the  
20 protector of the powerless. And he said, "In recognizing  
21 the humanity of our fellow beings, we pay ourselves the  
22 highest tribute." That is why those here today who  
23 provide legal help to those who are poor, that is why they  
24 deserve our highest compliment. The rule of law and  
25 access to justice is all about that, how to recognize the

1           humanity of our fellow human beings.

2                       These are challenging times and it's a time to  
3           remind us all that any of us could be in need suddenly.  
4           It could be our own parents, it could be our siblings, it  
5           could be our children. What would we want for them? What  
6           would we want for us? Justice, after all, is JUST US.  
7           And I think that's a pun, but there you go.

8                       CHIEF JUSTICE LIPPMAN: We like it.

9                       DEAN MARTHA MINOW: You know, we talk about what  
10          we teach in law school and that we ought to be teaching  
11          about ethics and access to justice, and the fact is we  
12          teach it whether we say so or not, but the question is  
13          what do we teach? Do we teach that we live up to the  
14          highest standards or not? And the legal profession  
15          teaches, whether we know it or not. What do we teach?  
16          What do we teach the country about what we stand for? I  
17          want to say that we stand for justice.

18                      And I, in that spirit, thank you all for the  
19          work you do to advance justice every day.

20                      CHIEF JUSTICE LIPPMAN: Thank you, Dean Minow,  
21          for that really eloquent statement and for your  
22          comprehensive testimony. I can't think of anyone who can  
23          lay out this problem as well as you did and the many  
24          solutions that you and all of our distinguished visitors  
25          from the Legal Services Corporation have done to advance

1 this issue. Let me ask you just a few questions.

2 DEAN MARTHA MINOW: Certainly.

3 CHIEF JUSTICE LIPPMAN: You know we are very  
4 proud to get this latest grant, the Innovation Grant by  
5 Western New York, and we see how much good your grants do  
6 and how important the Legal Services Corporation is today  
7 with a budget of \$360 million and something in that range.  
8 What should the federal government's role be in promoting  
9 the kinds of things the LSC has done? And let's be very  
10 frank, over these last years it's been a struggle. It  
11 seems to get the funding that is really needed. It seems  
12 almost incomprehensible, even with the gridlock in  
13 Washington, that we cannot get additional funding for LSC.  
14 What should our representatives in Washington be thinking  
15 about when they talk about the federal role in providing  
16 funding for legal services for the poor?

17 DEAN MARTHA MINOW: Well, thank you for that  
18 question. I do believe that we have a job to do to help  
19 educate our own leaders about the multiplier effect of  
20 legal services, as the research conducted by your Task  
21 Force has demonstrated. If you're not moved by just doing  
22 the right thing, doing the smart thing should be pretty  
23 good evidence. The return on the investment is better  
24 than most other kinds of returns that the federal  
25 government makes. If there really were sufficient support

1 for legal services there would be not only the kind of  
2 access to justice that would make us all proud, there  
3 would be a strengthening of the economic and stability  
4 dimensions of each local community.

5 I do think that in addition that the federal  
6 government could understand I think that its own  
7 commitments, its own benefits would be better secured if  
8 there's legal services to help people actually make the  
9 federal programs work. And the veterans example, I can't  
10 imagine a better one, that our returning veterans are  
11 entitled, they're entitled to health care, they're  
12 entitled to job services, they're entitled to small  
13 business association grants, but it's very hard for them  
14 to navigate. And the federal government, in order to make  
15 its own investments meaningful, should invest in legal  
16 services.

17 CHIEF JUSTICE LIPPMAN: I couldn't agree with  
18 you more. We talked about it a little bit earlier today  
19 this idea that this isn't only the right and ethical thing  
20 to do, but there are very good economic issues to make the  
21 case for the good of our community, for the good of our  
22 society, for the stability, for the fabric of our society.  
23 And those arguments are out there, we make them, you make  
24 them. Is it that we need more of our constituency to be  
25 pounding the door in Washington and making these same

1 arguments? Why is it that even given everything that we  
2 know is going on in Washington today, is that what it is,  
3 that we need more soldiers in this fight?

4 DEAN MARTHA MINOW: I am sure that more  
5 constituents talking with their own representatives would  
6 help. I also believe that a combination of statistics and  
7 stories are the way to communicate. And so it's vital in  
8 fact to support the kind of research that this Task Force  
9 has undertaken to make available to people who want to  
10 make the case the materials that will help them do so.

11 CHIEF JUSTICE LIPPMAN: And I also think, as we  
12 were talking about earlier today, there are various parts  
13 of our constituency in a broader sense, including the  
14 Judiciary, that must be standing up and going to  
15 Washington and insisting that this be done.

16 But let me ask you about another part of our  
17 constituency that you are so familiar with, the law  
18 schools. What is the role of the law school today? And I  
19 know we talked about privately some really wonderful  
20 points about we're teaching values, whether we say we're  
21 doing it or not, in the broadest sense when we tried to  
22 mobilize the 15 New York law schools behind this idea that  
23 they are very much a part of this access to justice vision  
24 that we're all trying to push. What do you see -- I know  
25 that we teach these different disciplines in law school

1           which lawyers have to know to be capable lawyers. Is it  
2           mutually exclusive to teach these disciplines and to let  
3           lawyers understand -- the prospective lawyers -- what it  
4           means to be a lawyer and they have to give back? How do  
5           you take it to the mandate of the law school? What do you  
6           do to mandate of the law school?

7                         DEAN MARTHA MINOW: In many ways the legal  
8           education is a little different than any other part of  
9           higher education. We are a professional school, we're  
10          also part of the university. We are the locus of research  
11          about law and justice and therefore have to be a place  
12          that criticism of the justice system is pursued. And we  
13          also of course try to prepare people to have meaningful  
14          lives and careers. If we do not address what frankly is  
15          the multi-decade-long crisis about whether or not law is a  
16          profession or is a business, then we will not have this  
17          unique role anymore.

18                        There are many, many businesses, but if we're  
19          not also a profession then we're not addressing what is  
20          unique about law. I do think that one of the great  
21          surprising side benefits of the financial crisis is that  
22          we have the rapt attention of law students when we turn to  
23          mortgages in the middle of the property class. We have  
24          the rapt attention of the law students when we turn to the  
25          questions about stay and injunctions in procedure class.

1 The issues have spilled over into public awareness. So  
2 the students are aching for the opportunity to take the  
3 learning that they're getting and apply it on behalf of  
4 people in need. The law schools have to provide a way to  
5 be able to equip them to do so and also to provide the law  
6 schools as a meeting ground for the transformation of the  
7 profession. That includes the role of technology. That  
8 includes assisting the courts in digitizing forms and  
9 otherwise helping to modernize. We are the research arm  
10 of the legal profession and that is a major role for us.  
11 That includes empirical study about the efforts to meet  
12 the access to justice problem.

13 Just one more element. The law schools alone  
14 can never remedy the justice gap. We can play a role and  
15 we help students play a role. But what we can do is be  
16 part of an integrated solution that connects the  
17 practicing bar, the Judiciary, the business community and  
18 help everything from having a platform, a shared digital  
19 platform, for allocating pro bono cases, to actually  
20 translating the data into law reform proposals. So I  
21 think there's an enormous opportunity for the law schools  
22 to play that kind of role today.

23 CHIEF JUSTICE LIPPMAN: I agree. In your law  
24 school and your leadership I think that's obvious. And I  
25 think around the country it's so important. One more



1 question before I ask the panel if they have any  
2 questions. You talked about awareness in public  
3 consciousness. And we know that in the criminal area the  
4 public gets it, from the TV alone or from all the things,  
5 about your right to an attorney and how critical it is.  
6 And obviously since *Gideon v. Wainwright* and watching  
7 Henry Fonda in the movies, we get it, everybody gets an  
8 attorney.

9 Is the public starting to get it that the roof  
10 is going to come down over your head that someone is  
11 entitled to representation? Do they get the fact that  
12 losing your home can be as severe as actually losing your  
13 liberty? Is that public consciousness getting there in  
14 your mind?

15 DEAN MARTHA MINOW: I had a student who grew up  
16 in Russia and who learned about the Miranda warnings from  
17 watching American television growing up in Russia. I  
18 don't think we have anything comparable to that level of  
19 awareness in this country, much less around the world,  
20 about civil justice. So I think we have a long distance  
21 to go.

22 I think that the numbers of representatives in  
23 Congress who don't know what civil legal services, what  
24 that phrase means, is astounding. So that's our burden.  
25 That's our obligation to figure out how to communicate

1 much better.

2 CHIEF JUSTICE LIPPMAN: I think in some ways the  
3 economic crisis maybe has made people a little more aware;  
4 particularly, the foreclosure clan, or whatever you want  
5 to call it, really did heighten the awareness, but I think  
6 we've got a ways to go. Are there other questions?

7 HONORABLE KAREN PETERS: I have one. I was  
8 fascinated by your suggestion of public libraries playing  
9 a role with regard to access to justice for low-income  
10 people. And as the Presiding Judge of the Third  
11 Department as you are probably aware we have so many  
12 clients and potential clients who live in rural areas who  
13 don't have access to a law school pro bono program, they  
14 don't have a Legal Aid office in their neighborhood or in  
15 their community or even within driving distance. But I  
16 live in a rural community in this department and I can  
17 tell you that there are libraries everywhere, many of whom  
18 have really come so far with regard to technology and  
19 availability of technology to local citizens. Would you  
20 tell me a little bit more -- and I know we're tight for  
21 time -- would it take to refining this type of cooperation  
22 successful in rural states?

23 DEAN MARTHA MINOW: Well, an example is Hawaii.  
24 And Hawaii on its many islands does not have a large  
25 number of lawyers. The lawyers are in Honolulu. So it's

1 exactly one reason why they've turned to libraries. And  
2 it was Andrew Carnegie who developed the idea that every  
3 community should have a library. And now in many  
4 communities the libraries are the own shared civic space.  
5 And as you say the libraries have become at the forefront  
6 about technology and how to make technology available.  
7 For many poor people the only access they have to online  
8 services is through their public library.

9 So what Hawaii has done and a few other states  
10 are exploring is the possibility of not only bringing  
11 access to a statewide portal or other kinds of materials  
12 that involve access to the court forums and so forth, but  
13 also providing training to the librarians in the same way  
14 that your Task Force is exploring the possible role as a  
15 navigator role or other roles for non-lawyers. Librarians  
16 should not pretend to be lawyers, they don't want to be  
17 lawyers, but they can provide the kind of access to  
18 reference materials as they do in other circumstances  
19 right here to advance the access to justice initiative.

20 HONORABLE KAREN PETERS: Thank you.

21 CHIEF JUSTICE LIPPMAN: Thank you for your  
22 terrific testimony. And I think everyone here in this  
23 room can get an idea of the wonderful work that LSC does  
24 through your really very comprehensive terrific testimony.

25 DEAN MARTHA MINOW: Thank you for the privilege

1 and inviting me to testify.

2 CHIEF JUSTICE LIPPMAN: Thank you. Our next  
3 witness will be the Honorable Katherine M. Sheehan, the  
4 Mayor of the great City of Albany.

5 MAYOR KATHERINE SHEEHAN: Thank you.

6 CHIEF JUSTICE LIPPMAN: And Mayor Sheehan, we're  
7 delighted to see you here. The City of Albany has always  
8 been very, very conscious of the need of legal services  
9 and we know that you actually, which you don't have to be,  
10 are a member of the profession and you are equally aware  
11 of the need for legal services in this City. So you're  
12 on, Madam Mayor, great to see you.

13 MAYOR KATHERINE SHEEHAN: Thank you very much.  
14 I want to thank you for this invitation. I want to thank  
15 the Administrative Judge Gail Prudenti, Presiding Justice  
16 Karen Peters, Justice Marks and Glenn Lau-Kee, President  
17 of the New York State Bar Association, for once again  
18 holding this Third Department hearing in Albany.

19 I also want to thank you, Judge Lippman, for  
20 your unwavering support for civil services and for  
21 securing unprecedented funding for the City of Albany's  
22 civil legal services providers and providers throughout  
23 the state.

24 I want to acknowledge with pleasure the  
25 President and the Board of Directors of the Legal Services

1 Corporation. I'm delighted to welcome them to the City of  
2 Albany. I'm particularly glad to welcome Jim Sandman, one  
3 of our own, back to Albany.

4 CHIEF JUSTICE LIPPMAN: They all come back to  
5 Albany.

6 MAYOR KATHERINE SHEEHAN: They do. Thanks to  
7 Don Levi, and Dean Martha Minow who we just heard from,  
8 and all the members of the Board of Directors for their  
9 support in civil legal services.

10 Albany is a beautiful and historic city. We are  
11 proud to be the Capitol of New York. Despite being New  
12 York's Capitol we are not without our challenges that  
13 many, many cities in our state face today. The City of  
14 Albany's population is about 98,000 people and 25.4% of  
15 them live in poverty. A staggering 34% of our children  
16 are living in poverty. Similarly, our substantial elderly  
17 population also has a very high poverty rate. And for all  
18 of these people they face many of the burdens of  
19 maintaining the essentials of life. They grapple with  
20 consumer debt, but they also need shelter, safety,  
21 stability and access to education and health care.

22 And with so many residents in need, I am very  
23 pleased that Albany is home to a number of the finest  
24 legal service providers, each of whom provides vital  
25 services to low-income residents. As an attorney in

1 private practice and as general counsel of a manufacturing  
2 company I was only rarely able to provide direct legal  
3 assistance to low-income people in need, but when I did it  
4 was the most gratifying work that I ever performed in my  
5 career. That is the situation for many local lawyers and  
6 that is why ongoing fiscal and programmatic support for  
7 these agencies is essential to the residents and to the  
8 economic viability of our City.

9 The Legal Aid Society of Northeastern New York  
10 provides a full range of civil legal services to protect  
11 essential needs. Legal Aid provides general legal  
12 services to all low-income people. Their housing  
13 attorneys partner with the City through our Emergency  
14 Solutions Grant Program and with Albany County to provide  
15 comprehensive homelessness prevention services. They also  
16 administer several projects which respond to the acute  
17 needs in our City. For example, Foreclosure Prevention,  
18 Disability Advocacy Project, the Children's Law Project,  
19 HIV/AIDS Law Consortium, the Nutrition Outreach &  
20 Education Program, Upstate New York Immigration Law  
21 Project, Senior Legal Services Program and Low-Income  
22 Taxpayer Clinic.

23 The Legal Project of the Capital District  
24 Women's Bar Association also provides essential legal  
25 services to victims of domestic violence and stalking.

1 The TLP leverages pro bono volunteers throughout the  
2 Capital Region to provide services to low and moderate  
3 income New Yorkers, including the working poor. They also  
4 provide services to prevent foreclosures, do affordable  
5 home closings, wills and appellate cases. They sponsor a  
6 reduced fee matrimonial program, small business advice  
7 bureau, speakers program, pro bono bankruptcy program, and  
8 also they host an incubator project with the Albany Law  
9 School.

10 The Albany Law School Clinic and Justice Center  
11 provides free legal services through a variety of clinics,  
12 including the Health Law Clinic, Tax & Transactions  
13 Clinic, Field Placement Clinic, Civil Rights &  
14 Disabilities Law Clinic, Domestic Violence Prosecution  
15 Hybrid Clinic, Family Violence Litigation Clinic and  
16 Immigration Project and Introduction to Litigation Clinic.

17 The City of Albany is also home to Empire  
18 Justice Center, a statewide advocacy organization that  
19 provides back-up services for local legal service  
20 providers and direct representation in some appellate and  
21 public benefit cases. Disability Rights New York, also  
22 located in the City of Albany, provides protection and  
23 advocacy services to the developmentally disabled, the  
24 mentally ill and other disabled people.

25 It is gratifying to see all the local legal

1 service providers collaborate among themselves to minimize  
2 duplication of services and to coordinate for the  
3 provision of services to low-income residents in Albany.  
4 I am proud to serve on the board of Albany Law School and  
5 note their commitment to community partnership and  
6 collaboration with local legal service providers. The  
7 benefit of the services delivered by all of these  
8 providers is best demonstrated by first-hand accounts from  
9 those that they serve. And I understand you are going to  
10 be hearing first-hand accounts from individuals today.

11 CHIEF JUSTICE LIPPMAN: We will absolutely.

12 MAYOR KATHERINE SHEEHAN: I want to tell you  
13 about one individual the Legal Aid Society of Northeastern  
14 New York represented, Christine, a disabled woman who was  
15 evicted for nonpayment of rent. They appealed the  
16 termination of her Section 8 voucher and after an  
17 administrative hearing her housing voucher was reinstated  
18 after Legal Aid set forth her many attempts to pay her  
19 rent. The hearing officer agreed and restored her  
20 voucher.

21 In a city like Albany eviction can uproot an  
22 entire family. We are only now beginning to understand  
23 that transiency, particularly among students in our  
24 schools, is a leading indicator of a challenge and a  
25 leading negative indicator around graduation rates.



1 Having advocacy around keeping people in their homes is  
2 critically linked to the education outcomes that we see in  
3 our City. And as we begin to understand that, the  
4 importance of pro bono services and of advocacy to help  
5 keep families rooted in their neighborhoods so that their  
6 children can stay in the same schools throughout their  
7 school career is critically important. It's just one  
8 example of the investment that the Dean talked about, that  
9 it pays dividends and why it's so important that we  
10 advocate and continue to do this work.

11 I applaud the Task Force for the long reach of  
12 all of its activities. The Task Force's commitment to  
13 developing non-economic access to justice initiatives is  
14 brilliant. The 50-hour admission requirement was the  
15 first in the nation. And I am proud to say in Albany  
16 local law students have responded eagerly to the new  
17 initiative. I believe that the Task Force's commitment to  
18 increasing pro bono and using non-lawyers, online dispute  
19 resolution, training and technology to promote access to  
20 justice will enure to the benefit not only of residents of  
21 the City of Albany today, but in the days to come and the  
22 generations to come.

23 I eagerly await the results of today's hearing  
24 and this year's Task Force report. I can provide you with  
25 any other additional information, please don't hesitate to

1 ask. But thank you again for the work that you do.

2 CHIEF JUSTICE LIPPMAN: Thank you, Mayor  
3 Sheehan, for being here today, and we really appreciate  
4 it. Let me just ask you a couple of quick questions. Do  
5 people know where to go in Albany to get legal services?  
6 Even assuming the fact that we know that we can't handle  
7 all the requests that we get now for legal assistance, you  
8 talked about collaboration, do you have the means to see  
9 people in the legal services? Is that clear to the  
10 average person where they go?

11 MAYOR KATHERINE SHEEHAN: The navigation of it  
12 can be challenging, but I will say in a city like Albany  
13 where there are so many advocacy groups that are located  
14 here that we are able to direct people to where they need  
15 to go in most instances.

16 CHIEF JUSTICE LIPPMAN: When they come into a  
17 governmental office do you send them to legal service?

18 MAYOR KATHERINE SHEEHAN: Absolutely. So when  
19 they come into City Hall, and people come to City Hall for  
20 a whole host of reasons, eviction is a very common one we  
21 get, and so we are able to refer them to a provider that  
22 can help them.

23 CHIEF JUSTICE LIPPMAN: One other question. So  
24 you get them into legal services and certainly significant  
25 numbers of people are helped, not as many as we would

1           like. Describe, as the Mayor, how this affects the fabric  
2           of this city that having the ability to have legal service  
3           providers helping people in need, whether it's an eviction  
4           or some other crisis in their life, how do you see it from  
5           your broad perspective of things?

6                       MAYOR KATHERINE SHEEHAN: To me, having that  
7           access is essential for our city to be able to grow, to be  
8           a place where people feel as though they are treated  
9           fairly, where they have the ability to get a fair hearing  
10          of their challenges and to be able to navigate the system  
11          in a way that -- we have so much more work to do. It's  
12          not just the legal system, it's all of us, have a lot more  
13          work to do to provide that ease of access to people so  
14          that they can focus on providing for their family, on  
15          making sure that their children are getting a good  
16          education, as opposed to having to go from one place to  
17          another to another.

18                      CHIEF JUSTICE LIPPMAN: You're evicted, you lose  
19          your job, your kids can't go to the same school that  
20          they're supposed to be going to.

21                      MAYOR KATHERINE SHEEHAN: Exactly.

22                      CHIEF JUSTICE LIPPMAN: All these things are not  
23          healthy for your community.

24                      MAYOR KATHERINE SHEEHAN: And if we can get back  
25          to that root problem of preventing it from happening in

1 the first place, prevent that eviction from occurring.  
2 The issue that is causing that can be domestic violence,  
3 it can be unfair treatment in their job. You know, all of  
4 these are challenges that people face that when they have  
5 that advocate, when we're able to connect people with  
6 somebody who becomes their advocate and helps them  
7 navigate through the system we see wonderful outcomes.  
8 But that's the key, is making sure that they have that  
9 person who is helping them to navigate.

10 CHIEF JUSTICE LIPPMAN: Any further questions?

11 HONORABLE LAWRENCE MARKS: Quick question to  
12 follow up on Judge Lippman's question. So the federal  
13 government is a source of funding for legal services, the  
14 state is a source of funding, increased source of funding,  
15 at least in the State of New York, for legal services. If  
16 local governments, including cities, benefit from  
17 well-financed legal services do the local governments and  
18 cities have any responsibility of their own to fund legal  
19 services?

20 MAYOR KATHERINE SHEEHAN: Well, you know, the  
21 challenge for a city like Albany where we have high rates  
22 of poverty, where we have significant challenges with just  
23 being able to fund basic city services as well as our  
24 schools it is a challenge. I know from where I speak  
25 because I had to issue my budget last Wednesday. And the

1 City of Albany, notwithstanding making significant cuts to  
2 our operations, still has a \$12 million deficit. We are  
3 funding that with one-time revenue opportunities, but it  
4 is very, very challenging. And that is why I think if we  
5 can get advocacy around these issues at the state and the  
6 federal level, this is a way that localities can be helped  
7 with offsetting the burdens that are created when you have  
8 people that fall through the cracks, because that then  
9 places a strain on our local resources.

10 So I think from the standpoint of finding the  
11 ways to fund it where -- our tax base is really our  
12 residents who are in some cases in the least position to  
13 be able to provide funding for those services which is why  
14 we look to the federal and state government in order to do  
15 that.

16 HONORABLE KAREN PETERS: I just have one  
17 question. You mentioned the studies show clearly that if  
18 the child has residential stability it's a relevant factor  
19 for success in school. And interestingly, in this country  
20 in general, if the child gets sick in school and there's a  
21 school nurse the child can go to for some assistance, and  
22 in most situations if the family is not of money means  
23 they will have some assistance getting medical care for  
24 that child. But interestingly, if the child's family is  
25 being evicted, there's no way that family is going to get

1 assistance until some program that you have available in  
2 the city will provide assistance to them. Do you think  
3 that part of the problem is that most people in this  
4 state, in this country, who aren't in physical distress  
5 don't seem to understand the need for civil legal services  
6 is just as serious as the need for medical care?

7 MAYOR KATHERINE SHEEHAN: I think that we're  
8 starting to see that, that what is contributing to  
9 stability and that we just reported in a story about two  
10 different school districts, two high schools one and a  
11 half miles apart, with staggeringly different outcomes.  
12 But within the school district that was struggling where  
13 they had about 60% graduation rate, among students who had  
14 been in the district from kindergarten all the way  
15 through, 95% are graduating. I mean to me that is an  
16 incredibly compelling number that shows the importance,  
17 just as you said, that physical stability, that stability  
18 in your life and the supports around your life are every  
19 bit as important as your health and as other factors that  
20 we seem to assume but we don't -- we have not made that  
21 connection around these other areas where legal services  
22 can play an incredibly important role in providing that  
23 stability.

24 CHIEF JUSTICE LIPPMAN: Thank you, Mayor  
25 Sheehan, it's always a delight to see you at the Court of

1 Appeals. Thank you for coming in. I now ask the  
2 Honorable A. Gail Prudenti, the Chief Administrative Judge  
3 of the courts, to come up. And it's a little unusual that  
4 Judge Prudenti is testifying, she's usually sitting up  
5 here next to me, but we thought it important for the  
6 judges to tell us a little bit about what's going on in  
7 New York, the success that we've achieved, problems, to  
8 document some of the numbers about what the results are  
9 here in upstate in regard to civil legal services for the  
10 poor. Judge Prudenti.

11 HONORABLE A. GAIL PRUDENTI: Yes, thank you.  
12 Thank you, Chief Judge. And I would just like to thank  
13 you for the privilege of being the Chief Administrative  
14 Judge and for being here today. And I also would like to  
15 thank my colleagues and friends who are of course sitting  
16 with you: Presiding Justice Peters, Judge Marks,  
17 President Lau-Kee.

18 Thank you for the opportunity to address you.  
19 I'm not going to be reading from my remarks, but I have  
20 some notes that I have taken, so please don't hesitate if  
21 you would like to stop me at any point, that's fine. If  
22 you would like to wait until the end to ask questions,  
23 that's fine, but I would be absolutely delighted to answer  
24 any questions.

25 For those of you who don't know me my name is

1 Gail Prudenti and I am the Chief Administrative Judge.  
2 Many people have asked me what does the Chief  
3 Administrative Judge do? Well, the Chief Administrative  
4 Judge is appointed and in this case by a brilliant Chief  
5 Judge.

6 CHIEF JUSTICE LIPPMAN: Thank you, Judge. You  
7 see why I have her testifying.

8 HONORABLE A. GAIL PRUDENTI: And our brilliant  
9 Chief Judge is a visionary and he is a visionary of the  
10 New York State court system and his reputation is known  
11 nationally. But I have to tell you, whether it be in  
12 Barcelona or Puerto Rico, he is known internationally as  
13 well. And I am a spokesperson who tries to make his  
14 initiatives a reality.

15 But I am here today to talk about an important  
16 role that these hearings play in helping us to set and  
17 meet the unmet legal needs of so many New Yorkers. My  
18 role today is to share the progress of this Chief Judge's  
19 initiative to expand access to civil legal services to all  
20 New Yorkers. It has always been, and those of us who have  
21 known him know it well, always been a top priority of this  
22 Chief Judge's administration. It's also a vital  
23 importance to all of the Judiciary.

24 I have to tell you I don't know a judge who has  
25 sat in the family court or in the housing court or in the



1           matrimonial courts or in the medical malpractice courts or  
2           at the Appellate Division level that doesn't realize the  
3           vital importance of civil legal services for individuals  
4           who can't afford those services themselves. So it is  
5           important to all New Yorkers.

6                        As I said, our visionary Chief Judge long ago,  
7           and I tell you long ago because I've had the privilege of  
8           working for this gentleman for about 20 years in different  
9           capacities, recognized the situation that we were in is  
10          critical. He knew and we talked about how people came to  
11          us at some of the most difficult times in their lives and  
12          without the benefit of counsel, they were frightened, they  
13          were anxiety-ridden, they didn't know which way to turn.  
14          So he also decided that as far as his administration was  
15          going to be concerned, that providing civil legal services  
16          to those who couldn't afford legal services would be at  
17          the top of his agenda when he became the Chief Judge.

18                       There are millions and millions that are  
19          appearing without lawyers in our courts in New York. They  
20          are involved and they remind us, as the Chief Judge said,  
21          that there are individuals that sometimes we forget about  
22          that do not have the essentials of life. They don't have  
23          a roof over their head, they don't know where their  
24          children are supposed to go to school, they don't have any  
25          health care being provided, nor have they had the

1 privilege of education. There are women who are victims  
2 of domestic violence. So as our Chief Judge said, it was  
3 time and it was appropriate to do something to help many,  
4 many individuals who are in great need of civil legal  
5 services but couldn't afford them.

6 There were many in our legal community, and I  
7 remember it well, that said the Chief Judge had the right  
8 idea but that it was not the appropriate time due to the  
9 financial crisis that we were in. But as the Chief Judge  
10 said, if not then, when?

11 The current economic climate has lead to an  
12 increased number of poor and unrepresented individuals in  
13 civil matters, but many of us have realized the Chief  
14 Judge was correct, we must give help and hope when it is  
15 most needed. Civil legal service money is essential to  
16 our Judiciary fulfilling its course mission which is equal  
17 justice to all.

18 Lack of legal representation not only hurts the  
19 unrepresented, but as we judges know, and we practiced in  
20 the courts in the State of New York know, we saw higher  
21 litigation costs, and usually for those people who are  
22 represented, leads to less efficient courts, and it's  
23 because of constant adjournments and because of judges who  
24 want people to have a level playing field. And of course,  
25 to the quality of justice suffering. As the Chief Judge

1           said, this issue is as important as keeping the doors of  
2           our courthouse open.

3                       So we are indeed fortunate to have a proactive  
4           Chief Judge who leads by example and taught me long ago,  
5           longer than either one of us would like to admit, that one  
6           person can be a force for positive change in the world  
7           today. We are here because of his commitment to help  
8           others.

9                       So now I would like to talk to you about the  
10          many successes that we have had in the past four years.  
11          But although we have many successes, we have very far to  
12          go. We have tried in so many innovative ways to bridge  
13          the justice gap. We've heard today already and so many of  
14          us already know about the 50-hour pro bono requirement for  
15          admission to the Bar or increase in aspirational hours of  
16          pro bono service for the lawyers in the State of New York,  
17          for our Pro Bono Scholars Program which Judge Graffeo and  
18          Chief Judge Lippman work so hard on, that not only bridges  
19          the justice gap but helps young law students hopefully  
20          achieve their own personal and professional goals. And of  
21          course pro bono service by in-house counsel.

22                      So in these challenging budget times, and  
23          believe me each and every year is a challenging budget  
24          process, we have been able to obtain increasing amounts of  
25          funding in our Judiciary budget. The first year that

1 funding was \$27.5 million. In our second year we were  
2 able to obtain \$40 million. And in our third year \$55  
3 million. And the current fiscal year ending March 2015  
4 \$70 million. Each year we have passed on to IOLA  
5 \$15 million in rescue funding and distributed the rest  
6 through our Judicial Civil Legal Services Funding through  
7 an Oversight Board that has its RFP process. We request  
8 proposals by civil legal service providers and we focus  
9 only on the matters involving essentials of life which you  
10 have heard so much about today and which we hear so much  
11 about at each and every hearing with regard to civil legal  
12 services.

13 We know that the eligibility for services is  
14 limited to persons who are living at or below 200% of the  
15 federal poverty level. Primarily we focus on direct legal  
16 services, that is our funding priority. And collaboration  
17 among civil legal services providers is very, very much  
18 encouraged.

19 Grantees also may use a very small portion of  
20 their award to give other legal assistance, whether it be  
21 hotline, help desk, workshops, referrals to other  
22 providers. The Oversight Board allocated the latest  
23 Judiciary budget of \$55 million to 75 civil legal services  
24 providers serving low-income New Yorkers in every county  
25 in the State of New York. Grants range from approximately

1           \$15,000 to \$6 million.

2                   I would be remiss though if I didn't personally,  
3 not only on behalf of the Chief Judge, but on behalf of  
4 myself, thank Helaine Barnett, the Chair of the Task Force  
5 to Expand Access to Civil Legal Services in New York and  
6 the Chair of our Oversight Board. Through her efforts and  
7 that of her Task Force they have been able to afford us  
8 the ability to assess the need for civil legal services,  
9 to give us information in a comprehensive report each and  
10 every year. And they have dedicated and studied all of  
11 our creative ideas and come up with many creative ideas on  
12 their own. They are enabling us to address this critical  
13 situation.

14                   I personally owe Helaine Barnett a debt of  
15 gratitude. I have learned so much from her about the  
16 legal services community not only in the State of New York  
17 but throughout the country. She is a true professional  
18 with a very kind heart.

19                   The good news is that funding is helping  
20 millions and millions of New Yorkers. The physical year  
21 ending March 2014 grantees of our Judiciary civil legal  
22 service funding handled 385,000 cases involving the  
23 essentials of life. We have seen improvement with  
24 increased funding. Vast improvement. The number of  
25 clients served more than doubled from 2011-2012 to

1 2012-2013. And many more New Yorkers were helped who were  
2 not directly given services but still were the  
3 beneficiaries of cases that were brought on behalf of  
4 individuals, as well as class action, and as well as  
5 family members who are also involved in foreclosure  
6 proceedings, as well as one very notable case which  
7 involved an individual and her family, her children were  
8 suffering from disability. Post-Sandy or Superstorm or  
9 hurricane, no matter what you call it it was devastation,  
10 this woman and her family were being asked to leave the  
11 hotel where they were housed, there would be no more  
12 federal funding. A legal services provider brought a  
13 case, the matter was resolved. But that case just didn't  
14 help that family, it helped 488 other people who were  
15 similarly situated. Last year close to 1.4 million  
16 individuals were beneficially impacted.

17 With regard to our other legal assistance,  
18 whether it be informational, help desk, hotline,  
19 educational workshops, the number of individuals using  
20 this assistance has grown dramatically. In our first year  
21 it was approximately 730,000 individuals, in our second  
22 year it was 1.9 million individuals, and in our third year  
23 it was 4 million individuals.

24 As you will see this afternoon from clients who  
25 will tell their stories, these stories are heart

1 wrenching, and believe me they can tell their stories  
2 much, much better than I would ever be able to tell their  
3 stories. You will hear from them. I have included in my  
4 written remarks some of the many stories that touched my  
5 heart that make me truly believe that these people and so  
6 many others, including so many people that we love and we  
7 care about, family members, could be in this situation at  
8 any time, and that it is our obligation and our  
9 responsibility as lawyers to provide these services.

10 We have come a long way. We have made great  
11 progress. In 2009 we've estimated that 2.3 million  
12 individuals were unrepresented litigants in civil cases.  
13 Now, from our 2013 data, it shows a dramatic decline to  
14 1.8 million. There are examples we have seen of many  
15 improvements, whether it be tenants in eviction cases,  
16 whether it be in family court outside of the City of New  
17 York, whether it be inside New York City with regard to  
18 child support matters. We still have so far to go. The  
19 number of unrepresented litigants in these important cases  
20 remains extremely high.

21 Tenants in eviction cases in New York City  
22 remain unrepresented at a high rate of approximately 99%.  
23 Defendants in consumer credit cases that were closed last  
24 year there were 96% of individuals in those cases that  
25 were unrepresented. The current resources are still

1           insufficient. As always, we must build upon and redouble  
2           our efforts. This is fundamental to our core issues.

3                         With that said, I would be remiss if I didn't  
4           say a heartfelt thanks to the Board of Directors of the  
5           Legal Services Corporation. They are the Chief Judge's  
6           kindred spirits and their tireless efforts will help us  
7           achieve our goals I hope in our careers and in our  
8           lifetime.

9                         With that said, thank you for listening to me  
10          and I would be very happy to answer any questions you  
11          might have.

12                        CHIEF JUSTICE LIPPMAN: Thank you, Judge  
13          Prudenti, for putting some meat on the bones and some  
14          numbers before us. Let me ask you a question now. With  
15          the money we get from the state, which you work very hard  
16          across the street to help to get us, and the money that  
17          comes into New York through the Legal Services  
18          Corporation, what about the issues that Judge Marks raised  
19          before about our cities and localities? I was very  
20          pleased that New York City, under the current  
21          administration, is putting money into eviction cases and  
22          providing representation and to immigration cases which  
23          are so relevant today. Do you think that the cities and  
24          municipalities are a part of this puzzle or do we say gee  
25          their economic problems at that level of government are so



1           difficult that we can't expect to have additional funds  
2           coming in? Do you have any thoughts about that?

3                   HONORABLE A. GAIL PRUDENTI: I certainly do. I  
4           think that we have to be sympathetic to the difficult  
5           times that our cities and our counties are facing. There  
6           are cities and counties around the State of New York who  
7           aren't able to provide assistance. Chief Judge, I have  
8           seen member items in the City of New York that are as  
9           small as \$1-, \$2-, \$3-, \$4-, \$5 million, but each and  
10          every one of those dollars adds up. I know that we have  
11          some wonderful avenues and I know that there are some  
12          counties and some cities around the State of New York who  
13          have insufficient funds and realize that by spending those  
14          funds they will be able to -- their Social Services  
15          budgets will go down and they will have more money to  
16          spend because they will gather more federal dollars. So I  
17          think an educational process is needed.

18                   I also would like to say that our partners in  
19          the Executive Branch and the Legislative Branch are very  
20          gracious and kind and listened and heard your message, but  
21          I also would like to say that we obtain many grants, many  
22          grants nationally that have also helped us with this  
23          mission, and I'm sure that we could encourage many cities  
24          and counties to help us as well.

25                   CHIEF JUSTICE LIPPMAN: I affirm what you say.

1 The Legislature and Executive have been terrific in New  
2 York in providing the funds that they do. I am very  
3 pleased by the numbers and we are looking toward what that  
4 number will be as to how many people are unrepresented in  
5 the State of New York. And you put that number 1.8 now  
6 and I think that is progress that we should be proud of.  
7 Give people a sense, how many cases come into the New York  
8 State courts every year?

9 HONORABLE A. GAIL PRUDENTI: Chief Judge,  
10 millions and millions and millions and millions, that's  
11 what I can tell you. If my memory serves me correctly,  
12 and please correct me if I'm wrong, but it was like 4- or  
13 5 million cases.

14 CHIEF JUSTICE LIPPMAN: Yes, between 4- and 5-.  
15 Judge Prudenti is a good learner. 4- to 5 million I think  
16 is right. So you're talking about 1.8 million people who  
17 are unrepresented. Of course that can be more than one  
18 person in the same case. But there are certain -- and I  
19 think the judge made that clear -- there are certain kinds  
20 of cases in which the representation level is so low and  
21 virtually no one is represented. And those are the areas  
22 we're looking, with President Lau-Kee, we're looking at  
23 other methods of delivering legal assistance where there  
24 are no lawyers to hear many cases. Even with pro bono  
25 efforts we still don't have many lawyers. So that's where

1 we've gotten into the initiative with non-lawyers maybe  
2 being involved in this process, particularly housing and  
3 consumer credit.

4 HONORABLE A. GAIL PRUDENTI: Chief Judge, I just  
5 would like to end my testimony and tell you that having  
6 been a judge and sat in many courts I can tell you that  
7 for the individuals that are involved in each and every  
8 case this is no passing matter. And I think this  
9 afternoon everyone will see that the individuals who were  
10 represented by legal services providers, that these  
11 providers changed their lives. And I can say for myself,  
12 having attended many of these hearings with you, that what  
13 it does for me when I sit in this room or if I sit on this  
14 panel, it makes me rededicate my efforts to your efforts.  
15 Thank you.

16 CHIEF JUSTICE LIPPMAN: Thank you. Any other  
17 questions for Judge Prudenti? Let's have Corinda  
18 Crossdale, the Director for the New York State Office for  
19 the Aging. Thank you for coming, it's a pleasure to see  
20 you.

21 CORINDA CROSSDALE: Thank you, I appreciate the  
22 opportunity to be here. I am the Director of the New York  
23 State Office for the Aging and I am here today to speak  
24 about New York State's Services Initiative, which is a  
25 private/public effort announced in September of 2012 by

1 Governor Andrew Cuomo. The intent of this initiative is  
2 to find new ways to better provide affordable legal  
3 services to older New Yorkers, individuals of all ages  
4 with all types of disabilities and their caregivers; with  
5 the goal of advancing equal access to justice.

6 The partnership established to implement this  
7 initiative includes the New York State Office for the  
8 Aging, the New York State Office of Court Administration,  
9 and New York State Bar Association, and the New York State  
10 Office for People with Developmental Disabilities. In an  
11 effort to achieve greater and more diverse involvement in  
12 this statewide effort, our partnership is collaborating  
13 with a Think Group of experienced individuals from across  
14 the state to define the barriers these populations  
15 encounter when they need legal assistance, to identify  
16 strategies to address them.

17 In accordance with the Older Americans Act, the  
18 New York State Office for the Aging administers a Legal  
19 Assistance Program for older adults who, due to economic  
20 or social need, would not likely be able to obtain the  
21 assistance of an attorney. At the community level, each  
22 area agency on aging is required to dedicate a portion of  
23 federal funds to provide legal assistance under this  
24 program.

25 Individuals with disabilities, that's including

1           mental, developmental, intellectual, emotional and  
2           physical, account for 2 million of New York State  
3           residents. There are currently 3.7 million adults aged 60  
4           and over in New York State; and informal caregivers number  
5           over 3 million. It is expected that all of these  
6           populations will increase over the next decade. People  
7           are living longer and increasing numbers of people are  
8           living alone in all stages of life. Health and long-term  
9           services and supports have moved away from institutional  
10          care to home and community-based care. For some older New  
11          Yorkers and individuals with disabilities access to legal  
12          services can be a critical factor in their ability to  
13          continue to live in the community of their choice.

14                 These shifts in demographic and policy trends  
15          provided the impetus for the development of the Legal  
16          Services Initiative. Some of the reports received from  
17          across the state underlie the importance of working on  
18          these initiatives, activities and goals which include lack  
19          of awareness regarding the legal framework underlying many  
20          of the problems encountered; therefore, legal rights and  
21          protections are not considered when addressing these  
22          concerns. Many older adults and individuals with  
23          disabilities enter the court systems without the benefit  
24          of legal representation. Numerous residents cannot afford  
25          the costs of legal help, and there is a growing gap in the

1 ability to afford legal assistance. Many residents do not  
2 know where or how to contact legal help that is most  
3 appropriate to address their particular needs. Many  
4 members of the legal community and of the Judiciary are  
5 not knowledgeable about the traits, conditions and  
6 circumstances characterizing aging individuals and persons  
7 with disabilities and are often unaware of the extent to  
8 which these elements have a significant impact on the  
9 ability to gain successful access to the legal system or  
10 to achieve just outcomes.

11 Based on these reports the legal initiative  
12 collaborative looks to a successful partnership that will  
13 advance the following goals: Ensure that New York's older  
14 adults, individuals with disabilities and caregivers have  
15 practical access to sufficient and affordable legal  
16 assistance. Increase awareness among these populations  
17 and their service providers of legal rights regarding a  
18 variety of topic areas. Increase attorneys', Judiciary  
19 members' and law students' awareness of the traits,  
20 characteristics and circumstances of these populations, as  
21 well as increase understanding of how these elements  
22 impact the ability of older adults and those with  
23 disabilities to successfully engage with the legal  
24 community and the court systems. Increase attorneys',  
25 Judiciary members' and law students' awareness of the very

1 diverse types of legal concerns impacting the targeted  
2 populations on a daily basis. Increase the number of  
3 attorneys who will include the needs of this population in  
4 their practices. Explore the provision of pro bono legal  
5 services, as well as other non-attorney alternatives, as a  
6 means of increasing access to affordable legal assistance.  
7 And strengthen and better coordinate the aging network's  
8 legal assistance program.

9 To date the legal services collaborative has  
10 completed six statewide exploratory surveys. The goals of  
11 these surveys is to describe the status of legal  
12 assistance for these three population groups. The  
13 information obtained from the six surveys is still being  
14 analyzed and will soon be reviewed by a public/private  
15 Think Group which will be convening this month. This will  
16 be a group of about 120 individuals that will comprise a  
17 wide variety of experts from across the state, including  
18 representatives from state agencies, community aging and  
19 health networks, community disabilities networks,  
20 caregiver organizations, members of the legal and  
21 Judiciary communities, law schools, and of course  
22 consumers. The findings from the survey and Think Group  
23 will be used to develop strategies, activities and steps  
24 to achieve the Initiative's goals of equal access to  
25 justice.

1           We are anticipating that the next steps for the  
2           Legal Services Initiative's partners and Think Group will  
3           be to establish voluntary work groups that will take  
4           recommended strategies developed and begin implementation.  
5           The final goal is to increase availability, affordability  
6           and accessibility of legal assistance for older adults and  
7           people with disabilities, particularly those with great  
8           economic and social need, as well as the informal, unpaid  
9           family members and friends who provide the majority of  
10          care for these individuals.

11           The legal services collaborative will continue  
12          to be proactive in working to improve legal services and  
13          advocacy for older adults and those with disabilities of  
14          any age. By increasing partnerships and integrating the  
15          work of the Initiative with other agencies and entities to  
16          maximize the utilization of resources, we will continue  
17          down this path to create systems that are more seamless  
18          for the consumer and their caregivers.

19           I thank you for the opportunity to share my  
20          comments.

21           CHIEF JUSTICE LIPPMAN: Thank you. And I want  
22          to thank the Governor and your office for focusing on what  
23          is a key population group that so desperately needs legal  
24          services, and by focusing on that I think you're really  
25          furthering the cause of equal justice in this state that's



1 often overlooked and their problems not really  
2 concentrated on. I think your office is doing a terrific  
3 job and a collaborative one, which we applaud.

4 CORINDA CROSSDALE: Your support is very much  
5 appreciated as well.

6 CHIEF JUSTICE LIPPMAN: Thank you. President  
7 Lau-Kee.

8 MR. LAU-KEE: I just wanted to note that the New  
9 York State Bar Association will be participating in that  
10 think tank. I will be there personally, so I look forward  
11 to it.

12 CORINDA CROSSDALE: Fantastic.

13 CHIEF JUSTICE LIPPMAN: Thank you, I appreciate  
14 it. Our next speaker is Chris O'Malley, who is the  
15 Executive Director of IOLA, which certainly performs a  
16 vital role in our state, and Chris does a terrific job.  
17 Today he's going to report on our next cost benefit  
18 analysis that is being prepared by the NERA Economic  
19 Consulting Group. Chris, great to have you with us and  
20 thanks so much for coming.

21 CHRIS O'MALLEY: Thank you very much, your  
22 Honor, for having me here, and for all of your work. I've  
23 been asked to testify and sum up the testimony of  
24 Dr. Elizabeth Becker. She is an economist who works for  
25 the NERA Economic Group who for the past three years, pro

1 bono, has been providing detailed economic analysis of the  
2 civil legal services provided in New York State.

3 And I've been asked to focus on three of the  
4 highlights of her work this year in summing up her work.  
5 First, Dr. Becker looked at the savings associated with  
6 the prevention of emergency shelter costs in New York  
7 State. And in doing this Dr. Becker was updating a study  
8 that had originally been done in 2011 by the Cornerstone  
9 Economic Group of Dr. Edith Sing. And Dr. Becker updated  
10 in two important and significant ways. First, she was  
11 able to do a survey of homelessness shelter costs  
12 throughout the state and update those figures. And as you  
13 know, those can be quite extensive. For example, in New  
14 York City the cost of an individual's homeless shelter  
15 cost for one year is \$27,000. For a family it's \$36,000.  
16 And the average family stay is amazingly over 460 days.

17 Dr. Becker also applied the findings from a  
18 Pennsylvania study that looked at the efficacy of brief  
19 advice and services in civil legal service. And so that  
20 way she was able to look at all of the benefits that were  
21 derived both from extended representation and brief  
22 representation. And what Dr. Becker found was that in the  
23 year 2013 the savings realized were over -- and this is a  
24 conservative estimate -- over \$150 million which  
25 represented an increase of \$30 million in taxpayer savings

1 from 2011. And you will hear me use that phrase  
2 "conservative estimate" quite a bit in my testimony.

3 And just to give an example to touch upon  
4 something that Mayor Sheehan mentioned, the impact that  
5 homelessness has on education and graduation rates. For  
6 example, the lifetime earnings of somebody who has a high  
7 school degree versus a non-high school degree is over a  
8 million dollars. So for every student who can maintain a  
9 place to live, stay in school and graduate, the economic  
10 benefits are substantial over the years and that gets  
11 multiplied thousands of times in New York State. But  
12 again, conservatively just looking at the savings from the  
13 shelter costs, that's \$150 million.

14 CHIEF JUSTICE LIPPMAN: So helping people out of  
15 homelessness is a good economic investment for our cities  
16 and our state.

17 CHRIS O'MALLEY: Absolutely. And it helps, as  
18 again Mayor Sheehan was mentioning, the difficulties that  
19 many of our governments and towns across the state are  
20 facing, this saves them money. This saves taxpayer money  
21 and it's direct.

22 CHIEF JUSTICE LIPPMAN: I think the  
23 documentation of those savings, Chris, is so important in  
24 the reports that we give to the Legislature in these cost  
25 benefit analyses. Continue.

1                   CHRIS O'MALLEY: Yes. The second new area that  
2                   Dr. Becker looked at this year was the economic impact of  
3                   obtaining permanent legal status for clients, and these  
4                   are mainly women, who obtain permanent legal status  
5                   through VAWA, which is the Violence Against Women Act;  
6                   U Visas, which is for victims of crime; or T Visas, which  
7                   is for trafficking victims. And as you know, the impact  
8                   on an individual is transformative, not just in increased  
9                   earnings, but their change in permanent legal status, and  
10                  also better housing, and the ability for children to stay  
11                  in schools. But Dr. Becker again looked at a very kind of  
12                  narrow slice of that overall economic benefit and looked  
13                  at the present-day value of obtaining the permanent legal  
14                  status. And she found that for this group of clients,  
15                  which represents only 10% of immigration cases closed by  
16                  legal service providers in New York, the impact was again  
17                  considerably over \$15 million.

18                  The last area that Dr. Becker looked into this  
19                  year was she looked at the federal funds brought into New  
20                  York State in 2013 through the provision of civil legal  
21                  services, and that figure was \$518 million.

22                  CHIEF JUSTICE LIPPMAN: That's a lot of money.

23                  CHRIS O'MALLEY: That's a lot of money. And  
24                  that represented a \$60 million increase from 2012. But  
25                  she also looked at another aspect of those funds coming

1 into the state. The Department of Commerce estimates that  
2 for every \$1 brought into New York it generates \$1.49 of  
3 economic activity. That figure represents \$769 million,  
4 which is a 13% increase from 2012. And that represents  
5 the creation of 7,675 new jobs in New York. And there's a  
6 very simple reason for that; these funds are going to the  
7 lowest income New Yorkers and these people have to spend  
8 money for food, for housing, for the essentials of life,  
9 for Medicare, Medicaid. And as your Honor has heard in  
10 testimony from leading hospital administrators, that's  
11 been very important for hospitals in their ability to  
12 provide jobs. And that again is one of the leading  
13 economic engines of New York State.

14 Dr. Becker also looked at the fact that a large  
15 percentage of the federal funds that are brought into New  
16 York this year will continue to come in. For example, SSI  
17 and SSD benefits have an average life span of 9.5 and 10  
18 years respectively. Again, the conservative estimate by  
19 Dr. Becker of the present-day value of those funds in New  
20 York in 2013 is \$1 billion over the next 10 years.

21 Thus, Dr. Becker's estimate adding the  
22 150 million in shelter savings, the \$15 million that is  
23 realized by people who are establishing permanently from  
24 VAWA, U Visa and T Visa, the \$518 million in federal funds  
25 brought into the state this past year, the \$769 million in

1 economic stimulus benefits, and the future value of those  
2 awards, Dr. Becker conservatively estimated that the total  
3 economic impact was well over \$1 billion.

4 And she wouldn't put it this way because she's  
5 an economist, but I get to say it's not a free ride. For  
6 every dollar that New York sends to the federal government  
7 New York only receives 79¢ back in benefits and that  
8 results in a deficit of this past year of \$104 billion.  
9 So that \$518 million that came back to New York State  
10 through the provision of legal services represents money  
11 that should come back to New York State taxpayers and it  
12 reduces that deficit by 2.4%. Overall, Dr. Becker was  
13 able to again conservatively estimate that for every  
14 dollar spent in New York State in 2013 there was more than  
15 six fold return on that investment.

16 CHIEF JUSTICE LIPPMAN: I think that's really  
17 helpful, Chris. I think it graphically demonstrates when  
18 we talk about \$1 invested makes \$6 back to the state,  
19 that's real. We think it's the best argument. We talked  
20 to Dean Minow about what's the argument at the federal  
21 level, the state level, what can be clearer than the kind  
22 of report that again we're going to receive this year in  
23 black and white. It demonstrates so convincingly that  
24 this goes beyond society's obligation to those people in  
25 need, the society and our government's obligation to the

1 people of our state, and that is investing in civil legal  
2 services. There could not be a better investment for our  
3 state or our government.

4 CHRIS O'MALLEY: Exactly.

5 CHIEF JUSTICE LIPPMAN: Any questions? Thank  
6 you, Chris, and thank you to Dr. Becker. We're really  
7 very, very grateful.

8 Our last witnesses for today will be three  
9 clients of legal service organizations. First, Tajma  
10 Motley from the Legal Aid Society of Northeastern New  
11 York, accompanied by Marlene Morales; Dideolu Olufunke  
12 Okediran, a client of The Legal Project, accompanied by  
13 Lorraine Silverman; and Cinnamin Schmitz, a client of the  
14 Legal Aid Society of Mid-New York, accompanied by Matthew  
15 Schreck.

16 Tajma, do you want to start out and tell us your  
17 story?

18 TAJMA MOTLEY: Good afternoon.

19 CHIEF JUSTICE LIPPMAN: Good afternoon.

20 TAJMA MOTLEY: My name is Tajma Motley. I am  
21 here to tell you how the Legal Aid Society of Northeastern  
22 New York prevented me from becoming homeless and gave me  
23 my dignity back. I am 42 years old and I have  
24 fibromyalgia, diabetes and back pain. My back pain  
25 prevents me from walking or sitting for long periods of

1 time without pain. My health limits me in the types of  
2 work that I am able to perform. I can only do clerical  
3 type jobs.

4 I used to be a secretary at Hudson Park  
5 Rehabilitation & Nursing Center. I worked there for two  
6 years. I met and greeted the patients, conducted  
7 inventory and kept the medical records and doctors'  
8 schedules up to date. I really liked my job. I worked  
9 with helpful staff that would assist me when I needed to  
10 carry heavy inventory. Without their help I could not  
11 have completed some of my assigned tasks.

12 After I lost my job at Hudson Park I received  
13 unemployment benefits until they ran out. Without any  
14 income to support myself and pay my rent I applied for  
15 temporary assistance. During my eligibility interview at  
16 the Department of Social Services I told the caseworker  
17 about my disabilities. I did everything the caseworker at  
18 DSS asked. I brought in all the documentation that was  
19 requested. I was assigned to the job search program and  
20 told to search for 15 jobs and return the completed job  
21 search form in a week. The forms say that 10 of the  
22 employment applications had to be filed in person. After  
23 doing job searches while receiving unemployment benefits,  
24 I knew that employers would not let me apply for the types  
25 of jobs I could perform. Nevertheless, I tried applying



1 in person, but was directed to apply online.

2 I returned the completed form with 17 online job  
3 applications. The person who took the job search form did  
4 not give me a new job search log or a bus pass to continue  
5 my search, I was only told that I would get a response in  
6 the mail. Later I received a denial letter from the  
7 Department of Social Services for failing to comply with  
8 the job search assignment. I felt that I had done  
9 everything that I was supposed to do, but I was still  
10 denied benefits. Because of my lack of income, I was not  
11 able to pay my rent. I received an eviction notice from  
12 my landlord. I was afraid of losing my housing and  
13 becoming homelessness.

14 I requested a fair hearing, but had no idea what  
15 to do to prepare, so I called the Legal Aid for help.  
16 Mrs. Marlene Morales was my lawyer. She explained the  
17 fair hearing process to me. Marlene also explained the  
18 rules that apply to my case. She told me that because I  
19 told my caseworker about my medical limitations, she  
20 should have asked me to submit proof or send me for a  
21 medical examination before assigning me to the job search  
22 program.

23 Marlene represented me at the hearing. We won.  
24 My temporary assistant case was opened and I received  
25 retroactive benefits. I was given the opportunity to

1 submit medical documentation about my disabilities and my  
2 work limitations. I also received emergency assistance to  
3 prevent my eviction.

4 Even though I did my best to comply with what  
5 was asked of me at the Department of Social Services, they  
6 did not follow their own rules. I am grateful that Legal  
7 Aid helped me get the benefits that I needed to stay in my  
8 home. And thank you for helping to keep funds going to  
9 Legal Aid so that they can help others like me.

10 CHIEF JUSTICE LIPPMAN: Thank you. Your life  
11 would have been a lot different without legal services.

12 TAJMA MOTLEY: Yes, it would have been.

13 CHIEF JUSTICE LIPPMAN: Could you imagine, what  
14 would you have done?

15 TAJMA MOTLEY: I don't know. I mean I really  
16 don't know.

17 CHIEF JUSTICE LIPPMAN: Thank you for telling us  
18 your story. People can see on a real human level what  
19 legal services means to people confronting everyday  
20 problems that can so dramatically affect their lives, and  
21 the services of a lawyer can be so important. So thank  
22 you so much for coming in to tell us, we greatly  
23 appreciate it.

24 We're now going to hear from Ms. Okediran, a  
25 client of The Legal Project. Great to see you.

1                   DIDEOLU OLUFUNKE OKEDIRAN: Good afternoon,  
2                   ma'am, and sirs. I am very happy to be here today to be  
3                   in your presence, and to The Legal Aid Project,  
4                   Ms. Lorraine Silverman. I am here to tell my story, which  
5                   is a sorry case. My story may not be new in terms of  
6                   domestic violence experienced by women around the world,  
7                   but what I went through was the most horrific encounter of  
8                   my life.

9                   It all started in 2006 when I married a man that  
10                  I thought would be my partner, friend and husband.  
11                  Instead, he turned out to be the devil in human skin. I  
12                  soon realized that I made the greatest mistake of my life.  
13                  This man promised me that if I left my home in Nigeria and  
14                  moved with him to the United States, that I would find  
15                  employment using my credentials as a qualified social  
16                  worker. Trusting the man I loved, I resigned from my job  
17                  in Nigeria and moved away from everything I knew.

18                  But, as soon as we reached the United States, he  
19                  immediately broke his promise. He never allowed me to  
20                  work. I soon realized I was in my own hell. He  
21                  emotionally and physically abused me. His goal was to  
22                  belittle me and my capabilities. He called me all sorts  
23                  of derogatory words almost every day and I was blamed for  
24                  everything. He would always tell me that here, in the  
25                  United States, things are done differently. Everything I

1 did or wanted to do was not right by him. He regularly  
2 showed me that my opinions did not count and I soon  
3 realized that all of my self-esteem was gone.

4 This man controlled and monitored my every move.  
5 I had no privacy. He would constantly ask me if I called  
6 or talked to my family, and if I said yes he wanted to  
7 know every detail. If I said no, he would force me to  
8 call them so he could pick up the other phone, interfere  
9 and take over the whole conversation. His jealousy only  
10 worsened as time went on. I was only allowed to call and  
11 receive calls on my cell phone from him, all other calls  
12 had to wait until I got home.

13 Things eventually turned physical. He hit me  
14 once and demanded sex on a daily basis, whether or not I  
15 wanted it, but I was too scared to fight back. Instead, I  
16 would get down on my knees and beg him. I always tried to  
17 console myself. I'd say, "Dee, things is going to get  
18 better, just continue to pray as a child of God." But  
19 unknown to me I was only deceiving myself.

20 In time I grew very wary of him. I grew afraid.  
21 Afraid that while asleep he could hit or even kill me. At  
22 times I would relapse and feel horrible, my pride was  
23 deeply shaken as was my faith, for which I had to struggle  
24 to hold on to it. I was fervent in my prayers to God to  
25 release me from the lion's den because I was so scared. I

1 believed that he could kill me, chop me up and put me in a  
2 box and throw me in the Hudson River on his way to work,  
3 and then he would lie to people that I walked out of the  
4 marriage.

5 But no matter how bad it got, I couldn't leave,  
6 I was financially unable to. Every time I received money  
7 as a gift from people he would cunningly take it from me  
8 by telling me he was broke. I married a controlling  
9 pathological liar.

10 Then one day I finally found the courage to  
11 fight back. In March 2010 he came home from work, and as  
12 usual the table was already set for his dinner. While he  
13 was eating he demanded sex. After washing the dishes I  
14 went to him the way I always did when he demanded sex, but  
15 this time he demanded that I caress him before the actual  
16 thing and I said, "No! Just have me the way you been  
17 doing it." That is when all hell broke loose. He told me  
18 to get out of his house. He was literally kicking me out  
19 of the door because finally I stood up to him. I told him  
20 not to touch me and that I would leave, even though I  
21 didn't know where to go. I had no friends or family to  
22 help me. He isolated me from day one. I had no one to  
23 turn to. I had no one to talk to. I had no one to share  
24 what I'm facing there. I was only with him and him alone.

25 So I picked up my backpack, went out in the

1 cold, crossed the lawn and went to a neighbor's house who  
2 took me in and allowed me to spend the night. She was my  
3 Guardian Angel. We both then called the domestic violence  
4 hotline that I gave to her which I cut out of the school  
5 bulletin and kept in my wallet. The next day I was taken  
6 to a domestic violence safe house where I stayed for six  
7 months until I got my own apartment.

8 I finally realized I needed help getting a  
9 divorce. First I sought help from the domestic violence  
10 agency, and then I went to family court hoping I would get  
11 an attorney to help me file for divorce. Instead, I was  
12 told to go to the Supreme Court, where I was given a big  
13 packet called New York State Unified Court System  
14 Uncontested Divorce Forms and Instructions. When I got  
15 home I looked through this packet. I was so overwhelmed.  
16 It was so overwhelming for me to digest and process. I  
17 broke down and cried for days.

18 I knew I needed an attorney desperately if I had  
19 any chance of getting divorced, but I had no money. In  
20 the course of time I was given the phone number of The  
21 Legal Project. I called the number and was immediately  
22 set up to meet with Ms. Lorraine Silverman, the managing  
23 attorney for the Katheryn D. Katz Fellowship Program.  
24 That was the beginning of the end of my sorrow from my  
25 estranged husband.

1           I went to the office and I met with this  
2 beautiful lady who treated me like a queen. She listened  
3 to my plight, collected previous court orders from me and  
4 told me that she or her law fellows would get back to me.  
5 And they did exactly as they promised.

6           The experience I had with them throughout the  
7 divorce process was awesome. They beat my imagination.  
8 It was when I went for the second meeting that I met my  
9 attorney with her bunch of beautiful, handsome and  
10 intelligent fellows who represented me in the divorce  
11 case. They came to my rescue when I least expected it.  
12 Their straightforward tact and sympathetic understanding  
13 approach, which was so calm and clear, eased my scares and  
14 concerns. I finally realized that this divorce was  
15 actually possible. They provided support and excellent  
16 advice throughout the filing of the divorce papers. They  
17 made the whole process easy by explaining things in a way  
18 simple for me to understand. On the day of the divorce I  
19 was rallied around by my attorney and her fellows. They  
20 kept assuring me that there would be no problem and  
21 everything would be fine.

22           In fact, their display of honesty, dignity,  
23 humility and compassion during this trial period has left  
24 a deep and lasting impression on me. I truly value their  
25 guidance and counsel. I thank them all for being my

1 friend through such a hard and pressing time. I also give  
2 thanks to God that I finally came out of it alive. I  
3 would say that I was so lucky to have them as my  
4 attorneys, and if ever I need an attorney in the future, I  
5 will certainly be going back to them. More powers to your  
6 elbows.

7 CHIEF JUSTICE LIPPMAN: Thank you so much for  
8 your story. It demonstrates again what legal services is  
9 all about. With legal services you know you're not alone.  
10 You have legal services and sometimes it replaces friends  
11 and family and is the one thing you can hold on to. Life  
12 is very different, right?

13 DIDEOLU OLUFUNKE OKEDIRAN: It is very  
14 different.

15 CHIEF JUSTICE LIPPMAN: And better, right?

16 DIDEOLU OLUFUNKE OKEDIRAN: Yes.

17 CHIEF JUSTICE LIPPMAN: Again, thank you for  
18 demonstrating what a legal service provider can do for  
19 someone who just needs a helping hand. And in sometimes a  
20 very dangerous situation. So thank you so much.

21 DIDEOLU OLUFUNKE OKEDIRAN: Thank you, sir.

22 CHIEF JUSTICE LIPPMAN: I'm now going to ask  
23 Cinnamin Schmitz, a client of The Legal Aid Society, to  
24 speak.

25 CINNAMIN SCHMITZ: My name is Cinnamin Schmitz



1 and I am here today to talk about how the Legal Aid  
2 Society of Mid-New York helped me to save my home. I live  
3 in the home with my husband, four children and my disabled  
4 father. I originally bought my house in July 2004 and the  
5 only loan type I qualified for was an interest only for  
6 the first five years at \$698 per month. When the interest  
7 only period ended in September 2009 my payments increased  
8 to \$797 a month which we still didn't have a problem with.

9 About four months after this increase I was  
10 informed by my employer that my entire department would be  
11 relocating resulting in me losing my job. And when I  
12 contacted American Home Mortgage Servicing, Incorporated,  
13 who was the mortgage sever at the time, they told me that  
14 there wasn't much I could do until I fell behind in my  
15 payments. Starting April 1st my mortgage payment was  
16 increased to \$1235 a month. This left my family less than  
17 200 a month to live on after the mortgage payment. Scared  
18 and desperate, I filled out paper work and tried for a  
19 loan modification. Believe it or not, I sent paperwork in  
20 to American Home Mortgage Servicing, Incorporated, a total  
21 of 22 times over 18 months. Claiming that they never  
22 received all the paper work from me, I had to restart the  
23 modification process a total of three times, and didn't  
24 get any closer to a modification.

25 In the middle of all this I'm dealing with a bad

1           job market, seven people living in my household, and  
2           having no luck attempting to modify my mortgage, my  
3           mortgage servicer changed again from American Home  
4           Mortgage Servicing, Inc. to Homeward. They said I would  
5           need to start the entire modification process again. I  
6           had the same struggles with the new servicer. Soon after,  
7           I received notice that a foreclosure had been initiated  
8           and that the court had scheduled a settlement conference  
9           to begin foreclosure proceedings on my house.

10                       Scared to death that I had gotten nowhere, I  
11           contacted housing counselor Mary Kilmer of Delaware  
12           Opportunities who accompanied us to the first settlement  
13           conference. The judge's court attorney told us that we  
14           needed to have jobs or no one would be willing to work  
15           with us and we would not get a modification.

16                       Mary Kilmer eventually suggested that we contact  
17           Legal Aid before we lost our house. I was getting so  
18           worried and was not sleeping well. I was actually getting  
19           sick and was put on depression medication by my doctor.

20                       At the first conference where Legal Aid assisted  
21           me in May of 2013, and after switching mortgage servicing  
22           again to Ocwen, Ocwen's attorney asked that the case be  
23           removed from conference claiming that I had been evaluated  
24           and denied for a modification twice. We already had five  
25           conferences with no resolution, and that the foreclosures

1           should be allowed to proceed. They even brought a deed in  
2           lieu of foreclosure paperwork to court, marked with tabs  
3           where they wanted us to sign off to agree to hand over our  
4           house to them. Legal Aid was not only able to keep the  
5           case in conferences, but after about a year of more  
6           conferences and discussions with Ocwen, they finally gave  
7           us a modification.

8                       My attorney at Legal Aid, Matthew Schreck, made  
9           repeated requests for information which Ocwen seemed  
10          reluctant to give, and he strongly advocated on my behalf  
11          in these conferences, demonstrating to the servicer that  
12          the information they were basing their case on was  
13          incorrect. I had believed from the start that everyone  
14          who had held my mortgage, including and especially Ocwen,  
15          was not servicing my loan properly, and with the help of  
16          Legal Aid we were able to eventually get Ocwen to  
17          acknowledge that their numbers were incorrect and that a  
18          modification was in fact affordable for us.

19                      When the modification papers arrived I was very  
20          pleased; my monthly payment was reduced by roughly \$400,  
21          the interest rate was changed from an adjustable rate to a  
22          4.5% fixed rate, and just under \$34,000 was taken off the  
23          principal.

24                      Because of the help I received from my housing  
25          counselor at Delaware Opportunities and from my attorney

1 at Legal Aid I no longer have to worry about losing my  
2 home to foreclosure. My health has improved, I'm off my  
3 depression medication and my life is back on track. I am  
4 so very grateful for the assistance I received and hope  
5 that other people who find themselves in positions similar  
6 to mine can also get the same help I did. Thank you.

7 CHIEF JUSTICE LIPPMAN: Thank you for coming in.  
8 And I think it's a familiar story that when you're dealing  
9 with, in this case a big lender or a bank, you don't speak  
10 their language, right?

11 CINNAMIN SCHMITZ: No.

12 CHIEF JUSTICE LIPPMAN: If you had to do it on  
13 your own God knows what you would do, right?

14 CINNAMIN SCHMITZ: Yes.

15 CHIEF JUSTICE LIPPMAN: So I think in your case  
16 the role of a housing counselor, usually a non-lawyer, and  
17 an attorney was able to turn this situation around for  
18 you.

19 CINNAMIN SCHMITZ: Right.

20 CHIEF JUSTICE LIPPMAN: And we thank you so  
21 much. Again, what could be more important I'm sure to you  
22 than getting your mortgage taken care of. Having a home  
23 for you and your family is so critical. And we're so  
24 pleased that this was able to work out for you and so  
25 pleased that you came in to tell us about what legal

1 services means for people who have basic problems in life  
2 that need to be dealt with. And I think that your stories  
3 help us in demonstrating why funding for legal services is  
4 so important. So your testimony was the most instructive.

5 And we've heard today from so many witnesses who  
6 all told a different part of the story. We heard from the  
7 Dean of one of our most notable law schools in the United  
8 States, who is the vice chair of the Legal Services  
9 Corporation, that provides such critical work in  
10 Washington in funding for legal services.

11 We heard from the mayor of the City of Albany  
12 what legal services means to the well-being of this city  
13 and the fabric of its communities.

14 We heard from our great Chief Administrative  
15 Judge talking about how many people this funding serves  
16 and what it does in the documentation of what funding for  
17 legal services can mean in terms of the well-being of our  
18 state.

19 We heard from the director of the New York State  
20 Office for the Aging which really shows the commitment of  
21 our state government to legal services for the elderly.

22 And we heard from Chris O'Malley from IOLA  
23 demonstrating just a few of the cost benefit analyses that  
24 we've done that shows in dollars the difference to the  
25 economic well-being of our state by just helping people

1 who need assistance we help the entire state and all of  
2 our citizens.

3 And of course the last three witnesses really  
4 have put the human element to it and it shows what legal  
5 services not in the abstract, but in graphically relation  
6 to human beings who again need help in all different  
7 situations in life.

8 So this is the fourth and final hearing of this  
9 year. The Task Force will take the testimony that is  
10 received from each of these hearings, will digest it, put  
11 it together and they will inform our recommendations this  
12 year to the Legislature as to the financial needs of legal  
13 services and also provide recommendations beyond the need  
14 for public funding for legal services and where we should  
15 be proceeding next in New York in trying to close and  
16 eventually eliminate the justice gap.

17 So I want to thank everybody for being here  
18 today, for our witnesses, for our audience. And I  
19 particularly again want to thank the Legal Services  
20 Corporation for having their quarterly meeting here in  
21 Albany, and President Levi, and really contributing to the  
22 rest of the country seeing what we're doing in New York  
23 and we seeing what goes on in the rest of the country.  
24 And I can't tell you how much it means to us to have you  
25 here. And be assured that we will take your visit and all

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of the information that we've gathered from the hearings to again make some recommendations of what we do this year. With our help from the State Bar and from our partners in government we hope to continue our efforts to close the justice gap in New York.

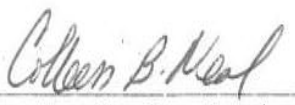
Thank you all. And particularly thank you to our last three witnesses. Thank you so much.

C E R T I F I C A T E

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I, **COLLEEN B. NEAL**, Senior Court Reporter in and for the  
Third Judicial District, State of New York, **DO HEREBY CERTIFY**  
that the foregoing is a true and correct transcript of my  
stenographic notes in the above-entitled matter.

DATED: October 10, 2014



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Colleen B. Neal, Senior Court Reporter  
Albany County Courthouse  
Albany, New York 12207



**APPENDIX 11:**

**Written Statements Submitted at the First Department  
Hearing Held on September 22, 2014**

Written Statements Submitted at the  
First Department Hearing on September 22, 2014

Hon. Melissa Mark-Viverito (*Speaker, New York City Council*)

Zachary W. Carter, Esq. (*Corporation Counsel for the City of New York*)

Debra L. Raskin, Esq. (*President, New York City Bar Association; Partner, Vladeck, Waldman, Elias & Engelhard, P.C.*)

William D. Rahm, Esq. (*Senior Managing Director, Centerbridge Partners, L.P.*)

Jennifer L. Kroman, Esq. (*Director of Pro Bono Practice, Cleary Gottlieb Steen & Hamilton LLP*)

Joellen R. Valentine, Esq. (*Director & Assistant General Counsel, Citigroup Inc.*)

Wun Kuen Ng (*Client of MFY Legal Services, Inc., accompanied by Donna Chiu*)

Karen Rivera (*Client of Legal Services NYC, accompanied by Nelson Mar*)

Yvette Walker (*Client of The Legal Aid Society, accompanied by Kathryn Kliff*)

**Hon. Melissa Mark-Viverito**  
Speaker, New York City Council



THE COUNCIL  
OF  
THE CITY OF NEW YORK  
CITY HALL  
NEW YORK, NY 10007

MELISSA MARK-VIVERITO  
SPEAKER

TELEPHONE  
(212) 788-7210

**The Honorable Melissa Mark-Viverito  
Speaker  
New York City Council  
Testimony before the Honorable Jonathan Lippman, Presiding Judge  
Luis A. Gonzalez, Chief Administrative Judge A. Gail Prudenti, and the  
President of the New York State Bar Association, Glenn Lau-Kee  
September 22, 2014**

Thank you Chief Judge Lippman, Presiding Judge Gonzalez, Chief Administrative Judge Prudenti and New York State Bar Association President Lau-Kee for the opportunity to present testimony on one of the most serious challenges facing the judicial system today--equal access to justice. I want to first acknowledge your significant accomplishments. You have been a persistent and strong voice in the struggle for simple fairness for low income New Yorkers and I—along with my colleagues in the Council--are proud to join you in that effort.

Through your tireless advocacy, you have secured funding to pay for the representation of thousands of New Yorkers in housing, benefits and family matters. The increase in Judiciary Civil Legal Services funding during the last four years that the Task Force has been working is remarkable. You've grown the annual commitment from \$12.5 million to \$55 million during that time.

I am proud to report that the Council has also grown its investment by almost doubling funding for legal services in New York City this year. In fact, we dedicated more than \$20 million – the City's largest commitment ever – to civil legal services. For fiscal year 2015, we increased our Anti-Eviction program funding to \$5 million. We also provided \$3.75 million for citywide legal services – a 150% increase over the previous year. We increased funding for our legal services for the working poor initiative by 45% to \$1.5 million. We increased funding for our domestic violence initiative, which includes legal services, by about 41% to \$4 million and we doubled funding for our immigrant battered women's initiative to \$1 million.

Obviously we share your goals. The Council therefore strongly supports the Chief Judge's call for significant growth in statewide Judiciary Civil Legal Services funding in the State budget.

The Council also supports your efforts to marshal additional attorney and law student pro bono hours—through both the Pro Bono Scholars program and 50-hour bar admission requirement—will help low-income New Yorkers access the civil legal services they so desperately need.

We also admire your innovative approach to experiential legal education, which is another area you are examining through today's hearing. We believe that experiential legal education—whether internships, externships or clinics-- play an important role in the law school experience, providing students with real-world experience, training and mentorship.

Indeed, the Council's legislative divisions are enthusiastic participants in law school externship and post-graduate fellowship programs. Our externs and fellows receive superb training from experienced attorneys and many of these students go on to impactful careers in public service at the Council and elsewhere. Such programs play an important role in developing the next generation of public interest lawyers. Additionally, we hope to have the opportunity to participate in the new Pro Bono Scholars program, which would allow us to partner with New York's law schools to further support the professional development of public-service minded law students and provide them with meaningful opportunities to serve New Yorkers.

And of course your work with the Center for Court Innovation has led to tens of thousands of legal matters being handled by new preventative and early intervention legal assistance efforts as opposed to traditional courts. The Council is a longtime supporter of CCI and has helped fund its programs since FY 2005. The Community Courts, the Domestic Violence court parts, the Mental Health Court and the many other specialized programs are now vital parts of our legal system.

The access to justice crisis in New York City is one in which we dare not let our guards down. We must keep searching for innovation and opportunity to bridge the gap in representation. I am therefore proud to share with you that the Council has recently created a new Committee on Courts and Legal Services. Chaired by Council Member Rory Lancman, this Committee will complement and amplify the tremendous work you and this Task Force have done in addressing unmet needs in civil legal services.

The Council—through this new committee—is eager to be your partner in addressing access to justice issues. Council Member Lancman is particularly well-suited to leading our effort. He has substantial experience as an attorney and legislator, including serving on the Assembly Judiciary Committee. He has been a tremendous advocate on access to justice issues and I know will be working closely with you to support and expand your initiatives.

One more issue I'd like to raise with you--just as important as efforts at providing access to justice are the measures we take to avoid the need for court intervention. I want to commend the task force for its recognition of the importance of preventive efforts and to let you know about some of the work the Council is doing now on that front.

On the legislative side, one of the Council's first acts this session was to enact a broad expansion of the paid sick time law. More low-wage workers than ever will no longer have to risk their jobs and, in turn, their apartments, food and other essentials to care for a sick child. We also recently passed a law creating a new City identification card for which all New Yorkers will be eligible. The Police Department has agreed to accept the card as identification and so will not need to arrest as many folks as they do now on summonsable offenses.

We have also sought to help New Yorkers facing federal immigration enforcement actions. Let's be clear—when we talk about the City's immigrant population we're talking about New Yorkers who have been here for years, set down roots, started families, work and pay taxes. The upheaval and disruption for families and communities caused by detention and deportation is heartbreaking, unnecessary and fundamentally unfair.

Detention facilities are well known for their deplorable conditions and immigrants are often placed in facilities far from their communities—making it very difficult if not impossible to communicate with family or even obtain the documents they need to defend themselves. Those in detention cannot provide for their families who may end up in housing court for eviction proceedings, face debt collection actions or no longer obtain appropriate medical care.

Since 2011, I have worked to reduce the City's unnecessary involvement with federal immigration enforcement. We have passed laws that enhance the City's ability to be more discerning when deciding whether to assist authorities in dragnet-like enforcement actions and we plan on significantly expanding these laws in the very near future.

On the funding side, we have sought to help low-income New Yorkers more successfully navigate immigration court. I'm sure I don't have to tell you there is a crisis of under representation in federal Immigration Court. When an immigrant who is eligible for some form of relief is nevertheless deported simply because she lacks representation—her family feels it. The spill over impact can be devastating as it relates to the essentials of life—housing, access to health care and education, subsistence income and family matters.

While the Council has historically funded initiatives to provide legal services to immigrants and the need for representation legal services programs for immigrant New Yorkers, the need for representation has escalated dramatically in the face of the Obama administration's ramped up enforcement efforts and congressional inaction on immigration reform. So we've looked for innovative approaches to the problems immigrant New Yorkers face.

The City Council helped launch the first-in-the-nation program to offer legal representation to detained, indigent New Yorkers facing deportation -- the New York Immigrant Family Unity Project ("NYIFUP"). In Fiscal 2014, working with a group of experts assembled by Judge Robert Katzman, Chief Judge of the U.S. Court of Appeals for the Second Circuit and the Vera Institute of Justice, the Council funded a pilot program which achieved great success. I am proud to say we increased funding for the project this year to \$4.9 million so that every indigent person detained in the New York City area will be represented by an attorney. The program is now up and running, keeping intact immigrant families that might otherwise have been unnecessarily torn apart by a loved one's deportation and hopefully by doing so—avoiding the financial and family disruption harm that might result in state civil court involvement.

Just as heartbreaking and tragic is the apprehension and detention of unaccompanied minors at our southern border. We've all seen the reports of a recent and substantial surge in the number of child refugees fleeing violence, human trafficking, poverty and human rights abuses in Central America. In fiscal year 2012, 14,000 children arrived alone at the border—double the amount of previous years. In fiscal year 2013, the number climbed to 23,000. Since October 2013, over 63,000 unaccompanied minors have been apprehended at the border. The numbers are staggering and make no mistake—this is a humanitarian crisis. We have an obligation to protect these kids, thousands of whom have been placed with relatives and loved ones in New York City.

Recently the federal government announced that it would accelerate the removal process for these kids. On August 13 this year the immigration court commenced a daily special docket for these cases. I visited the “surge” docket personally and it is to say the least--distressing. Traumatized children standing before a judge without a lawyer. While it is obvious that these kids need help getting into school, obtaining medical and psychiatric services, thankfully we have a governmental and social service provider infrastructure in place that can assess and work to meet those needs. The most urgent need, though, is legal representation, without which these children may be returned to the seriously dangerous and deplorable conditions they fled.

The agencies currently providing legal services for immigrants do incredible work with limited funding but they simply do not have the capacity to handle all the new cases. I will be making an announcement tomorrow outlining the Council’s approach to ensuring that these children have legal representation.

In closing I want to thank you again for all you’ve done to close the representation gap in New York and also to remind those listening that despite our accomplishments the gap remains. Poverty is persistent in New York and the need for equal access to justice is still great. I look forward to continuing our work together.



**Zachary W. Carter, Esq.**  
Corporation Counsel for the City of New York

**TESTIMONY SUBMITTED TO THE TASK FORCE TO EXPAND  
ACCESS TO CIVIL LEGAL SERVICES IN NEW YORK**

**Monday September 22, 2014**

**ZACHARY W. CARTER  
NEW YORK CITY CORPORATION COUNSEL**

Good morning Chief Judge Lippman and members of the Task Force to Expand Access to Civil Legal Services in New York. Thank you for the opportunity to testify today on the need for expanded access to legal representation in civil cases. As a former member of the board of New York Legal Services when it was still called CALS – Community Action for Legal Services- I have been a long-time witness to the struggle to provide funds to support legal services for the poor and working class of this City who are denied meaningful access to the courts when they are not represented by counsel. It is an honor to be here today in my role as the Corporation Counsel of the City of New York. I commend the Chief Judge for his foresight and leadership in addressing the acute and chronic need that low-income New Yorkers have for free or low cost legal representation.

My legal career took root in criminal practice, first as a prosecutor and later as a judge and defense counsel. By the time I started practicing law in the mid-1970s, *Gideon v. Wainwright* was imbedded in the criminal justice system as a well-recognized right. I could not imagine a criminal justice system that did not afford an accused individual legal representation at every stage of the process. After all, each criminal case implicates liberty interests, however nominal those interests may be in a given case. However, individuals seeking access to our courts of civil jurisdiction often have interests at stake nearly as dear as liberty or even life itself.

Think of a family facing foreclosure or eviction or a parent threatened with the loss of custody of a child, or the loss of access to health services or reasonable accommodations for a disability.

At the Law Department, we are charged with vigorously defending the City's interests in civil litigation before our courts. But, we believe the interests of the City are best served when individuals bringing claims against the City are well-represented. We believe that both fairness and efficiency are served best in cases where claimants are represented by able counsel.

However, far too plaintiffs cannot afford attorneys and must proceed *pro se*. By way of example, over 90% of the tenants lack counsel in eviction proceedings last year. It is not surprising that almost 30,000 families were evicted. Experience has shown that legal representation can reduce preventable evictions. We must fund legal services at level that permits everyone facing eviction to have representation by counsel.

After September 11 and Superstorm Sandy, we saw the critical role legal services played to ensure access to needed benefits to get families back on their feet. Families are still struggling to recover from Superstorm Sandy even after two years. There will be other crises and we will need legal services to assist us.

We applaud the efforts of the Chief Judge to encourage *pro bono* representation on the broadest possible scale. Judge Lippman's initiative promises to create a culture of service, particularly among new entrants to the bar that will have long-lasting effects on the state of legal representation for the poor. That said, it remains fundamentally necessary that we fund paid legal services organizations sufficiently to ensure that all indigent persons will be represented in civil cases.

Thank you for the opportunity to testify concerning these important issues today.

**Debra L. Raskin, Esq.**

President, New York City Bar Association

Partner, Vladeck, Waldman, Elias & Engelhard, P.C.

**DEBRA L. RASKIN**  
**VLADECK, WALDMAN, ELIAS & ENGELHARD, P.C.**

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Debra L. Raskin worked at the Legal Assistance Foundation of Chicago from 1977 to 1981, serving in 1981 as Supervisor of Employment Litigation for that organization. She served as law clerk to Hon. Lee P. Gagliardi of the United States District Court, Southern District of New York from 1982 to 1984. From 1984 to 1986, she served as an Assistant Attorney General of the State of New York in the Civil Rights Bureau.

She joined the Vladeck firm in 1986, and became a partner of the firm in October 1988. Ms. Raskin is the current President of the New York City Bar Association. Her past service at the City Bar includes service as Chair and member of the Executive Committee and as Chair of the Labor and Employment Law Committee. Ms. Raskin is a Fellow of the American College of Trial Lawyers, has taught at Columbia and Fordham Law Schools and has lectured and written on employment law matters for the New York State Bar Association and the American Law Institute/American Bar Association, among other groups.

**Education:** B.A., Radcliffe College, 1973  
J.D., Yale Law School, 1977



**The Chief Judge's Hearing on Access to Civil Legal Services  
September 22, 2014  
Appellate Division, First Department  
27 Madison Avenue, New York City**

**Testimony of the New York City Bar Association  
By: Debra L. Raskin, President**

I appreciate the opportunity to testify today on behalf of the New York City Bar Association at this annual hearing to address access to justice for New Yorkers who cannot afford an attorney for their crucial civil legal services needs. Chief Judge Lippman, we applaud your commitment and that of Helaine Barnett and the Task Force. You all have made New York a leader in increasing access to justice. However, as we all know, the justice gap still is far too wide, and calls for more resources, more commitment and more innovative approaches.

The New York City Bar has long been committed to providing access to justice, which we address both through policy initiatives and providing direct legal assistance. We continue to advocate for an adequate funding of the federal Legal Services Corporation and have supported each of the increases in legal services funding presented in recent State Judiciary budgets. In addition to our legal and policy work in this area, our public service affiliate, the City Bar Fund, has two divisions providing direct legal assistance. Our City Bar Justice Center leverages the efforts and resources of the City's legal community to increase access to justice for low-income individuals in New York City. And our Cyrus R. Vance Center for International Justice stimulates and coordinates pro bono efforts in Latin America, Africa and elsewhere in the world.

Through Chief Judge Lippman's and Chief Administrative Judge Prudenti's outstanding leadership, the Judiciary Budget now includes \$55 million for civil legal services, in addition to \$15 million in IOLA replacement funds. We urge that you stay the course toward the original goal of a \$100 million increase in annual civil legal services funding. This is a crucial element of any effort to provide additional legal assistance to those who cannot afford it. The fact that over two million people continue to enter New York courthouses every year to fend for themselves without counsel is testimony to how much more we need to do.

Of course, adding this funding is a necessary but not sufficient condition. As we ask more of the State's taxpayers, so we must ask more of the legal profession, and must consider and implement new ideas to provide assistance.

The City Bar understands it must provide the opportunities, training and guidance to support lawyers who want to do pro bono work. At the City Bar Justice Center, we engage volunteer lawyers in targeting particular needs within our community. We have a broad array of programs through which volunteers can assist those in need, from the homeless to cancer survivors, from immigrant women and children who have been trafficked or abused to persons who risk losing their homes through foreclosure. Our veterans project continues to assist those who served this country in their fight to obtain the benefits they are rightly due. And our Legal Hotline not only is the largest free general civil legal services hotline in New York City, but also now provides brief legal services in addition to responding to callers' questions.

The additional funding provided to the City Bar Justice Center in the last round of funding will enable the Center to increase the Legal Hotline's capacity for brief services, such as

creating court papers for pro se litigants, and will enable us to expand our new LGBT Advocacy project, to provide direct legal services to LGBT New Yorkers who cannot afford an attorney.

We know the rest of the organized bar is committed to undertaking pro bono activities. However, our combined commitment has not generated a sufficient amount of pro bono hours and support to come close to meeting the need. Just to consider one major area of need, homelessness is at record levels, with approximately 56,000 people sleeping each night in the City's shelter system. More than 12,000 families with children are living in homeless shelters and the average stay is over 14 months. The Justice Center's homeless program, and other legal services efforts, meets part of the need but this remains a critically underserved population.

The City Bar has supported efforts, including those recommended by the Task Force, to increase pro bono activity. We supported the rule that established a 50-hour pro bono requirement for admission to the New York Bar. As this rule first affects the law school class of 2014, it has now been built into the educational fabric. Similarly, law schools are adopting the Pro Bono Scholars Program, which gives interested 3L's the opportunity to take the bar exam in February of their senior year so long as they devote their last semester of law school to providing pro bono service for the poor through an approved externship program. This year the City Bar Justice Center looks forward to hosting two Pro Bono Scholars and we believe this program has great promise for providing needed services to low income New Yorkers while giving 3Ls practical experience in a supervised setting.

While these initiatives are designed for incoming lawyers, all of us have the responsibility as officers of the court and as members of a privileged profession to give back.



The City Bar continues to support the requirement that lawyers report their pro bono activities and donations to legal services organization as a means both to encourage more activity and assemble data with which to better analyze pro bono efforts around the State.

We also applaud the Task Force's initiative to find appropriate ways in which nonlawyers can assist individuals who otherwise would not have counsel. In fact, we recommended such an approach in a report we issued nearly 20 years ago, and in a report issued in 2013 by our Committee on Professional Responsibility. We greatly appreciate the productive work of the committee co-chaired by Fern Schair and Roger Maldonado in getting this initiative under way.

We also believe part of the push to both stimulate funding – including private contributions – and encourage pro bono participation is to demonstrate that providing legal services to the poor is cost-effective. The Task Force has conducted studies showing that a dollar spent on providing legal services generates substantially more in benefits. The City Bar's Immigration and Nationality Law Committee recently asked the economic consulting firm NERA to study the costs and benefits of providing free legal counsel to immigrants facing detention and deportation and found that the amount spent would be offset by savings in detention, foster care, case processing and transportation outlays alone, even without quantifying other likely fiscal, social and administrative benefits. We believe more such studies would strengthen the argument that legal services funding is an investment in our society, and one that is quantifiably productive.

One significant hurdle to increasing pro bono participation is the concern of a significant number of lawyers that they lack the training and support to provide these services. In addition,

sometimes a lawyer who has the spirit but lacks the knowledge and support to competently perform pro bono falls short of providing the assistance the client needed. We need to find ways to make pro bono more satisfying to the lawyers and more effective for the client. I have appointed a group within the City Bar to examine this topic and make recommendations, which I expect within the next year.

Let me conclude by again thanking you and the Task Force for your leadership and inspiration, which already has resulted in many thousands more individuals receiving legal assistance. We at the City Bar look forward to continuing to work with you in our joint pursuit of truly increasing access to justice in New York.

**William D. Rahm, Esq.**

Senior Managing Director, Centerbridge Partners, L.P.

**Biography of  
William D. Rahm**

William D. Rahm is a Senior Managing Director at Centerbridge Partners, L.P. Mr. Rahm joined Centerbridge at its inception in 2006 and currently focuses on investments in the Real Estate and Gaming & Lodging sectors. Prior to joining Centerbridge, Mr. Rahm was a member of Blackstone's Real Estate Private Equity group, where he completed investments in lodging businesses and real assets. Mr. Rahm serves on the Boards of Directors of Carefree Communities Holdings, LLC, Extended Stay America, Inc. and Brixmor Property Group, Inc. Mr. Rahm is a 2014 David Rockefeller Fellow and currently serves on the Board of Trustees of the East Harlem Tutorial Program. Mr. Rahm graduated cum laude from Yale College. He received his J.D. cum laude from Harvard Law School and his M.B.A. with distinction from Harvard Business School.

Mr. Rahm is a native of New York, NY and resides in the Chelsea neighborhood of New York with his wife and young son.

**Testimony of William D. Rahm  
Senior Managing Director of Centerbridge Partners, L.P.  
The Chief Judge's Hearings on Civil Legal Services  
September 22, 2014**

Good morning and thank you for inviting me to address the distinguished panel today on the need for expanded access to legal representation in civil cases. There is a clear fairness argument to support these services: we accept the right to counsel in criminal cases but many civil matters result in hardship as impactful on an individual's life as any penalty handed down by a criminal court. Equally relevant, and perhaps overlooked, is the economic value of providing services to poor New Yorkers to help them deal with civil legal matters.

Centerbridge Partners, L.P. is a private investment firm with offices in New York and London and has approximately \$25 billion in capital under management. The firm focuses on private equity and distressed investments. The Centerbridge funds provide a platform through which Centerbridge can invest throughout the capital structure in industries and geographies in which the Firm has substantial knowledge. Our team includes more than 200 professionals and our investors include some of the largest pension funds, university endowments and sovereign wealth funds in the world.

At Centerbridge, we seek to improve every portfolio company. We invest in both growth-oriented businesses led by entrepreneurs and bankrupt companies requiring significant turnarounds. In every case, a major driver of success is empowering talented individuals to perform their functions well. Additionally, broad-based economic growth encourages sales growth in most businesses. Both of these drivers benefit from access to legal services.

A few examples may help illustrate these points. At both Centerbridge and our portfolio companies, we have employees who require assistance with visa or other immigration matters. Fortunately, we have the resources to provide counsel to these people. Most individuals, even at large companies, do not have the benefit of legal representation in these cases and it can create a significant financial and emotional burden on the employees that limits their productivity at work. Worse still, if the matter is not properly handled and a strong contributor needs to leave the country temporarily, companies typically need to re-hire and re-train a replacement, which imposes a cost on the company as well as the individual.

The economic and social cost is rarely limited to the immigrant employee. When an immigrant who is eligible for some form of relief is nevertheless deported simply because she lacks legal representation her family is impacted and that impact can be devastating to their lives: disrupting their housing situation, affecting their access to health care and education and, potentially, separating children from their family. These costs borne by the immigrant's family must be considered in the analysis of what value the State receives from providing legal services for the immigrant on the initial matter

Housing issues offer another example. As a result of the housing crisis, tens of thousands of homeowners were left with mortgages in default. Many of these homeowners live in New York state and have struggled to deal with the administrative burden of resolving these defaults with mortgage servicers or lenders. The process is complicated and difficult to navigate even for sophisticated professionals and it imposes real hardship on low-income residents of our state who lack the resources to hire experienced counsel. Furthermore, I imagine that the higher number of pro se defendants in housing courts reduces the efficiency of the judicial process. Ultimately, the housing crisis has caused a real drag on the US economy. Access to legal representation for homeowners might have allowed for better resolution of mortgage defaults as well as less economic waste; these services would surely have benefited both individuals and broad-based economic growth

As a new father, I can understand how the prospect of losing parental rights or not being able to provide shelter for your family could be as terrifying as a jail sentence. On moral grounds alone, I commend the Chief Judge and the task force for their efforts in this area.

As an investor and a business person, I appreciate the economic value that could be unlocked by expanding civil legal services in areas such as immigration, family rights, housing, health care and education. The burden placed on low-income New Yorkers who lack representation reduces

their ability to contribute to economic growth and surely limits their productivity wherever they may work.

I applaud the Task Force for its work and support the recommendation for additional funding for civil legal services.

**Jennifer L. Kroman, Esq.**

Director of Pro Bono Practice,  
Cleary Gottlieb Steen & Hamilton LLP

# Jennifer L. Kroman

Director of Pro Bono Practice,  
Cleary Gottlieb Steen & Hamilton LLP

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Jennifer Kroman is Director of Pro Bono Practice at Cleary Gottlieb Steen & Hamilton LLP. In addition to maintaining an active docket of pro bono cases, she supervises and manages the provision of pro bono legal services by Cleary Gottlieb attorneys.

Ms. Kroman often speaks on issues related to pro bono. In 2014, she presented at the ABA Equal Justice Conference on Obtaining Post-Conviction Relief for Victims of Human Trafficking, and in 2013 she spoke on the legal needs of trafficking victims at the UJA Conference, "We Were Slaves." She also presented at the PLI Seminar, "Ethical Issues in Pro Bono Representation 2013."

Ms. Kroman was honored by *New York Law Journal* as a "Lawyer Who Leads By Example" for Pro Bono in 2014, and with The Legal Aid Society's 2014 and 2012 Pro Bono Publico Awards. She was selected as a member of The YWCA of the City of New York's 2013's Class of the Academy of Women Leaders for her professional achievements, contributions to the community and dedication to women's and diversity initiatives.

Ms. Kroman is on the Board of Sanctuary for Families. She previously served on the Boards of New York Lawyers for Public Interest and The National Center for Law & Economic Justice. She is a member of the Federal Bar Council Public Service Committee, The New York City Bar Pro Bono and Legal Services Committee, and the Association of Pro Bono Counsel. From 2010-2011, Ms. Kroman was the Co-Director of the Uncontested Divorce Project at Sanctuary for Families.

Ms. Kroman originally joined the firm in 1996, was a litigation partner from 2003 to 2006, and rejoined the firm in 2011. From 1996 to 2006, Ms. Kroman's practice focused on complex commercial litigation. She represented numerous issuers and underwriters in securities fraud cases. She also handled numerous grand jury and SEC investigations, as well as related civil litigation, for companies and individuals. During this time, Ms. Kroman devoted substantial time and energy to pro bono matters, primarily in connection with poverty and domestic violence issues, including the widely-covered successful representation of 195 homeless people in their quest to receive minimum wage from their employers.



# Jennifer L. Kroman

Director of Pro Bono Practice,  
Cleary Gottlieb Steen & Hamilton LLP

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Ms. Kroman received a J.D., *magna cum laude*, from the University of Pennsylvania in 1994, and a B.A., *Phi Beta Kappa*, in 1991 from the University of Michigan. Ms. Kroman served as a law clerk to the Honorable Phyllis A. Kravitch, of the United States Court of Appeals for the Eleventh Circuit. She is a member of the Bar in New York and is admitted to practice before the United States District Courts for the Southern and Eastern Districts.

Testimony of Jennifer L. Kroman  
Director of Pro Bono Practice, Cleary Gottlieb Steen & Hamilton LLP

Good morning, Chief Judge Lippman, Presiding Judge Gonzalez, Chief Administrative Judge Prudenti and New York State Bar Association President Lau-Kee. Thank you for inviting me to testify before you today.

I am the Director of Pro Bono Practice at Cleary Gottlieb Steen & Hamilton LLP, an international law firm with more than 1,200 lawyers. Although lawyers in Cleary's 16 offices undertake pro bono, I am going to confine my remarks today to the pro bono work done by the approximately 700 lawyers in our New York office.

Pro bono is an essential part of the civil legal services delivery system, enabling legal services organizations to leverage their resources and increase their capacity to represent low-income New Yorkers. Last year, Cleary Gottlieb's New York lawyers logged more than 50,000 pro bono hours. In this respect, Cleary is not unique: all over New York State, associates and partners at law firms big and small, solo practitioners, and other attorneys are working on pro bono cases. Indeed, studies by the State and the American Bar Association indicate that lawyers in New York contribute more than 2.5 million pro bono hours each year.

The vast majority of Cleary Gottlieb's pro bono hours are spent on behalf of individuals fighting for the basic necessities of life -- such as shelter, safety, and subsistence income -- or for particularly underserved populations such as domestic violence and sex trafficking victims, veterans and undocumented immigrants. Many times, these two spheres overlap.

In 2013, for example, we represented dozens of trafficking victims. Among other things, we helped vacate their prostitution convictions by filing post-conviction motions where there is no

right to counsel, we defended clients in family court proceedings where pimp-traffickers tried to gain custody of children, and we helped international sex trafficking victims file for T-Visas, a form of immigration relief for trafficking victims.

With respect to housing, we recognize that affordable and safe housing is critical to ensuring the well-being and health of families in New York. To that end, we spent thousands of hours last year working to prevent families from being evicted from public and private housing.

Additionally, for decades, Cleary Gottlieb has sponsored two externships: one at Lawyers Alliance for New York, which provides transactional legal services to nonprofits that improve the quality of life for New Yorkers, and one at MFY Legal Services Inc., which provides civil legal representation and community education to nearly 5,000 households every year. Each Cleary Gottlieb extern spends approximately four months working full-time at Lawyers Alliance or MFY and then is replaced by the next extern, effectively providing each of these organizations with an additional full-time attorney. The MFY extern is dedicated to representing indigent New Yorkers in housing court. It is worth noting that one of the Cleary Gottlieb partners who now supervises much of our pro bono housing work was an MFY extern in 1998.

And that brings me to the importance of what I call the “snowball effect” of pro bono. I have seen time and time again how taking just one pro bono case as a young lawyer can foster a lifetime commitment to pro bono. When I started at my firm as a litigation associate nearly 20 years ago, one of my first cases was a pro bono lawsuit seeking minimum wage for a class of homeless New Yorkers. During the course of the case, I spoke often to many of the plaintiffs about their other seemingly endless legal woes. Their legal problems were the typical ones faced by our city’s most vulnerable population – someone would call me on the brink of eviction or

because their benefits had been cut off or a plaintiff would show up at Cleary Gottlieb's offices after having been attacked by an intimate partner without knowing where else to go. Meeting these New Yorkers and hearing their stories – and seeing how I could help – changed my view of legal work forever. From that time forward, there was never a time as a litigation associate and then a litigation partner at Cleary Gottlieb that I did not do pro bono work. And now that I have the privilege of overseeing and managing Cleary Gottlieb's pro bono practice on a full-time basis, a career shift I attribute in no small part to that one case years ago, I see this phenomenon repeated again and again. As one associate recently emailed me: "I will never forget the look of relief, gratitude and shock in Mr. S's eyes following our victory in his case. When I spoke to him a few days later, he said that he was able to sleep soundly for the first time since his ordeal had begun almost three years ago. I'd like to help out on another case."

We are rightfully proud of all the pro bono work we do. We relish the victories on behalf of our clients - the NYCHA apartment a 78 year-old woman gets to keep, the special education secured for a disabled child desperate for an appropriate education, and the two-year order of protection granted to a woman that allows her to safely go to work each day. But of course, when only 20 percent of low income New Yorkers have their civil legal needs met, we in the Pro Bono Community must constantly think of ways to do more, to reach more people, to work together in the private bar to do pro bono work more efficiently.

I want to conclude my testimony where I began by noting that pro bono work is a critical way to enable legal services organizations to leverage their resources. The private bar could not do pro bono work without the amazingly talented and committed attorneys and staff members at the organizations that we work with on a daily basis. It is not an exaggeration to say that we work with groups like The Legal Aid Society, Legal Services NYC, and Sanctuary For Families in

virtually every one of our pro bono cases. These nonprofits screen the individual clients, train our lawyers, and most importantly, work with us throughout the cases. We rely upon our legal services colleagues for their expert advice, counsel, and guidance. For this reason, whenever there is discussion of expanding the pro bono work done by the private bar as a means of addressing the access to justice gap for low and moderate income New Yorkers, there must simultaneously be discussion of increasing the resources and capacity of the civil legal services organizations.

Thank You.

**Joellen R. Valentine, Esq.**

Director & Assistant General Counsel, Citigroup Inc.

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Born and raised in New York, I received an A.B. from Harvard University in 1996 and then returned to New York for law school. I received a J.D. from Columbia Law School in 2001 where I was the Editor-in-Chief of the Columbia Law Review. Currently, I am a Director and Associate General Counsel at Citigroup where I provide litigation advice to the Institutional Clients Group. I have performed pro bono work throughout my career, and at Citigroup, help coordinate Citigroup's volunteers in the Family Court Volunteer Attorney Program.

My name is Joellen Valentine, and I am an in-house litigator at Citigroup. For nearly the last eight years, I've had the opportunity to volunteer in the NYC Family Court Volunteer Attorney Program (VAP), specifically in the clinics for unrepresented litigants in family court, which I'll call the Clinics.

These Clinics started in 2006, and they reach a population in great need. I understand that 80% of filings in family court are pro se and remain that way, and yet, these litigants grapple with some of life's most critical and personal issues.

Coincidentally, 2006 was the same year that Citigroup Legal launched its Pro Bono Initiative, encouraging its lawyers to use their skills for the public good. The timing was perfect.

Citigroup joined the Clinics at their inception in November 2006 partnering with the law firm Greenberg Traurig, another founding participant in the Clinics.

In 2006, the Clinics launched with just five firms and one corporation (Citigroup) sending approximately 40 volunteer attorneys to staff clinics in Brooklyn, two days a week. Now, we've grown to over 300 attorneys with roughly 50 solo practitioners and about 250 lawyers from 40 different firms and corporations. We now staff in-person in four boroughs and by video conference in Staten Island and Ontario County.

Citigroup has been able to sustain its volunteer base in the Clinics for two primary reasons. First, support for pro bono



work continues to thrive at Citigroup and goes to the highest levels of Citigroup's legal department up to and including the General Counsel. Second, the Clinics are well-suited to the schedules of and demands on in-house attorneys. Citigroup asks its volunteers to give one morning or afternoon a month in one of the Project's locations. Last minute substitutes can be found if schedules change. Training for CLE credit is available year-round. It is offered live five to six times a year and at any time on DVDs. The work itself is limited in scope. Sessions typically last 30 to 45 minutes depending on the complexity and the needs of the client, but there is no ongoing relationship once the session ends. Volunteers do not appear with the litigants in proceedings. Issues are confined to custody, visitation, paternity, support, guardianship, and family offense allowing volunteers to gain more confidence and knowledge over time. An essential part of the Clinics has been the excellent court attorneys who make everything work. They handle scheduling, provide real-time screenings during intake, and provide valuable insight into the court and nuances of the law gained through years of experience. Since the volunteers are not family law experts, having court attorneys who are makes all the difference – not just in keeping attorneys in the Program but in recruiting them as well.

The Clinics provide needed and important advice. Many times, a client's access to a lawyer in the Clinic will be that client's only

chance for legal advice. The advice helps not just the advocates, but ultimately, improves the process for all participants because clients of the Clinics arrive at court appearances more prepared and with a clearer understanding of important issues.

Of course, there is always more to be done and that's why I'm here. Citigroup remains committed to delivering legal services to those who cannot afford them whether through this effort or others, and we look forward to continuing our partnership with the court system to help low income families get fair treatment and access to justice.

**Wun Kuen Ng**

Client of MFY Legal Services, Inc.

Accompanied by Donna Chiu

Ms. Wun Kuen Ng, Client of MFY Legal Services, Inc.  
Client Background

I am a freelance writer. I write finance articles and general interest articles for the Asian Community. I have lived in Chinatown since I was six years old. I went to college in New York City. I enjoy volunteering and have done so in many different organizations. Currently, I am volunteering with the Asian Women in Business.

Testimony of Ms. Wun Kuen Ng  
Client of MFY Legal Services, Inc.  
Testimony before the Chief Judge on Access to Civil Legal Services

My name is Wun Kuen Ng. Thank you for the opportunity to tell you about how the legal assistance I received from MFY Legal Services saved my home and helped me and other tenants preserve our community. I am 42 years old. I live at 83-85 Baxter Street in Manhattan's Chinatown.

I have lived there for more than 15 years. In 2012, my building was bought by a new landlord. That landlord had been buying up rent regulated apartment buildings on the Lower East Side and Chinatown and turning them into market-rate luxury housing, but I didn't know that at the time. At the time, all I knew was that the landlord sent me a notice saying that he would take me to Housing Court for eviction because he claimed I wasn't living in my apartment as my primary residence. The address where the landlord claimed I really lived was in fact my parents' public housing apartment. I had not lived there since 1999.

When I received this notice, I was shocked. I have lived in my apartment since 1999. The prior owner of the building came from the same village in China that my family is from. Most of the tenants came from the same village and treated each other like family. They knew my parents before I moved in. In many ways, we were like a village in a building. To be accused of faking my residence there was absurd – anyone who had ever spoken to anyone in the building or had taken even a few minutes to visit me would have known that I lived there and was part of the community.

I can't afford to hire a lawyer. I do not make much money. I work as a freelance journalist and get a little bit of support from my family. I was very worried about going to court against the landlord, who I knew would have a lawyer. Fortunately, I got in touch with MFY Legal Services, who agreed to represent me in Housing Court. I'm glad I had a lawyer, because the case dragged on for over two years. The landlord demanded discovery, and MFY helped me collect and turn over extensive documentation of my life. Without a lawyer to help me, I would have felt overwhelmed, gave up and moved out. I've since learned that that is exactly what most unrepresented tenants do in this situation, and many landlords count on that.

In my case, after MFY fought back, the landlord discontinued the case and gave me a new rent stabilized lease. And not only did MFY represent me in Housing Court and help save my apartment, they also invited me to come to a meeting of other tenants facing the same problem. When MFY had seen the wave of cases coming from this landlord, they brought together a coalition of community groups whose members were being harassed by the same landlord of many different buildings. We met together to compare our experiences. The coalition is made up of MFY Legal Services, CAAAV Organizing Asian Communities, Asian Americans for Equality (AAFE), Good Ole Lower East Side (GOLES), the Cooper Square Committee, and University Settlement.

We saw that we were all facing the same problems and the same tactics intended to drive us out of our homes. At these meetings, I realized we need the protection of the law, tenant advocacy policies and legal services to protect us against monstrous and predatory landlords who use illegal tactics that are racially and socially discriminating. Meeting other tenants made me feel we have a stronger voice to assert our rights and save our homes and community.

Most of these tenants were Chinese in heritage, like me. Many of them do not speak English. Most of them had lived in Chinatown or the Lower East Side for many years, but were seeing their neighborhoods transformed by gentrification. Most of us stood to lose not only our apartments but our village.

As a coalition, we were able to capture the attention of the New York State Division of Housing and Community Renewal's Tenant Protection Unit (TPU). With the help of MFY and the coalition, I and many of the other tenants met with the TPU and told our stories. On August 20, 2014, the TPU announced that it was investigating the landlord for harassment and had issued a subpoena. The TPU's investigation has just begun, but I and the other tenants are hopeful that it will shine a light on the way the landlord has treated us and tried to drive us out of our long-time homes, and that the landlord will be forced to change.

I am grateful that I was able to connect with MFY Legal Services and that they had the funding and capacity to not only help me with my own eviction case, but also to go beyond my individual case, to bring together other tenants in the same position, and change the way the landlord does business across the board. I have gone from being isolated and scared to knowing that other tenants share my story and stand with me, and that together we will not be moved.

Please continue to expand funding for civil legal services in our state. Thank you once again for the opportunity to testify.

# **Karen Rivera**

Client of Legal Services NYC

Accompanied by Nelson Mar

**Testimony of Karen Rivera**  
**Legal Services NYC**  
**Before the Chief Judge's Hearings on Civil Legal Services**

My name is Karen Rivera. I am a single mother taking care of my son Christian who has multiple disabilities, including autism. In 2009 Christian was attending a pre-school where he was not doing well. None of the children in Christian's school had autism, and the teachers there did not know how to work with him. I could see he was not progressing or developing, and his behaviors became worse. I could not even take him out to store or to the park. I was desperate to find help for him, but it felt like I was going around in circles and getting nowhere. I was all alone in caring for Christian and his needs were very severe. Because of the amount of time I spent in trying to find services for Christian and in keeping him safe I was at risk of losing my job as a manager at a local retail store, and was struggling to keep my apartment. It seemed that everything was falling apart and no one could help me. The struggle and stress I was experiencing at this time caused me to become extremely depressed and anxious. I began to believe that nothing would get better. I worried about my own mental health, that I might have a nervous breakdown, and I was afraid that if something happened to me there would be no one to take care of Christian. It was a very bad time.

While I was visiting a hospital with Christian I met a woman who gave me a card for attorney Nelson Mar at Legal Services NYC in the Bronx. I called Mr. Mar and he scheduled an appointment to meet with me. I explained everything that was going on and how worried I was for Christian. Mr. Mar responded to my story with caring, and expressed concern for me and my son. He told me that he would help me and for the first time I felt like I had someone that would be there for me. Mr. Mar also connected me with Legal Services NYC's social worker. I met with the social worker, Ms. Tara Lambert, that same day and she talked to me for a long time and reassured me that there were services that could help me and Christian, and that she would make sure that I was connected to them. From that day forward I spoke to Legal Services NYC every week.

I took a leave of absence from my job so I would have the flexibility and time I needed to care for myself and Christian. Legal Services NYC worked very hard to get Christian into a school that met his needs. Once Christian was placed in his new school Legal Services NYC continued to help me. They worked with Christian's social worker from Bronx Lebanon Hospital to connect us with the support services we needed and this was a big relief for me.

While things had gotten better for Christian I was still struggling with keeping our Section 8 apartment. I knew that if I lost our apartment I would have to go into a homeless shelter with Christian. I had done everything I was supposed to but I was still being threatened with eviction and termination of my Section 8. I tried for a long time to fix what was happening by myself, but I realized I could not do it alone. Legal Services NYC took on my housing case, fought hard for me and got my Section 8 restored. They found out that the money my landlord was accusing me of owing was based on a rent amount that was wrong. Instead of me owing my landlord rent, he actually owed me money!

The team at Legal Services NYC has continued to be there for me, and today I am happy to say that Christian and I are doing very well. I have returned to my job, and Christian is in a school where he is happy, safe, and growing strong. We have a future. I am so thankful for Legal Services NYC. Their help and support has made a huge difference for me and Christian and I appreciate everything they have done and continue to do.



**Yvette Walker**  
Client of The Legal Aid Society  
Accompanied by Kathryn Kliff

### **Introduction by Kathryn Kliff**

Good morning Chief Judge Lippman, and members of the Hearing Panel. Thank you for this opportunity to testify regarding the need for increased access to civil legal services. My name is Kathryn Kliff, and I am a Staff Attorney in the Civil Practice of The Legal Aid Society's Bronx Neighborhood Office. I represent homeless families that are wrongfully denied shelter and families that are placed in medically-inappropriate shelters. I conduct outreach twice a week at PATH (the New York City intake facility for homeless families with minor children located in the Bronx) with the assistance of The Legal Aid Society's Mobile Justice Unit. During outreach, I provide clients with Know Your Rights materials and give them advice. I also represent families who are wrongfully denied shelter and are in danger of being forced to sleep on the subway trains, in parks, or in unsafe homes.

I am here today with my client, Yvette Walker and her daughter, Jasmine. I first met the Walker family while conducting outreach at PATH. The family came to see me because they had been found ineligible for shelter on the basis that they could stay in the apartment of Ms. Walker's mother-in-law. However, that apartment was not accessible to Ms. Walker due to her medical conditions. I advocated on behalf of the family, so that they were ultimately found eligible for shelter. A year later, when the City transferred the family to a medically-inappropriate shelter, I again advocated on their behalf in order to ensure they were moved to a facility that could accommodate their medical needs. Ms. Walker will now share her family's experience.

### **Testimony of Yvette Walker Chief Judge's Hearing on Civil Legal Services**

Good morning. My name is Yvette Walker, and I'm here with my daughter, Jasmine. We are currently living in a homeless shelter in Brooklyn. We became homeless in the spring of 2013 because our landlord lost his house due to foreclosure. We came to PATH and were found eligible for shelter. A few months after being in shelter, I had knee surgery, as I suffer from degenerative joint disease. The surgery required me to stay in the hospital for a few days. The shelter staff told me that Jasmine could not stay in the shelter without me. As a result, I sent her to stay with my mother-in-law while I had the surgery. After the surgery, I had 32 staples down my knee. I came back to PATH with Jasmine in order to get placed back in a shelter. However, PATH refused me placement, telling me that we could stay at my mother-in-law's apartment, even though her landlord refused to let us stay there and my walker couldn't fit in the bathroom.

Without shelter, Jasmine and I had nowhere to go. I was scared and frustrated. While walking into PATH, I saw that there was a van outside with "The Legal Aid Society" printed on the side. I decided to go and see if they could help. I met Kathryn Kliff, who explained to me that she could help advocate for me so that my daughter and I wouldn't be forced to sleep on the streets. She wrote a letter, collected my medical documentation and advocated on my behalf to PATH's lawyers. After she did so, PATH agreed to give us placement and reinvestigate my case. Shortly after that, we were found eligible.

We had been living in a shelter for about a year when the shelter transferred us. They said that we needed to move to an adult family shelter now that Jasmine was 18. However, the new shelter was not medically appropriate for me. The bathroom stalls were too small for my walker, and so was the shower. As a result, I couldn't use the toilet or the shower at the shelter. I had to go to my church all day everyday to be able to use the handicap-accessible shower and bathrooms. I then had to wait for Jasmine to come home from school and pick me up so that she could help me in the shelter. Eventually, I called Kathryn Kliff again because it was just too difficult to live somewhere where I could not access the bathroom facilities. Kathryn immediately advocated on my behalf to the lawyers at the Department of Homeless Services (DHS), and they moved me to a shelter that could accommodate my walker.

Shortly after that, DHS told me that I would have to move again because they were transitioning the adult family shelter where I lived into a shelter for families with minor children. I was scared because I remembered what happened the last time they transferred me, and I worried that I would be placed in a medically inappropriate unit

again. I reached out to Kathryn again, and she raised my health issues with DHS once again. As a result, DHS transported me to a medically-appropriate shelter in Brooklyn where I now reside.

Kathryn also connected me to the Coalition for the Homeless, who helped me apply for supportive housing. I've been approved and am waiting for an apartment. Even with all the moving around, Jasmine graduated high school and will be starting college in January where she plans to study pediatric nursing. I am so proud of her.

I am very grateful that The Legal Aid Society agreed to help us. Without them, my family would not have a safe place to sleep at night, and Jasmine may not have been able to achieve her dream of going to college. However, I know that there are still many families who are struggling to access shelter that is safe and medically appropriate. The Legal Aid Society is an incredible resource to New Yorkers like me who experience difficult times. Without The Legal Aid Society and other civil legal services programs, families will have nowhere to turn when they are wrongfully denied shelter or placed in dangerous shelters. I am here in support of continued and increased funding for civil legal services in New York.

Thank you.

**APPENDIX 12:**

**Written Statements Submitted at the Fourth Department  
Hearing Held on September 29, 2014**

Written Statements Submitted at the  
Fourth Department Hearing on September 29, 2014

Hon. Stephanie A. Miner (*Mayor, City of Syracuse*)

Hon. Loretta C. Scott (*President and Councilmember At-Large, Rochester City Council*)

T. Andrew Brown, Esq. (*Corporation Counsel, City of Rochester*)

Van Henri White, Esq. (*President and Commissioner, Rochester City School District Board of Education; Chair, Council of Urban Boards of Education*)

Julie Longmore (*Client of Hiscock Legal Aid Society, accompanied by Susan Horn*)

Dawn and Michael Farnsworth (*Clients of Western New York Law Center, accompanied by Kate Lockhart*)

Eileen Kleps (*Client of Western New York Law Center, accompanied by Kate Lockhart*)

Commissioner M. Josh McCrossen (*Wayne County Department of Social Services*)

Sandra A. Parker (*President & CEO, Rochester Business Alliance*)

C. Kenneth Perri (*Executive Director, Legal Assistance of Western New York, Inc.*)

Erin E. McKinley (*Ithaca Area Collaborative Law Professionals*)

Kristin M. Small (*Disability Rights Attorney, Empire Justice Center*)

**Hon. Stephanie A. Miner**  
Mayor, City of Syracuse



## OFFICE OF THE MAYOR

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**Stephanie A. Miner, Mayor**

**Mayor Stephanie A. Miner  
Fourth Department Public Hearing  
The Chief Judge's Hearings on Civil Legal Services  
September 29, 2014, 11:30 a.m.-1:30 p.m.  
Telesca Center for Justice**

Good morning/afternoon. Thank you for allowing me the opportunity to speak today. I was asked to speak about how access to civil legal services often can promote family stability and how it relates to a child's schooling. In my limited opportunity to speak, I'll focus on the core issue of housing--where family stability begins and ends.

First, let me start out by telling you a little bit about the City of Syracuse that I proudly represent as mayor. The City of Syracuse is home to rich cultural diversity, a burgeoning population of new Americans, Syracuse University and several hospitals. We are seeing record development and signs of urban renewal. The Greater Syracuse Land Bank is rehabbing vacant and blighted properties and road construction is resurfacing our public infrastructure. IBM named Syracuse one of its "Smarter Cities" for our proactive approach on addressing vacant properties and neighborhood development. In the face of these exciting new developments, the people of Syracuse experience tremendous challenges.

Many of our children and families live in grinding poverty, with 38% of our Syracuse City School District families scraping by with household incomes below \$10,000. 2010 Census data reports that New York State and nationwide poverty rates are around 15%. In Syracuse, a jarring 82% of our city school students qualify for free or reduced price lunch. The people of Syracuse have real needs.

In Onondaga County, over 424 individuals and families are homeless and reside in shelters and over 1,700 young people do not have a permanent home. It's obvious that there is a growing homeless population because you see them—many of them are under bridges, at intersections and are right under our nose. Many of them are young. Family stability, or rather lack of stability, manifests itself in housing. In my city of approximately 150,000; 6,116 of landlord tenant eviction cases were brought to City Court last year, primarily involving those living in poverty-stricken, residential neighborhoods--the vast majority of which are either self-represented or simply default in appearing.

These numbers I just mentioned make it is easy to see that when faced with a legal crisis, these families do not have the financial resources to get legal help on their own. In addition to financial resources, issues such as literacy, transportation and knowledge of one's rights also present barriers in navigating the legal system. Public funding for legal service providers is critical to assist these families with issues most essential to maintaining a basic standard of living so parents can work, children can learn and families can become closer to achieving a middle class quality of life.



Recent programming in Syracuse has increased the demand for free civil legal representation. With the Greater Syracuse Land Bank foreclosing on tax delinquent and blighted properties, and using water shut offs to force the arm of property owners and landlords to pay their water bills, our Department of Neighborhood and Business Development, in partnership with our Law Department, are referring more and more renters to Hiscock Legal Aid Society. Hiscock Legal Aid provides legal assistance to low-income families and individuals living in rental housing with focus on the prevention of homelessness and the attaining of housing stability through early intervention. The City of Syracuse shows its commitment to assisting our constituents through its annual allocation of federal Community Development Block Grant funding to the Hiscock Legal Aid. In its current contract with the City, Hiscock Legal Aid receives \$110,000 to help fund three attorneys to assist City residents with homeless prevention services such as landlord/tenant matters, water shut offs, relocation services, advocates for tenants. Prior to that, their funding hovered between \$20-50,000 a year. Hiscock Legal Aid is now a part of our Housing Vulnerable Task Force.

Unfortunately, there is usually a pending legal proceeding and a host of other events that have already transpired by the time a legal service gets involved. When given an eviction notice, many people default and do not show up to court. If these tenants do not show up to court, they are required to vacate in 72 hours. This results in families splitting up, children relocating and perhaps being required to attend a different school. This type of chaos could be avoided, or at least lessened, with proper legal representation. An attorney could negotiate additional time for these families to move out and find new housing or assert a defense for habitability issues.

Eviction and relocation puts a tremendous amount of stress on our children and families. Such circumstances hardly provide a living environment that helps our young people to excel in school. How is a child expected to do homework if they do not have a home? How can a child learn when they are worrying about where they are going to sleep that night? And as a parent, how can you help your child with their homework or read to them when you are worried about where your family will sleep or how you will navigate a court system which frankly, may be very intimidating. With such a tumultuous home life, it is no wonder that only about 50% of our students graduate from high school. Nothing is more fundamental than one's home, but there is so much instability on the family end that the time spent at school cannot nearly compensate home lives that are riddled with chaos.

In Syracuse, we are fortunate enough to have a program called Say Yes to Education, a program that provides an array of social supports to help close the achievement gap and offers an opportunity for post-secondary success with the promise of free college tuition to all City school graduates. Syracuse is proudly the first city in the nation to implement this program district-wide. As part of Say Yes' holistic approach to closing the achievement gap, free legal clinics are available to assist families with legal issues that disrupt family stability. The most common issues are housing, family and divorce and immigration. The program started in 2008 with school-based drop-in clinics for parents to receive legal advice and be referred to ongoing legal representation.

In the 2011-2012 school year, the school-based legal clinics served 74 families. The following year, Say Yes partnered with the Volunteer Lawyers Project of Onondaga County to include

community based clinics into the Say Yes service program and provide free legal assistance to all Syracuse City School District students and families. This partnership led to a major increase, serving 533 Say Yes families that year. Last school year, the program assisted 942 Say Yes families with issues such as family matters, eviction, divorce and immigration. These free legal clinics, two at neighborhood schools and one downtown in the Court House, are a great start but merely scratch the surface of addressing this demand. Interestingly, in the past two years the number of families served by these legal clinics nearly doubled, and the number of housing and eviction cases remained proportionately the same, comprising about 60% of the caseload. The need is just compelling.

Although we are using innovative approaches to address the problem, there are still not enough resources allocated to fully address this demand. We have seen the demand for walk-in legal clinics with the expansion of the Say Yes legal services program, and those clinics are only at two schools. Not having a stable place to live is disruptive to everyday life, and the repercussions carry over to every phase of your life if you don't have a place to live. It's a threshold issue. Volunteer legal services certainly help, but it's not enough. Perhaps storefront legal clinics in easily accessible residential areas could help close this gap. The pilot program in Brooklyn and the Bronx of using "navigators," or trained non-lawyers to help steer people to existing programs and accompany unrepresented litigants to court, could help plug the hole in people's access to justice. I applaud your efforts to seek creative solutions to expand access, and I look forward to seeing the results of this pilot program.

There is tremendous opportunity to improve stability in the homes of our residents with increased access to civil legal services. Thank you for your time and for allowing me the opportunity to testify before you today. I commend you for leading the charge and raising public awareness on the need for publicly funded civil legal services. I look forward to seeing our democracy improve with the courts' continuing advocacy on this issue.

**Hon. Loretta C. Scott**

President and Councilmember At-Large  
Rochester City Council



**Loretta C. Scott** Council President, Councilmember At-Large  
Email: [Loretta.Scott@cityofrochester.gov](mailto:Loretta.Scott@cityofrochester.gov)

September 29, 2014

**Testimony from City Council President Loretta Scott on Civil Legal Services:**

Good Afternoon Chief Judge Lippman, Elected Officials, Community Leaders and Distinguished Guests: My name is Loretta C. Scott, I am an At-Large Member of the Rochester City Council and serve as the Council's President. I am honored to be here today to provide testimony regarding Civil Legal Services that are funded by New York State through the Office of Court Administration. Currently there is 55 million dollars in the State's Judiciary Budget for fiscal year 2014-15 dedicated to supporting civil legal services. While communities throughout the state appreciate the funding that has been secured; we urge the state to increase this funding in the next fiscal year. We appreciate the efforts of Chief Judge Lipmann to continue and increase this funding each year. Every year this funding has been used in its entirety, and still not all of the need is being met; proving time and again that an increase in funding is desperately needed.

Civil Legal Services are critically important to the citizens that utilize them. It is with regret that I have to state that Rochester holds the distinctions of being named the 5<sup>th</sup> poorest city in the entire United States among the top 75 metropolitan areas, the 2<sup>nd</sup> poorest city among comparably sized cities in the top 75 metropolitan areas, and the city of Rochester is ranked 3<sup>rd</sup> for the highest concentration of extremely poor neighborhoods among cities within the top 100 metro areas in the nation. These statistics are deplorable, but they speak to the true need that Rochester residents have for civil legal services.

These statistics pale in comparison to the dismal statistics facing our school district. The Rochester City School District is the poorest urban district in our state, and graduation rate is an unacceptable 43% with only 9% of African American males and 10% of Hispanic males graduating. As a member of Rochester City Council and the city's retired Commissioner of the Department of Parks, Recreation and Human Services (now called the Department of Recreation and Youth Services), I know full well the connection between the lack of basic essentials of life and the effect that has on a child's ability to learn. Children that are hungry, homeless or victims of abuse cannot learn. Funding civil legal services helps ensure that these essentials are met for so many of our struggling families, and by their nature these services help our kids succeed.

In our country, if a person finds themselves in criminal court they receive a court appointed attorney – however the same cannot be said for so many civil matters. If someone should find themselves in court going through a home foreclosure, or dealing with domestic issues and ultimately their personal safety, or if they are experiencing problems with financial assistance benefits they need to access lawyers who specialize in these services in staffed programs or through a pro bono program – this is not always easy or achievable for those in need. We must

ensure that people have access to legal services to address the root of the problems that they are experiencing; not just when they engage in illegal activities. Having an attorney advocate for them when they need help accessing life essentials, such as housing, income benefits, safety from abusive situations, and access to adequate food for their family will begin to address the affects of and the underlying issues of poverty.

In Rochester, 29% of our families live at or below the poverty rate – our community needs these services, the sobering statistic that speaks for itself and the true need that our city has for this assistance. I refuse to not fight for these programs and help to ensure that people who feel they have no voice have a voice in court, that they have someone that will support for them, advocate for them, guide them, and provide help when they feel helpless in a system that they do not understand and cannot properly navigate.

There is an unmet need when it comes to civil legal services, and we cannot and must not ignore that need. We, as elected officials and community leaders are charged with the responsibility to ensure that everyone in our communities have access to things that they need - the essentials. And the funding for civil legal services is a tool that helps to do that.

Respectfully, I on behalf of the entire Rochester City Council ask that the state look at increasing this funding going forward. Chief Judge Lippman has been critical in securing these dollars and we fully support his effort to expand access to civil legal services in Rochester and throughout New York State. I thank the Chief Justice for this opportunity, allowing me to formally put on record my support of these services and my strong desire to see additional increased funding available in order to provide Rochestarians and all New Yorkers the support they so desperately need in the areas in their life that are critical to their health, their mental well-being, their productivity in the community and even their own personal safety in some instances. Thank you.

**T. Andrew Brown, Esq.**  
Corporation Council, City of Rochester



TESTIMONY FOR FOURTH DEPARTMENT  
CIVIL LEGAL SERVICES PUBLIC HEARINGS

Monday, September 29, 2014

11:30A.M.-1:30 P.M.

TELESCA CENTER FOR JUSTICE

Good Morning,

My name is T. Andrew Brown and I am Corporation Counsel for the City of Rochester. It is my pleasure to be here today for such an important purpose at the request of and on behalf of the Mayor of Rochester, Lovely A. Warren. On behalf of the Mayor I welcome you to our beautiful city. The Mayor regrets that she could not be here in person, as she is deeply committed to the importance of Civil Legal Services knowing its impact upon our community.

I would like to thank Chief Judge Lippman and his Task Force for its very important work during this 5<sup>th</sup> anniversary of these public hearings which highlight and tackle the very important issue of Funding for Civil Legal Services for those who are most vulnerable and needy in both our local community and

statewide. I would also like to extend greetings to the rest of the esteemed members of this community who will become before you today to offer testimony. On behalf of Mayor Warren, it is my honor to be here today to discuss the benefits of providing civil legal services to students and their families and what kind of difference it can make in their long-term success.

Families and children in the City of Rochester interact with the civil legal system in a plethora of areas, to name a few: social security disability, child custody issues, truancy, PINS and/or Juvenile Delinquency proceedings, physical and/or sexual abuse and neglect matters, and foreclosure and eviction proceedings.

***Recently, Rochester was ranked the fifth (5<sup>th</sup>) poorest city in the country among the top seventy-five (75) largest metropolitan areas and the poorest urban school district in New York State (Rochester Area Community Foundation Report-December 2013). In addition, Rochester has the lowest graduation rates compared to the four (4) other largest school districts in the State (Buffalo, Syracuse, New York City, and Yonkers).*** This translates to a very large percentage of children in the City of Rochester living in poverty. By virtue of their caretaker's economic situation, they do not have the same access to civil legal services

because their parents, guardians or caretakers way too often DO NOT have the means to hire an attorney when and if the need arises. These families are the ones who have to rely on publically funded civil legal services. Thus, access to Civil Legal services is critical to many of the citizens of this City and that why this is an issue Mayor Warren and her Administration feels so strongly about.

As an attorney, Mayor Warren most certainly recognizes the fundamental role the legal system plays in the lives of the City's residents and the critical importance for EVERYONE to have equal access to justice, no matter their economic status, education level, address, or any other factor of their current life circumstances. Today's hearings are important because they document and explore the very tangible consequences that flow from lack of access to civil legal services and how that has a direct impact on a parent's ability to provide a stable, secure home for their children. A parent's inability to provide stability for his or her family in turn creates unstable neighborhoods and communities which is one of the major challenges Mayor Warren has been focused on turning around since her tenure began, and even before as President of Rochester City Council.

I think we can all agree that at some point in nearly everyone's life, they or a member of their family will have some contact with or need to interface with

the civil legal system. Unfortunately, for many of the children in this community and many others around the State, that interaction will not necessarily begin on a positive note.

Those interactions often wreak havoc in the lives of young people and jeopardize their physical and mental health, and that of their families. The stress of not knowing if you will be thrown out into the street with all your worldly possessions from night-to-night would make it almost impossible for students to concentrate on fractions, Shakespeare or anything else being taught in school. Or witnessing physical abuse or being themselves the victim of any kind of abuse or neglect, without recourse, would not be conducive to getting a good night's sleep and being ready to tackle school the next morning. To overcome and succeed in the face of such adversity my friends would be extremely difficult even for the most mentally stable person here in this room today. But yet, children are expected to do so.

This is why removing all barriers to EQUAL JUSTICE for all New Yorkers is such a critical goal; it is equally critical for children and parents/guardians. Many parents and children navigate this complex legal system without the benefit of

qualified, effective legal representation and are often adversely affected by not having the benefit of competent counsel.

Most of us can identify with the mistakes of youth that bring them into contact with the legal system. The outcome of that interaction with the court system at a young age sets a course for the child's future either positively or negatively. Having access to competent counsel can make all the difference at such a critical stage in a child's life. This is why recruiting and retaining a qualified public service bar is so critical to the Court's mission of EQUAL JUSTICE for all. Equally important is the parent and guardians of these children having that same equal access because if the parent/guardian is not in the home due to any number of outcomes that flow from contact with the civil legal system, then we know that home becomes unstable and that child's life becomes unstable. With qualified and competent counsel a child can either avert life-altering contact with the legal system through diversionary programs like Teen Court or have a more positive outcome which enables them to complete high school, pursue higher education, and hold jobs in the future. The same holds true for the parents and guardians of these students, with competent counsel by their side, they usually

have much more positive outcomes which translate to their ability to maintain employment, stay in their homes and provide for the well-being of their family.

The need for civil legal services funding in Rochester, as around the rest of the State, is great. Although Rochester has several reputable civil legal services providers, some housed within this very building we are sitting in today, these agencies do not have the resources required to meet the tremendous needs facing this community. The Telesca Center for Justice is a national model in providing legal services to individuals in need throughout our community. The success of its mission depends on continued support from our entire community and state. Ensuring access to equal justice is not only a moral obligation but a test of our democratic principles. The important work of the Telesca Center, and this task force on Civil Legal Services should have our full and continued support.

Thank you for allowing me on behalf of Mayor Warren to testify here today.

**Van Henri White, Esq.**

President and Commissioner

Rochester City School District Board of Education

Chair, Council of Urban Boards of Education

# Biography for Van Henri White



**Van Henri White**

**Board President**

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**Board Liaison to:**

Franklin Campus

Vanguard Collegiate High School

Integrated Arts & Technology  
High School

Youth and Justice Program

Schools 19, 36, 41, 50, 54, 57

**Term Expires Dec. 2017**

In 1990, Van White returned to Rochester, NY, where he attended Helen Barrett Montgomery, School No. 50 and Abraham Lincoln, School No. 22 as a child, to work as a Monroe County Assistant District Attorney. In 1994, White left the District Attorney's Office to serve as Mayor William A. Johnson's Special Counsel on Crime and Violence Initiatives. In his role as the City's "Crime Czar," White did everything from close down drug houses to start original youth violence prevention and intervention programming like Late Night Basketball, Teen Court and Pathways to Peace. Long after White left City Hall, these groundbreaking programs continue to positively impact area schoolchildren.

After leaving City Hall, White opened up his own private law firm where he began specializing in cases involving school safety issues -- the most significant of which was *Givens v. RCSD*. That case (involving the only student killed on City School District property) redefined the legal responsibilities of school districts when it comes to school safety.

In 2006, believing that he could have a greater impact on improving school safety by working from "within the system", White ran a successful campaign for a vacant seat on the City of Rochester School Board. Since being sworn in January 2007, he has been an outspoken advocate for improving school safety, raising graduation rates, decreasing truancy rates, and attacking the problem of lead poisoning -- which is proven to have a detrimental and devastating effect on the academic performance of urban children.

Having served as Board Vice President for two non-consecutive terms in 2008 and 2013, White was elected as Board President in 2014.

White is the father of two District graduates who have both gone on to college.



Testimony for the Chief Judge's Civil Legal Services Hearing

Hon. Jonathan Lippman, Chief Judge of the State of New York

September 29, 2014  
Telesca Center for Justice  
Rochester, NY

Van Henri White, Esq., Rochester, New York  
[van.white@thelegalbrief.com](mailto:van.white@thelegalbrief.com)

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My name is Van Henri White. I serve as Chair of the Council of the Urban Boards of Education and President of the Rochester Board of Education of the Rochester City School District.

CUBE is an affiliate of the National School Boards Association (NSBA). We represent more than 100 urban school districts from across the nation. These school districts are responsible for educating more than 7.5 million students in more than 12,000 schools across the nation and are immensely influential in public education. These schools (and the families which they serve) are educating and raising children under the most challenging set of circumstances. These social, academic, and economic challenges, often times, necessitate the intervention of other service providers – including the legal community.

As the third largest urban school system in New York State, enrolling some 34,000 students in grades pre-K to 12, the student, families, and staff of Rochester City School District (RCSD) is quite familiar with many of these social, economic, and academic challenges. About 79 percent of the district's enrollment is composed of students who are eligible for a federal free or reduced-price lunch subsidy, making the RCSD the poorest big-city school district in the state. Fifty percent of the district's schools have free and reduced-price lunch eligibility rates that equal or exceed 90 percent. About 8 percent of the district's enrollment is made up of students with limited English proficiency, and the district enrolls students from 35 different language groups. Finally, about 17 percent of the district's enrollment is composed of students with disabilities.

As a civil rights lawyer and as President of the Rochester City School District Board of Education I am keenly aware of those challenges. The Superintendent of Schools, Dr. Bolgen Vargas, and my colleagues work daily to address these challenges. We are very fortunate to have a variety of agencies and legal practitioners that are as committed to assisting us in addressing these challenges.

The most direct impact that these legal services providers and practitioners have on challenges that we face is in the area of students with disabilities:

- The RCSD has approximately 6100 students receiving Specialized Services enrolled with approximately 5200 in District buildings (The balance of these students are receiving services at partnering agencies such as Mary Cariola Children's Center, Norman Howard School, etc.);
- RCSD has a special education classification rate (17.7%) and among those students the graduation rate for 2007 cohort was 22.5%. The dropout rate for the 2007 cohort was 35.2%.

As compared with RCSD, Brighton Central School District (where I attended high school as a child) has a special education classification rate of 8.7%, graduation rate of 87% and a dropout rate of 2.9% for students of the 2007 cohort receiving specialized services. This data reveals that something is obviously, desperately wrong here in our District. We, at the District, must be candid and admit that we have not handled this challenge so well.

The Council for Great City Schools (CGCS) evaluated the services that we provide to our students with disabilities and concluded:

*"The district appears to lack clear written policies and procedures pertaining to the identification, evaluation, placement, and provision of procedural safeguards for students with disabilities. As a result, as expressed by interviewees, staff often had—A limited knowledge of legal requirements regarding special education, especially those included in the Individuals with Disabilities Education Act of 2004."*

*"An inconsistent understanding of procedures for manifestation-determination reviews (MDRs) required for students recommended for long-term suspensions and expulsions."*

We have made some improvements but we cannot do it alone. Often times "help" has come in the form of direct collaboration. The legal community has been amazing in this area. "Lawyers for Learning" is one example of the positive and productive efforts that is making a difference in our schools. We welcome the direct support that these lawyers have provided to our students and families and we would encourage other such efforts.

But, as a civil rights lawyer myself, I am compelled to acknowledge that sometimes the "help" that we receive may come as the result of "agitation" and or what we like to call litigation.

Indeed we have lawyers in this community who have provided:

- representation of kids with disabilities to get them an appropriate education,

- the structural work that Empire Justice is doing on things like the community economic diversity school,
- the Title IX softball case in Batavia, and
- the work that the Cohn Fellow at Empire Justice is doing with some of the suburban districts on appropriately dealing with LGBT kids.

But there are other less direct, but equally impactful, legal efforts which make a real difference in our children's lives. Examples would be:

- The foreclosure prevention representation and tenant representation needed to keep families living in the same home and avoid kids from missing school or changing schools mid-year because the family is displaced,
- The representation of victims of domestic violence that prevents kids from experiencing secondary trauma from seeing what happens to their homes,
- The economic security work, whether obtaining public assistance, SSI or redressing wage theft, which results in families being economically better off and kids less stressed about their economic situation, and
- The access to health care work that Law NY and Empire Justice do to make sure kids with health needs can get appropriate treatment and care.

In my capacity as the Chair of CUBE I would respectfully request that you not forget the vital legal services that are provided by attorneys who represent public schools throughout our state and nation. NSBA's Council of School Attorneys (COSA) is made up of more than 3,000 attorneys representing K-12 public school districts across this country. COSA attorneys are in-house and privately retained counsel. Without regard to who writes their paycheck, these attorneys are the primary advocates for our schools (and therefore by extension) our students and families. I would encourage you to solicit their opinions as you continue your deliberations. Any assessment of legal services that leaves them out, will not fairly or accurately represent what is happening or what needs to happen to improve services for schools and thereby our students and families.

RCSD, CUBE, and NSBA values the work that is performed by all of these legal practitioners and providers. They are making a difference in the lives of the children of our school district and throughout the state and country. We thank these legal service providers for their commitment to the students and families of our city, state and nation. We ask that you support and encourage the expansion of these activities in our community.

Thank you.

# **Julie Longmore**

Client of Hiscock Legal Aid Society

Accompanied by Susan Horn

## Chief Judge's Hearing on Civil Legal Services

Rochester, NY, September 29, 2014

### Testimony of Julie Longmore

That Hiscock Legal Aid Society is able to provide civil legal services for so many people, unable through life circumstances to pay themselves, is incredible. I am here today, vibrant, positive and moving forward dynamically with my life because of the assistance they provided for me.

The Hiscock Legal Aid Society presented me with the opportunity to get a divorce and ultimately leave an abusive marriage. I did not have the financial means to hire an attorney.

For so many people - especially women - trying to exit an abusive relationship, a big problem is the financial part. The financial controls that often exist keep a person trapped. Money is needed to start a new life for one, but also to hire an attorney, pay the retainer and afford the continuing legal costs to obtain a divorce or separation. (At the rate I was managing to squirrel away dollars it would have taken a very long time!)

Civil Legal Aid services can also help a person navigate the complicated requirements involving child custody arrangements, housing provision, protection orders and all the other necessary pieces that assist in establishing a new, abuse-free life. Civil Legal service help is vital at this vulnerable time.

Domestic Violence profiles similarly across all demographic groups. It happens in all neighborhoods, within all income groups and at all education levels. It can happen to anyone, at any time and this explains why civil legal services provide much needed help, assistance and vital gratis services when most needed, helping to free those whose lives are constrained by fear and economic controls.

Similar to other people trapped in abusive relationships, I was caught in the situation of wanting to get out but not having the financial means to either leave or get a divorce. Like so many others I kept the abuse in my life a secret. Crushed and crumpled by my life circumstances, emotionally dead inside, miserable and hurting, I didn't know where to turn. I had been made aware of the Hiscock Legal Aid Society through a free legal consultation at the Vera House. So, after yet another violent incident that left me bruised and shaken, tattered and torn, I contacted them.

The Hiscock Legal Aid Society provided the chance to get a divorce as I was eligible for legal assistance due to being reliant on my husband's income. It was a much needed provision of a gratis service to navigate the process.

I went into the office and met with Hiscock Legal Aid Society Law Assistant Christie Van Duzer who patiently, respectfully and kindly listened to my story and photographed the very large bruise on my leg. It was determined that as I had no direct access to the family income, and no income of my own, I was eligible for civil legal aid.

Hiscock Legal Aid Staff Attorney Stacey Schliffer validated the abuse I had experienced and encouraged me to write about the various

incidents of abuse experienced over the years. These formed the basis of my divorce petition.

Hiscock Legal Aid Senior Attorney Bryn Lovejoy-Grinnell worked dynamically on my case through to the final divorce decree, even filing motions as necessary to complete the process.

It remains of huge significance to me - even to this day - to have the words Domestic Violence Project clearly mentioned on all correspondence that came from the Hiscock Legal Aid Society. So very validating of everything I had been through.

Relationship Violence and Abuse escalates and intensifies over time. The first time he hit me, very soon after we were married, I remember thinking that this episode was a mistake and that it wouldn't happen again. But in those first few months of marriage there were many awful incidents that established a pattern of behavior that repeated and continued - countless times over the years. There were punches, kicks, bites, throttling's and deliberately targeted injuries. There were the cruel, harsh, demeaning, and disparaging words. Many layers of abuse occurred, including alienation from friends and family, thus eroding my vital support systems. (This leaves a victim with nowhere to go or no one to turn to when the decision is made to leave and the time is appropriate. This is when support and money are needed. Civil Legal services provide a lifeline for me at this susceptible moment.)

I will forever be grateful for the services provided by the Hiscock Legal Aid Society and that is why I am glad to provide this information in the hope that continuing funds will be made available to ensure that there will be civil legal services provided for all those that need it - whatever the life challenges they face.

# **Dawn and Michael Farnsworth**

Clients of Western New York Law Center

Accompanied by Kate Lockhart



# **The Chief Judge's Hearings on Civil Legal Services**

## **FOURTH DEPARTMENT HEARING**

### **Monday, September 29, 2014**

Good morning,

My name is Michael Farnsworth and I am here today, with my wife Dawn, to speak on the excellent representation we received from the Western New York Law Center, through OCA funding, when we were in danger of losing our home. I am a US Army veteran and I served during the Vietnam War. I am currently disabled, however in the past I worked for a company that sent me to different disaster sites for cleanup. In particular, I was sent to clean up the rubble after 9/11 and was there from September 18<sup>th</sup> 2001 – June 27<sup>th</sup> of the following year. In 2002, I was injured on a job which resulted in my back being broken. A year or so after my accident I returned to work and continued to work until 2010 when I was forced into retirement by my doctor. This is when our troubles with paying our mortgage started. It took me almost two years after applying to finally start receiving disability.

As soon as we knew we would have trouble paying our mortgage, we contacted Wells Fargo. I was constantly in contact with my lender trying to work something out while we were waiting for my disability to be approved. They were consistently rude to us and badgered us every day demanding the payments we were behind. Each time I explained to them that we didn't have the money at that time but wanted to work something out so we could pay once my disability was approved. We were approved for a short six month forbearance plan in 2011 where we paid half payments, however they wouldn't work with us to permanently modify our loan for the rest of the amount we were behind.

We contacted the Western New York Law Center when we saw their information on the notice for Settlement Conference from the Genesee County Courts. We started working with the Law Center in January of 2013 and it was the best thing we could have done. The Law Center worked with us to supply Wells Fargo, through their attorney, all the documents they required to review us for a loan modification. We always kept up with document request and after several months of review with Wells Fargo, and several complaints filed with the Attorney General against Wells Fargo, we were finally offered a Trial Modification. Our Trial Modification payments were due June, July and August of 2013.

After the first two months, the bank's attorney informed us that there was a Department of Social Services lien on the property that would have to be paid in full or we would have to get a subordination agreement before a final modification could be offered. I worked with the Law Center calling DSS to get them to agree to a subordination agreement for several weeks. Once we had the approval from DSS to subordinate the lien, the Law Center contacted Wells Fargo and their attorney to find out what format they desired the agreement to be in. After more than a

month of trying and no response from either the bank or their attorney, the Law Center put together the subordination agreement and DSS signed it. Not long after filing the subordination agreement, we received a different agreement from Wells Fargo. This agreement did not include the language that DSS required to subordinate the loan so we continued with the initial agreement the Law Center had worked out. After that agreement was submitted to Wells Fargo, we were informed that they would not accept that version of the agreement, even though it included all of the language of Wells Fargo's own agreement. At our next Settlement Conference, Wells Fargo's attorney informed the Law Center that they were no longer requiring the subordination agreement and that a final modification offer would be sent out to us in the following week. I tell this story to emphasize some of the difficulty we had with Wells Fargo even when we had representation. If the Law Center had not been there to tell us to continue to make our trial modification payments until we received the final version, we would have lost the permanent offer because we would have been another three or four months behind before the bank decided they didn't even need the subordination agreement that they fought us so much to get.

In February of 2014, we were finally able to sign our permanent loan modification. Our new loan lowers our interest rate from 5.5% to 3.25% and our monthly payment from close to \$1300 to \$897. We have twin daughters that are fourteen years old and recently we took in our stepdaughter's twin girls that are ten months old and they are living with us full time. I am convinced that without the assistance of the Western New York Law Center, my family and I would be out on the street. I don't know what we would have done without them.

Michael and Dawn Farnsworth

# **Eileen Kleps**

Client of Western New York Law Center

Accompanied by Kate Lockhart

**The Chief Judge's Hearings on Civil Legal Services**  
**FOURTH DEPARTMENT HEARING**  
**Monday, September 29, 2014**

Good morning,

My name is Eileen Kleps-Fox and I am here today with my friend and Power of Attorney Mary Ellen Wilber. Mary Ellen is here to assist me because I have memory issues related to dementia due to HIV / AIDS. We are honored to be able to speak and represent the great work that the Western New York Law Center does for homeowners through OCA funding.

I had been paying on my mortgage consistently each month since 1999 when, in 2012, I fell a few months behind on my mortgage because I simply forgot to make the payments (something very common for people with dementia). Once Mary Ellen found out that I was behind, she went to Volunteer Lawyers Project and got assistance in becoming my power of attorney to assist me in working things out with my lender. She contacted my lender, Wells Fargo, right away to try and make the back payments and get me current again. She was informed by Wells Fargo that my mortgage had been referred to the foreclosure department and they would not accept the back payments. For nine months, Mary Ellen submitted paperwork on my behalf requesting a loan modification from Wells Fargo. She contacted them often to ensure they had all the paperwork they needed, some weeks even contacting them 3 or 4 different times. Each time she would call, they would claim they didn't have her Power of Attorney on file and couldn't speak to her or would claim they never received the documents we had sent in. We were unable to get an answer from Wells Fargo on whether or not they could modify my loan and get me current again. We were at our wits end.

July 2013, I received notice of my Settlement Conference and that is where I met the Western New York Law Center. I worked with their office and was able to get a trial modification. After a few issues with a lien on the property, everything was straightened out and I was offered a permanent loan modification that reduced my interest rate from 10.75% to 5.125% and my monthly payment from \$618 to \$528. The Law Center was also able to set up automatic monthly payments for me so I don't have to worry about forgetting to make each one. While working on our own, we felt like the lender did not respect us at all. We are so grateful for the work of the Law Center and agencies like theirs because without them, we may not have been able to work something out.

Eileen Kleps

**Commissioner M. Josh McCrossen**  
Wayne County Department of Social Services

**TESTIMONY:**

**THE CHIEF JUDGE’S HEARINGS**

**ON**

**CIVIL LEGAL SERVICES –**

**FOURTH DEPARTMENT**

September 29, 2014

By: M. Josh McCrossen  
Commissioner  
Wayne County Department of Social Services  
77 Water Street  
PO Box 10  
Lyons, NY 14489

My name is M. Josh McCrossen and I am the Commissioner of the Wayne County Department of Social Services. I appear before you today to share information with you about the continued high unmet need for civil legal services for the low-income residents of Wayne County and the surrounding Finger Lakes region. I will also share with you information about the ways in which we in Wayne County collaborate with the Office of Court Administration's grantee, Legal Assistance of Western New York, Inc., known as LawNY, which is the primary provider of civil legal services in our area.

By way of background, my life's work has been spent either directly providing services, or overseeing the provision of human services, to economically disadvantaged people and other vulnerable populations in primarily rural settings.

I presently serve as the Commissioner of the Wayne County Department of Social Services and have been in that position since 2/15/2000, in which capacity I oversee, among other programs, our county's Child Protective services, Child Support Enforcement, Foster Care services, Temporary Assistance, Medicaid, Preventive Services for Children, Protective Services for Adults and Safety Net assistance. I also oversee contracts for services from other agencies, including LawNY.

Prior to assuming my position at Wayne County DSS, I served as the executive director of Catholic Family Center in Wayne County from 8/1980 – 2/15/2000. In that position, I oversaw a broad range of human services programs, including services to prevent teenage pregnancy and to strengthen family units. I began the Persons in Need of Supervision

(PINS) program in Wayne County and continue to fund it to this day. From a one-person operation in 1980, I was able to grow the services to 10 full-time staff by the time I left in early 2000.

This service growth is not indicative of a service-rich environment. Per capita, far more funding and far more services are available in metropolitan areas than rural areas. In addition, rural families face the barrier of little or no public transportation and often have to travel long distances to access what services may be available, at a not inconsiderable cost.

I know that the focus of today's hearing is on education and school law issues, the impact of providing civil legal services to students and their families and what a difference this makes in their success. I would like to begin, however, by discussing civil legal services generally and, at the end, I will focus my remarks on the education and school law issues at hand, with a particular focus on Wayne County and other rural areas.

I, together with the attorney in charge of our in-house legal department, our director of income maintenance and other agency leaders, meet regularly with the LawNY executive director, the managing attorney of the LawNY Geneva office and the LawNY staff member who conducts outreach in Wayne County with regard to the Supplemental Nutrition Assistance Program (SNAP), formerly known as the Food Stamp program. During these meetings, which we schedule on a quarterly basis, we exchange information about new developments in the programs that we offer. We also discuss (and often



resolve) policy matters of the type which, in the past, may well have led to litigation, with such resolution determined by the courts. Rather than assume a litigious posture with each other, we emphasize the commonalties of our concerns and attempt to work together to resolve situations to the benefit of our mutual clients, as much as possible.

I have been made aware of the Chief Judge's initiative to help abate the high unmet needs for civil legal services among low-income New Yorkers, and I can attest to the fact that, during the years of this initiative, LawNY's presence in Wayne County has grown and the number of low-income people that LawNY has been able to serve has increased.

My colleagues at LawNY have shared with me that the number of cases closed for Wayne County residents has grown from 620 in 2010 to 843 in 2013, an increase of 36% over the course of four years. The number of people benefitting from the services provided in these cases has grown from 1,449 in 2010 to 1,854 in 2013, an increase of 30% over the same four years time span.

LawNY's enhanced presence in Wayne County today now includes a number of programs to which we effectuate referrals of our mutual clients:

- A homelessness intervention project, through which low-income people who are homeless or at risk of homelessness receive information, advice and representation (if needed), with the goal of stabilizing them in safe and permanent housing;

- A disability advocacy project, through which low-income people who are unable to work because of a physical or mental impairment receive the assistance they need to document their medical conditions so that they can qualify for federal disability benefits from the Social Security Administration;
- A nutrition outreach and education project, through which low-income people who qualify for benefits from the SNAP program receive assistance with the application process;
- A project to provide seniors over the age of 60 with civil legal services, often in matters regarding access to health care;
- A foreclosure prevention project; and
- An employment law advocacy project which we help to fund.

In addition, our county funds LawNY to provide mandated representation to low-income adults in family court proceedings.

Yet, despite the enhancements to its service delivery system that LawNY has been able to implement in recent years, the demand for its services still outstrips its ability to provide them. Please note just a few demographics:

- The poverty population in Wayne County (those under 100% of the federal poverty level), stood at 10,449 in 2013 according to U.S. Census Bureau estimates, constituting 11.3% of Wayne County's total population;

- The number of people in Wayne County at or below 200% of the federal poverty level stood at 26,262 in 2010, constituting 28% of Wayne County's total population at that time;
- The number of foreclosures filed in Wayne County increased by 82% in 2013 over 2012, from 126 to 229;
- As of June 2014, the number of people in Wayne County receiving Temporary Assistance (TA) stood at 1,166 (1.3% of our residents) and August 2014 saw a year over year growth of 5.9% in individuals receiving TA. The number receiving SNAP benefits stood at 10,943 (11.8% of our residents). These numbers have not come down appreciably, indicating to us that our neediest residents have not been touched by whatever economic improvement may have occurred in NY State.
- In calendar year 2014 the number of people enrolled in Medicaid in Wayne County has averaged approximately 14,000 (15.1% of our residents), a number 35% higher than our 2007 figures.
- These numbers portray a community still suffering economic problems resulting in increased reliance on governmental supports. With the belief that school success is one of the prime paths out of poverty, the Department is committed to trying to make sure that those students from our poorest families are given the supports they need to become economically independent.

To this end, my agency provides TANF funds to LawNY to provide representation to low-income families needing assistance on issues such as the development of

individualized education plans, discipline issues (such as suspensions and expulsions from school) and bullying issues.

Advice, advocacy and information are necessary for low-income children in rural areas such as Wayne County, and elsewhere in New York State, to help ensure that children with disabilities receive an appropriate education as defined by each child's academic, physical, mental, emotional and social needs. If we can be successful in this endeavor, we better prepare them to be productive members of our community.

Students not only need an understanding of how to access community, state and federal resources, they and their parents need an understanding regarding the range of degree options in New York State and the changing New York State curriculum requirements.

In Wayne County alone, we have 11 school districts. According to the New York State Education Department, in the 2012 – 2013 academic year there were 14,319 students in Wayne County school districts. Of those, 12.2% (1,752) had a diagnosed disability. In addition, 42.7% of these students, totaling 6,114, were economically disadvantaged.

Yet, in Wayne County, in 2013, LawNY was able to serve only 18 families with school law problems and throughout its seven offices serving 14 counties, only a total of 52 families received services in this subject area. Each figure is clearly just a small portion of the total needing these services. It is not the case that we believe that schools do not care about these students; however, resources are limited for all of us, leading to a greater

demand (and competition) for those that do exist. In the great majority of cases, low income families cannot compete effectively, due to their own resource limitations. The attempt here, small though it may be, is to level the playing field.

With unfettered demand for services in areas of basic need such as housing, income and health issues, LawNY, and most likely all of the providers of civil legal services, must triage cases. Consequently, a very basic need – involving the education of children – is relegated to lower priority status. In so doing, we plant the seeds of future difficulties; we address acute needs rather than root causes. Only if additional resources are made available can we hope to effectuate a shift in this paradigm.

I want to thank you for conducting these hearings on civil legal services in the Fourth Department. Further, I commend you for the thoughtful process that you go through to assess the scope of the unmet need for these services. I look forward to reading the report which will be issued containing recommendations for your next steps.

Thank you for your time and consideration.

# **Sandra A. Parker**

President & CEO, Rochester Business Alliance

**Civil Legal Services Hearing Testimony**  
**September 29, 2013**

Good morning. I am Sandra Parker, Chief Executive Officer of the Rochester Business Alliance, the region's chamber of commerce representing 2,000 employers in the Finger Lakes Region. When I learned that the focus for the Civil Legal Services hearing in Rochester is on education I felt it important that the business community provide testimony. Our public policy agenda includes three primary areas of focus. These include: economic development, healthcare and urban education.

Many have questioned why the business community is concerned about urban education. The response is quite simple- the 28,000 students of the Rochester City School District represent our future workforce. They must have the necessary skills and talent to meet our labor force needs. Given the abysmal results coming out of the City School District (40% graduation rate) there is a lot that must be done!

There are many aspects to ensuring that kids receive a good education that prepares them for the workforce. Civil Legal Services providers do many things that help kids get a good education. They include:

- representing kids with disabilities to get them an appropriate education which will lead them to be able to have a fulfilling life commensurate with their abilities.

- structural work which focuses on the value of the community economic diversity school and increasing inter-district transfer opportunities like the Urban/Suburban program.

- Advocating for the expansion of quality early education programs for pre-school children.

The City School District has identified school attendance and not having kids move between schools unnecessarily is critical to educational success. Here again Civil Legal Services make a real difference in whether kids experience or avoid things that will be disruptive to their education.

For example:

-CLS represents families and tenants in foreclosure prevention working to keep families living in the same home and thereby avoiding kids missing school or changing schools mid-year because the family is displaced.

-Representing families to ensure access to health care coverage to ensure kids with health needs can get appropriate treatment.

-The work in lead poisoning prevention that has led to city and county policies that cut the incidence of childhood lead poisoning by over 87% over 10 years resulting in over 1,000 children each year not having their IQ's reduced by lead poisoning and enabling them to arrive at school better able to learn.

The Rochester Business Alliance will continue to focus on improving educational outputs in the future with time and resources. This issue however will take the energy of the entire community. Civil Legal Services is a much needed partner to community efforts on this issue.



# **C. Kenneth Perri**

Executive Director, Legal Assistance of Western New York, Inc.

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**TESTIMONY:**

**THE CHIEF JUDGE'S HEARINGS  
ON  
CIVIL LEGAL SERVICES**

October 3, 2014

By: C. Kenneth Perri  
Executive Director



## **I. Introduction:**

On behalf of Legal Assistance of Western New York, Inc.<sup>®</sup> (hereinafter LawNY<sup>®</sup>), I thank you for conducting the hearings on civil legal services in the First Department on September 22, 2014, in the Fourth Department on September 29, 2014, in the Second Department on September 30, 2014 and in the Third Department on October 6, 2014. I thank you as well for the opportunity to share these very brief comments with regard to the crisis facing the civil legal services infrastructure in New York State, how that impacts those unable to access the justice system because of their inability to pay for an attorney and the impact in LawNY<sup>®</sup>'s service area of Judiciary Civil Legal Services funding.

I extend my thanks in particular to the Chief Judge of the State of New York, Honorable Jonathan Lippman, as well as the other members of the hearing panels, Chief Administrative Judge A. Gail Prudenti, New York State Bar Association President Glenn Lau-Kee and Presiding Justices Luis A. Gonzalez, Randall T. Eng, Karen K. Peters and Henry J. Scudder. I also extend my thanks to Helaine M. Barnett, the chair of the Task Force To Expand Access To Civil Legal Services In New York, as well as the other distinguished members of the Task Force.

## **II. LawNY<sup>®</sup>:**

My name is C. Kenneth Perri and I am the executive director of LawNY<sup>®</sup>. LawNY<sup>®</sup> is a 501(c)(3) not-for-profit law firm whose mission is to provide access to the justice system to low-income New Yorkers and other vulnerable populations in our 14 county service area. I have been a civil legal services practitioner for 32 years.

LawNY<sup>®</sup> has seven staffed offices which provide services to low-income people in 14 counties in the Third and Fourth Departments. Our office in Bath serves the residents of Allegany and Steuben Counties. Our office in Elmira serves the residents of Chemung and Schuyler Counties. Our office in Geneva serves the residents of Livingston, Ontario, Seneca, Wayne and Yates Counties. Our office in Ithaca serves the residents of Tioga and Tompkins Counties. Our office in Jamestown serves the residents of Chautauqua County. Our office in Olean serves the residents of Cattaraugus County. Our office in Rochester serves the residents of Monroe County.

With the exception of the urban center in Rochester and the small cities of Canandaigua, Elmira, Geneva, Ithaca, Jamestown, Olean and Salamanca, the nearly 10,000 square mile, 14 county area served by LawNY<sup>®</sup> is primarily rural. In the counties in which we do not have staffed offices, we have sites where we can meet with and interview clients located in Belmont, Lyons, Montour Falls, Mt. Morris, Ovid, Owego and Penn Yan.

## **III. Continued Need for Funding:**

On September 29, 2010 I submitted written testimony and had the honor of providing oral testimony at the Chief Judge's hearing held in Rochester, New York. I also

submitted written testimony on October 7, 2011 in connection with the Chief Judge's 2011 hearings on civil legal services, on September 27, 2012 in connection with the Chief Judge's 2012 hearings on civil legal services and on September 25, 2013 in connection with the Chief Judge's 2013 hearings on civil legal services. On all four occasions I provided detailed information regarding the extremely high demand for services from LawNY<sup>®</sup> by the members of our low-income communities. The sum and substance of my September 2010, October 2011, September 2012 and September 2013 testimony in this regard remains unchanged, and is briefly able to be summarized as follows:

- The number of persons living in poverty in the 14 counties served by LawNY<sup>®</sup> continues to grow, from 189,000 persons according to the 2000 census to nearly 262,500 persons according to the small area income and poverty estimates for 2011, an increase of nearly 39%;
- Recent economic conditions have dramatically affected the demand for civil legal services among low-income people, including those who, because of loss of jobs, have fallen below the federal poverty level;
- The unemployment rate remains high;
- Employers continue to downsize, relocate or close;
- The number of people participating in the poverty programs of last resort – public assistance, food stamps and medicaid – remains exceptionally high, with 53,153 temporary assistance recipients as of June 2014, 252,189 supplemental nutrition assistance program recipients as of June 2014 and 350,249 persons enrolled in the Medicaid program during calendar year 2013;
- LawNY<sup>®</sup> continues to struggle to meet gaps in our service delivery system which we have identified, including in the areas of mobile home owners' rights, services for domestic violence victims, services for seniors and services in the areas of consumer law, employment law, education law and land sale contracts; and
- LawNY<sup>®</sup> also continues to grapple with other barriers to providing civil legal services which we have identified, including our large geographic expanse; low starting salaries for our professional staff of attorneys (\$46,500 at the entry level); the difficulty of recruiting and retaining volunteer lawyers to provide pro bono services in the rural counties in our service area; and recent reductions in federal funding from the Legal Services Corporation, amounting to 4% of our basic field grant in 2011 followed by another 15% reduction to our basic field grant in 2012 and yet another 3% reduction to our basic field grant in 2013.

#### **IV. LawNY<sup>®</sup>'s Use of Oversight Board Judiciary Civil Legal Services Funds:**

In the state fiscal year which ran from 4/1/11 – 3/31/12, Chief Judge Lippman was able to secure funding for civil legal services in the sum of \$12.5 million allocated by the

Oversight Board for Judiciary Civil Legal Services. Following a competitive RFP process, LawNY<sup>®</sup> was awarded \$656,175 to serve our four counties located in the Third Department and our ten counties located in the Fourth Department.

These funds allowed LawNY<sup>®</sup> to retain approximately 6.23 FTE attorney staff members, 1.18 FTE paralegal staff members and .26 FTE support staff members.

This provided LawNY<sup>®</sup> with the capacity to serve 1,063 additional households, including households with problems with subsistence income such as wages, disability, other benefits and consumer debts (42%); housing, such as evictions, foreclosures and homelessness (32%); family matters, such as domestic violence, children and family stability (20%); and access to health care and education (3%).

Other legal assistance was provided to 998 additional individuals in the form of presentations to groups of low-income people; dissemination of legal education brochures; the provision of printed and web-based materials; referrals to the private bar, other civil legal services providers and other human service providers; and outreach regarding program services.

In the state fiscal year which ran from April 1, 2012 – March 31, 2013, Chief Judge Lippman was able to secure funding for civil legal services in the sum of \$25 million, again allocated by the Oversight Board for Judiciary Civil Legal Services. Again, following a competitive RFP process, LawNY<sup>®</sup> was awarded \$1,312,350 to serve our four counties in the Third Department and our ten counties in the Fourth Department.

These funds allowed LawNY<sup>®</sup> to employ 12.86 FTE attorney staff members, 1.97 FTE paralegal staff members and 1.15 FTE support staff members.

This provided LawNY<sup>®</sup> with the capacity to serve 2,182 additional households, including households with problems with subsistence income such as wages, disability, other benefits and consumer debts (43%); housing, such as evictions, foreclosures and homelessness (28%); family matters, such as domestic violence, children and family stability (22%); and access to health care and education (3%).

Other legal assistance was provided to 828 additional individuals in the form of presentations to groups of low-income people; dissemination of legal education brochures; the provision of printed and web-based materials; referrals to the private bar, other civil legal services providers and other human service providers; and outreach regarding program services.

In the state fiscal year which ran from April 1, 2013 – March 31, 2014, Chief Judge Lippman was able to secure funding for civil legal services in the sum of \$40 million, again allocated by the Oversight Board for Judiciary Civil Legal Services. Again, following a competitive RFP process, LawNY<sup>®</sup> was awarded \$2,107,360 to serve our four counties in the Third Department and our ten counties in the Fourth Department.

These funds allowed LawNY<sup>®</sup> to employ 18.73 FTE attorney staff members, 3.93 FTE paralegal staff members and 3.24 FTE support staff members.

With 22.4% of our total staff funded with JCLS funds, 1,554 of the cases we closed were for clients who would otherwise not have been able to be served, including 586 with government benefit problems, 444 with housing problems and 254 with family law problems. In addition, another 1,401 households whose cases were not yet closed as of March 31, 2014 would otherwise have been unable to be served.

In the current state fiscal year, which runs from April 1, 2014 – March 31, 2015, Chief Judge Lippman was able to secure funding for civil legal services in the sum of \$55 million, again allocated by the Oversight Board for Judiciary Civil Legal Services. LawNY<sup>®</sup>'s base award in the sum of \$2,107,360 was renewed and, following another competitive RFP process, LawNY<sup>®</sup> was awarded an additional \$789,675 to serve our four counties in the Third Department and our ten counties in the Fourth Department.

We expect that this funding will support expansion of our staff by an additional 11.2 FTE members, positioning LawNY to further grow the services that we are able to provide to our clients.

In addition to the funding which allows LawNY and the legal services community to provide enhanced direct services to low income New Yorkers, the Task Force has played a proactive role in developing creative and innovative initiatives unrelated to funding to help abate the crisis created by the large number of unrepresented people with civil legal problems. These include the pro bono requirement for applicants for admission to the New York bar, the Pro Bono Scholars program, the use of technology, non-attorney navigator pilots, unbundling of legal services and alternative dispute resolution.

The new pro bono requirement for applicants for admission to the New York bar, together with a previous initiative of the Chief Judge, the Attorney Emeritus Program, provided the impetus for LawNY, together with five of our colleague programs – Legal Aid Society of Mid New York, Legal Aid Society of Northeastern New York, Legal Services of the Hudson Valley, Nassau/Suffolk Law Services Committee and Neighborhood Legal Services in Buffalo to submit a successful application to the Legal Services Corporation through its Pro Bono Innovation Fund.

As a result, on November 1, 2014 we will begin to implement a project to create a statewide (outside of New York City) pro bono practice group to create a new component of our service delivery systems through which emeritus attorneys and law students will use their skills to provide direct services to low income people to help abate the high unmet need for legal services in our state. We anticipate that thousands of additional hours will be donated to expand our collective capacity to provide legal services through our 33 offices which together serve every urban, suburban and rural community outside of New York City.

## **V. Conclusion:**

For the state fiscal year from April 1, 2013 – March 31, 2014, LawNY<sup>®</sup> staff in all seven offices, with all of our funding streams, cumulatively closed a total of 6,939 cases benefiting 15,069 people. The three highest substantive law areas in which cases were closed were in those in which clients presented with legal problems affecting the essentials of life – government benefits (37%), housing (29%) and family law (16%). LawNY<sup>®</sup> used a variety of strategies to meet these critical legal needs of our clients, including representation in judicial and administrative forums, preventive legal education, pro se information, short-term services such as counsel and advice and holistic community partnerships.

In 2015, absent renewed funding from the Oversight Board for Judiciary Civil Legal Services, LawNY<sup>®</sup>'s ability to continue to try to address the unmet needs of the low-income families in our service area with civil legal problems affecting the essentials of life will be irrevocably destabilized.

I am grateful for the efforts of the Chief Judge and the Task Force and extend my thanks on behalf of myself, the LawNY<sup>®</sup> board of directors and staff and, most importantly, the families that we are able to help as a result of this funding and the other initiatives..

I fervently urge that the Task Force recommend that funding from New York State for the provision of civil legal services to low-income people be enhanced in the state fiscal year which begins on April 1, 2015 so that LawNY<sup>®</sup> and the entire community of civil legal services providers can continue to respond as effectively as possible to the ever growing need for our services. The continuing demand by our low-income neighbors for assistance from the legal services provider community in turn demands ongoing and stable funding for the providers from the State of New York.

LawNY<sup>®</sup> and the other civil legal services providers throughout New York State welcome the opportunity to work with the Chief Judge and with the Task Force To Expand Access To Civil Legal Services In New York to achieve this result.

Thank you for your time and your consideration.

**Erin E. McKinley**

Ithaca Area Collaborative Law Professionals



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September 29, 2014

Transmitted via Email: [CivilLegalServices@nycourts.gov](mailto:CivilLegalServices@nycourts.gov)  
The Task Force to Expand Access  
to Civil Legal Services in New York  
c/o Chiansan Ma, Esq.  
Sullivan & Cromwell, LLP  
125 Broad Street, 32<sup>nd</sup> Floor  
New York, NY 10004-2498

**Re: Comments Submitted for Public Hearing**  
**October 6, 2014, Third Department**

Dear Judge Lippman and Members of the Task Force:

In response to your Notice of Public Hearings on Civil Legal Services, I submit for your consideration information about the **No Cost Collaborative Program** that has been developed by the Ithaca Area Collaborative Law Professionals. This program provides free legal assistance to eligible clients who wish to resolve their divorce, separation, and family law matters using Collaborative Practice.

The Ithaca Area Collaborative Law Professionals (“IACLP”) is a Collaborative practice group originally formed in 2003 and comprised of attorneys, financial professionals, and mental health professionals. The IACLP meets regularly to educate and provide resources to its members, and to promote the growth of Collaborative Practice in the Ithaca, New York and surrounding areas.

**A. Overview of the No Cost Collaborative Program**

Collaborative Practice is a method of alternative dispute resolution that is most commonly used in the context of divorce and other family law matters. In Collaborative Practice, each client is represented by his or her own attorney, and all issues are resolved without court intervention. The parties and their attorneys sign an agreement which disqualifies the Collaborative attorneys from ever litigating the case against the other party. The clients commit to respectful, cooperative negotiations and voluntary financial disclosure. Neutral experts can be used to help with tax and financial matters, and mental health professionals are sometimes used to provide guidance with parenting plans and the emotional aspects of the process.

Because Collaborative Practice is a voluntary process, both parties must demonstrate a desire to use the Collaborative process for one or both of them to be eligible for the No Cost Collaborative Program. If only one participant meets the financial qualifications for a free Collaborative

lawyer, the couple may still use the Collaborative process as long as the other participant hires a Collaborative lawyer and the parties agree to use the Collaborative process.

The No Cost Collaborative Program has two parts. One part of the program makes Collaborative attorneys available to low income individuals for assistance with separation and divorce (and all related issues). The other part provides Collaborative attorneys for low income individuals who need assistance with custody and parenting plans and who would otherwise be proceeding in Family Court.

1. Free Access to a Collaborative Attorney for Separation and Divorce

The No Cost Collaborative Program for separation and divorce is offered in partnership with the Ithaca office of Legal Assistance of Western New York (“LAWNY”). Clients who qualify for legal assistance through LAWNY are matched with a Collaborative lawyer who volunteers to work with the client *pro bono*.

The IACLP has provided LAWNY with information and materials about Collaborative Practice, to help their office educate potential clients about the No Cost Collaborative Program and identify clients who would like to use the Collaborative process. Clients who wish to apply for the No Cost Collaborative Program are referred to LAWNY to determine financial eligibility. After a client has been deemed financially eligible, LAWNY will ask the client to have his/her spouse confirm with LAWNY his/her willingness to use Collaborative Practice. The spouse will also be given an opportunity to participate in a financial screening, to determine eligibility for a free attorney. After the clients are matched with an attorney, they each meet with their respective attorney to discuss how the Collaborative process works. Collaborative negotiations can begin after both clients agree to proceed.

Couples with a case pending in court, or a history of domestic abuse, are not eligible for this part of the program.

If a client is interested in using the Collaborative process, but does not qualify for a free attorney under LAWNY’s guidelines, LAWNY will refer the client to our practice group on an informal basis. If a Collaborative lawyer from our group is available to represent the client *pro bono* or for a reduced fee, he or she may do so, but this is considered outside of the scope of the program.

2. Free Access to a Collaborative Attorney for Resolving Custody and Parenting Time

The No Cost Collaborative Program for custody and parenting time is offered in partnership with the Tompkins County Assigned Counsel Program. Clients who qualify for an assigned attorney are matched with a Collaborative lawyer from the Assigned Counsel panel. Clients who wish to use Collaborative Practice indicate their interest by checking the appropriate box on their Assigned Counsel application. Collaborative attorneys are compensated by the Assigned Counsel program in the same manner as all other attorneys.

Once the clients have agreed to use the Collaborative process, their Family Court petitions are adjourned to provide time for the clients to participate in the Collaborative Process. If a settlement agreement is not completed and submitted to the Court within the time provided, the Court determines whether to extend the adjournment or return the case to litigation. If the Collaborative process is terminated, the Collaborative lawyers are replaced by new attorneys, in keeping with the principles of Collaborative Practice.

**B. Benefits of the No Cost Collaborative Program**

In addition to the obvious benefit of providing clients of modest means with needed legal assistance, the No Cost Collaborative Program offers the benefits typically associated with Collaborative Practice:

- Client involvement: the non-adversarial nature of Collaborative Practice shifts decision-making into the hands of the clients, rather than the court
- Flexibility: creative solutions are encouraged
- Privacy: clients avoid discussion of their personal lives and finances in court
- Less stress: clients avoid lengthy discovery, depositions and court hearings
- Positive climate: clients and attorneys work cooperatively with one another
- Better for children: children are not subjected to the negative impact of litigation

**C. Need for Public Education and Marketing**

With these programs in place, and Collaborative attorneys ready and willing to work on Collaborative cases *pro bono* and through the Assigned Counsel program, the challenge at this time is to increase public education and marketing efforts of the No Cost Collaborative Program.

Dues from IACLP members have paid for the design and maintenance of a website, which includes information about the No Cost Collaborative Program. Updates to webpage are currently underway, with the goal of making the webpage more user-friendly for participants of the No Cost Collaborative Program. Dues from IACLP members have also paid for informational pamphlets widely distributed in our community. The pamphlets promote Collaborative Practice and provide some basic information about the No Cost Collaborative Program.

In July 2014, the IACLP was awarded a grant from the International Academy of Collaborative Professionals, to pay for bus advertisements designed to raise public awareness of the No Cost Collaborative Program. Images of these advertisements are included with this letter. The IACLP hopes to obtain additional funding from various sources to display these advertisements in other venues. For example, reaching out to rural areas is thought to be one way to increase public

awareness of Collaborative Practice and make it more likely that qualified clients will apply to use the No Cost Collaborative Program.

**D. Developing More Pro Bono/Low Cost Collaboration Programs in New York State**

The International Academy of Collaborative Professionals is a community of legal, mental health, and financial professionals which exists to promote Collaborative Practice and has more than 5,000 members from 24 countries around the world. In 2013, the International Academy of Collaborative Professionals formed an Access to Collaboration Task Force, to help promote and support the delivery of Collaborative Practice services to people with low incomes and modest means.

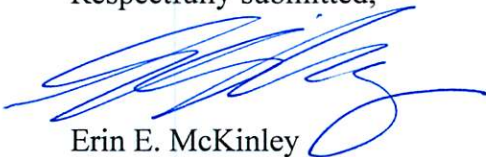
The Access to Collaboration Task Force is an excellent resource for any organization that wants to launch a Collaborative *pro bono* or low cost program of its own. Members of the Access to Collaboration Task Force can provide interested professionals with ideas and materials for their own local program. The Access to Collaboration Task Force can be contacted through the International Academy of Collaborative Professionals: <http://www.collaborativepractice.com>.

**E. Basis of Information**

The information that I have provided in this letter is based upon my personal involvement with the IACLP's No Cost Collaborative Program and my experience as a member of the International Academy of Collaborative Professionals' Access to Collaboration Task Force.

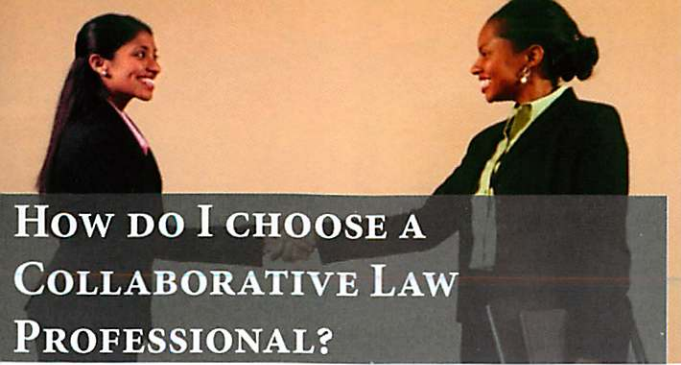
If I can answer any questions, or provide any additional information about the No Cost Collaborative Program in our community, please do not hesitate to contact me.

Respectfully submitted,



Erin E. McKinley

Attachments:            Bus Advertisement Images  
                                  IACLP Informational Pamphlet



## HOW DO I CHOOSE A COLLABORATIVE LAW PROFESSIONAL?

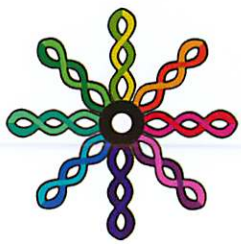
Collaborative Law Professionals (CLPs) can be lawyers, mediators, therapists, counselors, child specialists, or financial specialists. The best way to choose a CLP is to meet the person to determine if (s)he is the right fit for your situation. Any CLP can act as a point-of-entry to engage in the process. Most CLPs who are members of the Ithaca Area Collaborative Law Professionals (IACLCP) offer a free ½ hour consultation to explain the process and answer your questions. Check the list of IACLCP participating professionals on our website, [www.collab-law.com](http://www.collab-law.com).

Collaborative Law is also available for issues involving custody, or building a parenting plan agreement through the Tompkins County Assigned Counsel program, meaning that if you qualify to receive the services of an attorney via Assigned Counsel, you may be able to use the Collaborative Law process depending on the other parent's circumstances and willingness. To request a Collaborative Law attorney, just check the appropriate box on the Assigned Counsel application. The Assigned Counsel office can be reached at (607)272-7487.

Please see the list of IACLCP participating professionals who serve the Ithaca area on

**WWW.COLLAB-LAW.COM**

### For More Information



ITHACA AREA  
COLLABORATIVE LAW PROFESSIONALS  
[www.collab-law.com](http://www.collab-law.com)

### Additional Information on Collaborative Law:

International Academy of Collaborative Professionals (IACP)

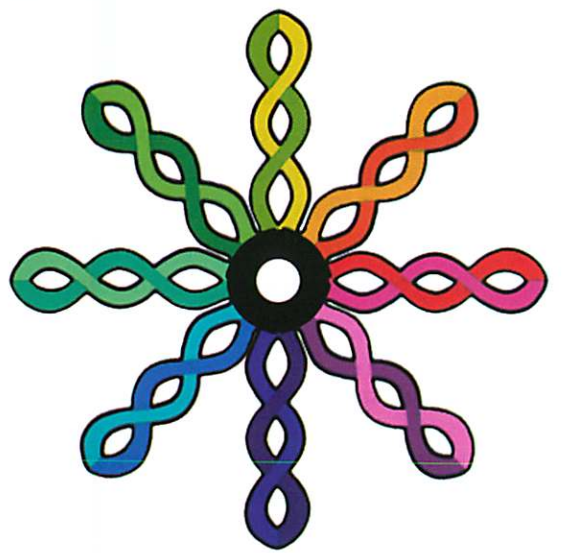


INTERNATIONAL ACADEMY OF  
COLLABORATIVE PROFESSIONALS

[www.collaborativepractice.com](http://www.collaborativepractice.com)



## COLLABORATIVE LAW



A DIGNIFIED APPROACH TO  
RESOLVING FAMILY MATTERS

**WWW.COLLAB-LAW.COM**  
Ithaca Area Collaborative Law Professionals



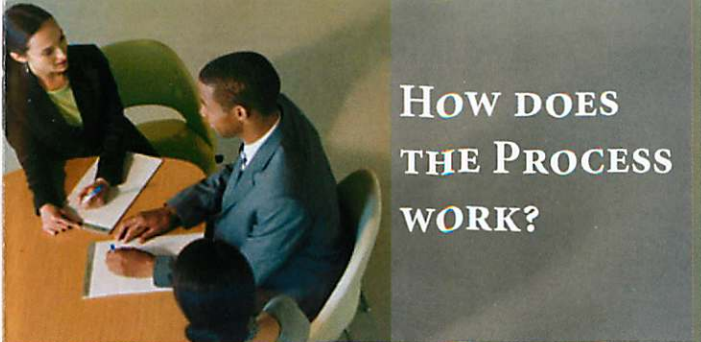


## WHAT IS COLLABORATIVE LAW?

If you are facing a major change in your life - like getting married, co-parenting, separating, divorcing or making a significant change within your family - Collaborative Law offers a means of building durable legal agreements and resolving disputes with the guidance and advice of professionals without going to court.

### Core elements of the process include:

- Reaching a mutually acceptable settlement without having a judge decide the issues
- Maintaining open communication and information-sharing that you can rely on and trust
- Creating resolutions that are unique to your situation
- Having professionals who are committed to helping you build an agreement that works for you both
- Providing a forum to work through the issues that is confidential and respects your privacy



## HOW DOES THE PROCESS WORK?

When you and your spouse or partner choose Collaborative Law, each of you hires a collaborative lawyer, who will be your advocate and your legal advisor. Each lawyer is committed to help you reach a settlement that works for both of you. Depending on your situation, neutral collaborative specialists may join the team to assist in financial, parenting or communication matters.

Everyone agrees - in writing - not to go to court. You will meet at regular intervals. All meetings are intended to be safe, produce an honest exchange of information and facilitate a clear understanding about needs and expectations. Mutual problem-solving by all participants leads to a final agreement that everyone can live with.



## IS COLLABORATIVE LAW RIGHT FOR ME?



### IF YOU.....

- Want to work through the issues in a respectful way, even when you disagree
- Accept and believe that both your needs and the needs of your spouse or partner are important and are due equal consideration
- Believe that working creatively and cooperatively is the best way to solve issues
- Can treat your spouse or partner with respect and consideration
- Want to build your own agreement, and not have one dictated to you by others
- Have children, and want to give priority to meeting their needs, now and in the future
- Want to have your lawyer at your side, working with you throughout the process rather than fighting battles in court.....

## TALK TO A COLLABORATIVE LAW PROFESSIONAL TODAY

# **Kristin M. Small**

Disability Rights Attorney, Empire Justice Center

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**From:** Kristin Small <ksmall@empirejustice.org>  
**Sent:** Monday, September 29, 2014 4:03 PM  
**To:** CivilLegalServices  
**Subject:** Comment/testimony from a legal aid lawyer

Dear Chief Judge Lippman;

Thank you for your statements at the public hearing today at the Telesca Center. I heard you ask the same question today of various witnesses – why are lawyers so important in the struggle to alleviate poverty? As a practicing legal aid attorney I would like to offer an answer to that question.

Some background: I've had the privilege of serving 3 low-income communities in 3 different states as a legal aid attorney: Weslaco, Texas, Boston, Massachusetts and Rochester, New York. I've practiced in a range of poverty-law areas including housing, public benefits, workers' rights, immigration and even a few divorce cases. Poverty law is my life's work.

I think the answer has to do with the following question: What is law? Is it words written on a piece of paper? We all know that some laws are on the books and never get enforced. If laws are not enforced, they may as well not exist. Legal aid lawyers are important because they are the **ONLY** means of civil law enforcement for the poor. Wealthy people take civil law enforcement upon themselves, and together privately fund a system of civil law enforcement. When someone breaks a law and it results in harm to a wealthy person, s/he hires a private attorney to prosecute a case against that person. However the poor do not have the resources to do this. **This means that without legal aid lawyers, the laws on the books essentially do not exist for poor people.** That leaves a sort of wild west, where might makes right and the highest rule is the Golden Rule – He Who Has The Gold, Makes The Rules. A culture of oppression develops in which (as Ms. Scott said today) the poor are preyed upon. In a place like that, it is almost impossible to pull oneself out of poverty.

I saw this firsthand when I worked as a housing attorney at Texas RioGrande Legal Aid, on the US-Mexico border. In the county where I worked there was a serious shortage of legal aid lawyers – 1 for every 30,000 potential clients. Eviction cases were brought in Justice of the Peace court, in front of judges who were local politicians and often uneducated in the law. The custom in the area I worked is for landlords to evict tenants without notice by changing the locks. This, of course, is illegal. However it makes no difference what's illegal unless someone is there to fight back in court and point out to the landlords and to the JPs that this is illegal. I would show up to JP court and the judges were always completely surprised to see me. "Who are you?" they would ask. "I'm here representing the tenant," I would reply, only to be looked at like I had three heads. Most of the JPs I appeared in front of had never seen a tenant's lawyer before in their courtroom.

The problem was, there was only 1 of me. Or about 8 of me in our housing unit, covering a geographic area of hundreds of square miles and many thousands of tenants. There was no way we could educate enough judges and landlords to change the culture of illegal eviction in those counties. And so, for the poor people of Hidalgo, Starr and Cameron Counties, Texas, there essentially was no notice requirement for eviction. Evictions are just one example – my office witnesses this phenomenon of lawlessness in many different areas.

So this is my answer: we can't just fund civil legal aid because lawyers should help people, and it's the right thing to do morally. We **MUST** fund civil legal aid to prevent the separation of American society into two parallel universes – one in



which the rule of law prevails, and one in which it does not. Unfortunately, the number of Americans who occupy the latter is growing at an alarming pace.

Thank you for your time and consideration.

Sincerely,  
Kristin Small



**Kristin M. Small**

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**APPENDIX 13:**

**Written Statements Submitted at the Second Department  
Hearing Held on September 30, 2014**

Written Statements Submitted at the  
Second Department Hearing on September 30, 2014

Commissioner Steven Banks (*New York City Human Resources Administration*)

Hon. Kenneth P. Thompson (*Kings County District Attorney*)

Hon. Rory L. Lancman (*New York City Council Member [District 24]; Chair, City Council Committee on Courts and Legal Services*)

Hon. Debi Rose (*Deputy Majority Leader, New York City Council [District 49, North Shore]*)

Reverend Doctor Demetrius S. Carolina (*Executive Director, Central Family Life Center*)

Thomas Cunsolo (*President, Staten Island Alliance*)

Scott M. Primiano (*President, The Insurance Advocates, Flood Direct National Insurance Program*)

Steven G. Leventhal, Esq. (*Access to Justice Program Chair, Nassau County Bar Association; Leventhal, Cursio, Mullaney & Sliney, LLP*)

Shaun Little (*Client of The Legal Aid Society, accompanied by Judith Goldiner*)

Taiwo Osinaike (*Client of Legal Services NYC, accompanied by Rachel Hannaford*)

Diego Parra (*Client of Legal Services NYC, accompanied by Stephanie Taylor*)

Adam J. Halper, Esq. (*Director of Legal Services, The Family Center*)

Donna Dougherty (*Attorney in Charge, Legal Services for the Elderly in Queens, Jewish Association for Services for the Aged*)

**Commissioner Steven Banks**  
New York City Human Resources Administration

## Commissioner Steven Banks Bio

On February 28, 2014, Mayor Bill de Blasio appointed Steven Banks as Commissioner of the New York City Human Resources/Department of Social Services (HRA), and he has served in that position since April 1, 2014. As Commissioner, Banks serves as chief executive of the largest local social services agency in the country, which serves over 3 million New Yorkers through the administration of more than 12 major public assistance programs, with 14,000 employees and an operating budget of over \$9 billion. Commissioner Banks is a key leader in implementing Mayor de Blasio's agenda to expand opportunity for more New Yorkers, address income inequality, and ensure that New Yorkers receive the benefits and assistance to which they are entitled.

Commissioner Banks has dedicated his entire career to improving the lives of low-income New Yorkers and is recognized as one of New York City's leading public interest lawyers. Throughout his 33 years with the Legal Aid Society, Banks developed an extensive track record of working productively with a unionized workforce and helping the city's most vulnerable residents – including seniors, survivors of domestic violence, immigrants, and people living with HIV/AIDS – navigate HRA's programs and services. From 2004 until his appointment, Banks was the Attorney-in-Chief of the Legal Aid Society, the country's oldest and largest not-for-profit legal services organization. During his tenure, he led the organization through a complete financial and managerial restructuring to save it from bankruptcy in 2004. With an annual budget of \$225 million, he managed a staff of 1,900, including some 1,100 lawyers, and was responsible for all aspects of the legal practice and operations of the organization's criminal, juvenile rights, and civil programs in New York City. Prior to becoming the Attorney-in-Chief, Banks held the positions of Associate Attorney-in-Chief, Deputy Attorney-in-Charge of the Civil Practice, Coordinating Attorney of the Homeless Rights Project, and Director of Government Relations for the Civil Practice. He began his career at Legal Aid in 1981 as a Staff Attorney in the organization's Staten Island Neighborhood Office. He has also previously served as counsel to the Coalition for the Homeless, and he was the lead attorney in major class action litigation requiring the provision of lawful shelter and services to homeless New Yorkers.

He is credited with helping reach a landmark settlement with the City in 2008 over its treatment of homeless children and adults, which resulted in the establishment of a permanent enforceable right to shelter for homeless families in New York City.

The [American Lawyer](#) has listed him as one of the top 45 public interest lawyers in the United States, The [Daily News](#) described him as "perhaps the City's most legendary Legal Aid attorney in this generation," and [New York Magazine](#) called him one of the most influential New Yorkers.

Banks graduated from the New York University School of Law in 1981, and from Brown University in 1978.

Testimony Of Steven Banks, Commissioner Of The New York City Human Resources Administration, At The Chief Judge's Hearing On Civil Legal Services – September 30, 2014

Good morning Chief Judge Lippman, Chief Administrative Judge Prudenti, Presiding Justice Eng, and State Bar President Lau-Kee. Thank you for inviting us to appear before you today to discuss the important role that civil legal assistance plays in providing access to justice, including in the aftermath of disasters.

As you know – every day in all five boroughs – the City's Human Resources Administration (HRA) is focused on carrying out the Mayor's priority of fighting poverty and income inequity and preventing homelessness.

With an annual budget of \$9.7 billion and a staff of 14,000, HRA provides assistance and services to some three million low-income children and adults, including:

- economic support and social services for families and individuals through the administration of major benefit programs (Cash Assistance, Supplemental Nutritional Assistance Program benefits (food stamps), Medicaid, and Child Support Services);
- homelessness prevention assistance, educational, vocational and employment services, assistance for persons with disabilities, services for immigrants, civil legal aid, and disaster relief; and, for the most vulnerable New Yorkers,
- HIV/AIDS Services, Adult Protective Services, Home Care and programs for survivors of domestic violence.

The provision of civil legal assistance is part of HRA's overall effort to address poverty and prevent homelessness.

To advance this effort, for the City Fiscal Year that began on July 1, the Mayor has consolidated all of the civil legal assistance programs in the City's baseline budget at the Human Resources Administration.

This consolidation has been implemented to enhance the coordination and effectiveness of these important programs.

The civil legal services programs and the \$21 Million in associated funding that have been consolidated at HRA are as follows:

- \$13.5 Million for anti-eviction legal services, which represents an increase of \$7.1 Million above the previous funding levels as part of the Mayor's new initiatives to prevent homelessness that were announced last month;
- \$2.1 Million for legal assistance for senior citizens, which includes an assigned counsel program for seniors at risk of eviction; and
- \$5.3 Million for legal assistance for immigrants, including legal services for survivors of domestic violence, immigrant workers, and immigrant City residents with legal needs involving citizenship and permanent residency.

As part of the budget agreement between the Mayor and the City Council, \$17.625 Million in discretionary funding has also been added to the City budget for this year for these programs:

- \$11.725 Million for civil legal services, including citywide civil legal services, legal services for low-income workers, legal assistance to obtain unemployment insurance benefits and federal disability benefits, legal services for survivors of domestic violence, legal services for veterans, and anti-eviction and SRO housing legal services;
- \$1 Million for additional legal assistance for immigrants, including legal services for survivors of domestic violence, immigrant workers, and immigrant City residents with legal needs involving citizenship and permanent residency; and
- \$4.9 Million for a unique Family Unity Project to keep immigrant families together and avert deportation.

In combination, these programs prioritize providing civil legal assistance in core matters involving the “essentials of life” – legal problems in the areas of:

- housing (including evictions, foreclosures, and homelessness);

- family matters (including domestic violence, children, and family stability);
- access to health care and education; and
- subsistence income (including employment wages, disability and other basic benefits, and consumer debts).

Overall, these HRA civil legal services programs emphasize the provision of preventive legal assistance that can avert or reduce the need for litigation as well as the need for the provision of comprehensive services that require a seasoned, well-trained civil legal services staff able to address often complex, interrelated legal matters.

Given the continuing need for civil legal assistance, we certainly welcome and support your allocation of additional Judiciary resources to complement and further leverage our increased legal assistance funding and our expanded services to help low-income families and individuals with basic civil legal needs. Thank you again for including us in this hearing and we welcome any questions you may have.



**Hon. Kenneth P. Thompson**  
Kings County District Attorney

Kenneth P. Thompson was elected the Kings County District Attorney in November, 2013.

He served as a prosecutor in the U.S. Attorney's Office for the Eastern District of New York, and was an attorney in the U.S. Treasury Department in Washington, D.C., where he served as Special Assistant to the Treasury Department Undersecretary for Enforcement, and later in the Department's General Counsel's Office.

After serving as a federal prosecutor, Mr. Thompson entered into private practice and worked at a prominent international law firm. He co-founded a law firm where he represented victims of discrimination or sexual violence.

Mr. Thompson graduated *magna cum laude* from John Jay College of Criminal Justice, and earned his law degree at New York University Law School, where he was awarded the prestigious Arthur T. Vanderbilt Medal for his outstanding contributions to the law school community.

Mr. Thompson resides in Brooklyn with his wife, Lu-Shawn, and their two children.

## “Access to Justice” Hearings for Funding Legal Services

Sept. 30, 2014, 10 a.m.

Richmond County Supreme Court, 26 Central Ave., SI

Thank you, Chief Judge Lippman, and Justice Eng, Chief Administrative Judge Prudenti and state Bar Association President Lau-Kee.

I am pleased to be here today to offer my perspective on the dire need for civil legal services for low-income New Yorkers.

The general public would assume that the Kings County District Attorney’s Office is only concerned with prosecutions, and with helping victims navigate the criminal justice system.

My office handles about 100,000 cases a year.

But for many of the crime victims we see, their troubles don’t end with a guilty verdict.

For victims of domestic violence, elder abuse, elder fraud, immigrant fraud and unscrupulous landlords, civil legal assistance is vital.

Domestic abuse victims need a lawyer so they can keep custody of their children and arrange safe circumstances for visitation.

Without legal counsel, particularly vulnerable victims, like people with disabilities, may find themselves at risk of losing

their kids to abusive partners, because they are perceived to be less capable of parenting.

Civil lawyers also help with housing and landlord-tenant issues and human rights relief when a DV victim is in danger of losing a job due to missing work during a pending court case.

When the victimization does not rise to the level of a criminal matter, we have to refer people to a civil lawyer. Too often, people are either turned away due to insufficient funding, or have to wait such a long time that they may be effectively precluded from getting assistance.

My Office has a Family Justice Center with four legal providers: Sanctuary for Families, Urban Justice Center, South Brooklyn Legal Services, and Her Justice. Also, Day One works with teen victims of domestic violence, and JASA (Jewish Association of Services for the Aged) provides support for elderly clients seeking Family Court Orders of Protection against abusive intimate partners and adult “children”.

There is a burgeoning demand at the Family Justice Center for civil legal assistance. If this option becomes scarcer, vulnerable people will stay in dangerous relationships even longer, exposing children to a greater risk of injury.

For many victims of domestic violence, the criminal justice system may not always be optimal. Seeking a civil protection

order in Family Court may be a better alternative. Research clearly demonstrates that one of the key components in reducing domestic violence is ensuring that victims have civil legal remedies and services.

Civil attorneys play a crucial role in assisting victims of intimate partner abuse and human trafficking who may be eligible for U-Visas and T-Visas, which are conferred on non-citizens who suffered substantial abuse in a crime and assisted in the prosecution of the case.

Immigration attorneys work closely with our office in getting “certifications” of a victim’s helpfulness, which begins the process of U-Visa and T-Visa applications.

So far this year, our office has approved 145 certifications.

Civil legal assistance is vital to low-income homeowners victimized by mortgage fraud, and to apartment dwellers being forced out of rent-controlled or rent-stabilized buildings.

As far as immigrant fraud, we have a new unit prosecuting those who prey on newcomers, but many require a lawyer to aid them in filing civil lawsuits against the individuals or businesses who scammed them.

Many victims will need an immigration lawyer to untangle the mess caused by empty promises of a Green Card, or an attorney to sue an employer for unpaid wages.

We can't guarantee restitution with a conviction.

And if there was greater access to competent legal help to get them through the complex immigration process in the first place, there would not be so much fraud and abuse of the immigrant community.

So speaking from a law enforcement standpoint, providing funding for these services for low-income New Yorkers can greatly improve their lives, and by turn improve their communities, and help decrease crime.

Thank you for pursuing access to justice for the state's neediest citizens.

**Hon. Rory L. Lancman**

New York City Council Member (District 24)

Chair, City Council Committee on Courts and Legal Services

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TWENTY-FOURTH DISTRICT, QUEENS

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Testimony before the Honorable Jonathan Lippman, Presiding Judge Randall T. Eng, Chief Administrative Judge A. Gail Prudenti, and the President of the New York State Bar Association, Glenn Lau-Kee

September 30, 2014

Thank you Chief Judge Lippman, Presiding Judge Eng, Chief Administrative Judge Prudenti and New York State Bar Association President Lau-Kee for the opportunity to testify before you regarding the critical importance of access to justice in our city and state. As chair the Council's Committee on Courts & Legal Services, and as a representative of a Queens district within the Second Department, I am particularly interested in today's hearing.

You heard testimony last week from Council Speaker Melissa Mark-Viverito and Corporation Council Zachary Carter on behalf of the Council and administration, and today I want to amplify their call for expanded civil legal services. Providing counsel when basic human needs are at stake is both the hallmark of compassionate government and a sound investment of our money as taxpayers.

As a member of the State Assembly in 2010, I had the distinct privilege of being present at Chief Judge Lippman's inaugural, rousing Law Day speech, where he announced the Task Force to Expand Access to Civil Legal Services in New York -- a commitment to ensure legal representation when, as Judge Lippman put it, "basic human needs are at stake -- shelter, sustenance, personal safety, health, or child custody." Ensuring adequate legal representation for indigent criminal defendants and civil litigants had long been a priority of the Assembly, and during my tenure there we worked together to greatly improve the administration of civil foreclosure proceedings, including expanding the availability of legal services to families facing foreclosure.



Let me start by applauding the Task Force's success, which includes an impressive increase of state funding of civil legal services from \$12.5 million to \$55 million over four years -- and these have not been four years of expanding state budgets. At the same time, I know the magnitude of the problem that remains to be solved, when millions of litigants still appear unrepresented in our courts and the Legal Aid Society, our oldest and largest provider of indigent legal services, must turn away three of four qualified applicants for legal assistance for lack of capacity to serve them. Meanwhile, federal Legal Services Corporation funding has decreased sharply, shifting an increasing share of the cost of providing services onto the city and state.

We in the city make every attempt to treat civil legal services as the funding priority that it must be. As you heard last week, Council funding increased 76% from fiscal year 2014 to 2015. Of course, we urge the Legislature to follow our lead in next year's budget cycle.

While insufficient to fully close the justice gap, the Council funds a broad spectrum of civil legal services for those whose basic needs are in jeopardy, including practice areas from labor and employment to family law to public benefits, health and education law. We fund large citywide providers including the Legal Aid Society, Legal Services of New York City and the New York Legal Assistance Group, and we also fund legal services through community-based organizations such as CAMBA in Brooklyn, Housing Conservation Coordinators on the West Side and the Northern Manhattan Improvement Corporation. We are always on the lookout for innovative funding opportunities that serve hard to reach populations and emergent legal needs.

We have made significant, concentrated investments in keeping low-income New Yorkers in their homes to avoid having to rely on the costly shelter system, in stopping domestic violence through empowering women via legal representation, and in maintaining vibrant families and communities through immigration services and deportation defense. The millions we spend on these services saves tens, potentially hundreds of millions in shelter costs, incarceration and public benefits.

Here in the Second Department, following the onset of the foreclosure crisis in 2008 and Superstorm Sandy in 2012, Council-funded legal services organizations have made a critical difference in the lives of struggling Staten Islanders, Brooklynites and Queens residents. We are especially proud of how effective these services have been.

For example, the New York Legal Assistance Group reported as of September 1, 2014, that its Storm Response Unit had recovered \$15 for every dollar spent on representation. Attorneys advocated effectively with federal, state and local recovery programs and agencies as well as insurance companies and contractors and, when necessary, in housing and bankruptcy court.

Thanks in significant part to your work at the state level as well as city funding, Legal Aid Society attorneys have been providing foreclosure defense services for several years

now, including crucial review of foreclosure documents so that families are not unjustly dispossessed by unscrupulous loan servicers. This effort has proven tremendously important in easing the burden on government services and keeping entire communities from falling into disrepair and hopelessness.

The Council's newest initiative, announced last week by Speaker Mark-Viverito, is the Unaccompanied Minor Initiative, which designates \$1 million in City funding and leverages an additional \$900,000 in private foundation funding to provide counsel for undocumented immigrant youth. Due in large part to increased violence in Central America, the number of unaccompanied immigrant and refugee children and teenagers journeying to New York has risen dramatically this year. Unrepresented, these youth are four times more likely to be deported back to the violence they escaped than if they have counsel.

Yet many undocumented youth have legitimate claims to political asylum, special immigrant juvenile status and/or visas for crime victims and their relatives and for trafficking victims, if only they had counsel to make the arguments. Through this Initiative, over 1,000 youth will gain representation from the Legal Aid Society, the Door, Catholic Charities Community Services, New York Law School's Safe Passage Project, Make the Road NY, Central American Legal Assistance, Kids in Need of Defense (KIND) and Atlas: DIY (Developing Immigrant Youth).

While unaccompanied immigrant youth, some of the newest and most vulnerable New Yorkers, clearly require full scale legal representation, we support the notion, now under investigation by your Committee on Non-Lawyers and the Justice Gap, that some legal services can be effectively unbundled and that nonlawyers can provide substantial legal help in many situations. Accordingly, we fund Housing Court Answers and Legal Information for Families Today, which help litigants understand landlord-tenant and family law and formulate effective arguments to make on their own behalf before the judge. We are committed to working with you on these and similar models that facilitate access to justice. We hope to begin a discussion soon about more accessible, unbundled services and information for debtors in civil court, many of them victims of aggressive credit card companies and medical billing schemes.

We are eager to collaborate and leverage the talent of New York area law schools and their clinical programs. Not only do they prepare new lawyers for practice, they too help fill the justice gap. From the Worker Cooperative Law Project at the City University of New York Law School to the Youth Re-Entry Clinic at Brooklyn Law School to the Consumer Justice for the Elderly Clinic at St. John's, our law schools boast many dozens of clinical offerings and are increasingly meeting the legal needs of low-income and working New Yorkers. I myself represented low-income individuals in unemployment insurance hearings as a law student through the Unemployment Action Center. It was what we call "win-win" -- I learned how to be a real lawyer, and my clients had, well, if not experienced counsel, certainly zealous counsel.

With the full implementation of the fifty-hour pro bono rule for bar admission, these clinics are critical to ensuring that our new lawyers hit the ground running and ready to represent litigants in need. The Council's Committee on Courts & Legal Services is committed to following this trend and exploring how to most effectively marshal the resources available to the city and state. It's time we talk seriously with law schools about making clinical work a graduation requirement.

Ultimately, we view the justice gap as a surmountable challenge. We in government owe it both to indigent New Yorkers who rely on publicly funded civil legal services as well as to better-off New Yorkers whose taxes fund the majority of public services to make the requisite investment and to close the gap for dignity's and efficiency's sake. I thank you for your time today and I join your effort to secure the requisite funding to make equal justice a reality for all New Yorkers.

# **Hon. Debi Rose**

Deputy Majority Leader, New York City Council  
(District 49, North Shore)

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THE COUNCIL OF  
THE CITY OF NEW YORK  
**DEBI ROSE**

DEPUTY MAJORITY LEADER  
49<sup>TH</sup> DISTRICT, STATEN ISLAND

**TESTIMONY OF THE  
HONORABLE DEBORAH L. ROSE**

**ON**

**STATEN ISLAND'S CIVIL LEGAL NEEDS**

**FOR**

**THE CHIEF JUDGE'S HEARINGS ON CIVIL LEGAL SERVICES**

**PRESENTED BEFORE**

**HON. JONATHAN LIPPMAN**

**CHIEF JUDGE OF THE STATE OF NEW YORK**

**HON. RANDALL T. ENG**

**PRESIDING JUSTICE, SECOND DEPARTMENT**

**HON. A. GAIL PRUDENTI**

**CHIEF ADMINISTRATIVE JUDGE, OFFICE OF COURT ADMINISTRATION**

**GLENN LAU-KEE**

**PRESIDENT, NEW YORK STATE BAR ASSOCIATION**

*"Keeping Constituents First"*

*“Injustice anywhere is a threat to justice everywhere.”*

Martin Luther King Jr.

### Introduction

Good morning. My name is Debi Rose and I represent the 49<sup>th</sup> District – comprising the North Shore of Staten Island – in the New York City Council.

First, I congratulate Judge Lippman and the Task Force for the tremendous work they have done to expand access to our justice system for all New Yorkers: conducting these hearings, producing reports on the civil legal needs of New Yorkers, and including millions of dollars for the provision of civil legal services in the budget of the Office of Court Administration for the last four years. These are extraordinary accomplishments.

Second, I thank you for inviting me to testify today before this august tribunal on the civil legal needs of Staten Islanders, a topic of great importance to me as a legislator, and to thousands of Staten Islanders in need.

### Description of District

You may not realize it, but Staten Island is a microcosm of the gorgeous mosaic of New York City.

With almost 500,000 residents, Staten Island is the least populous borough of New York City; however, it is also the fastest growing borough in New York State, with a larger population than the city of Atlanta. People who have moved to the area for less expensive rents and easy access to Manhattan have filled neighborhood schools to the limit.

The area I represent, the North Shore of Staten Island, is the borough’s oldest and most densely populated area. The Leni Lenape tribe established a settlement here dating back to 2100 B.C., and in 1609 Henry Hudson established Dutch trade on the North Shore, naming the island ‘*Staten Eylandt*’ after the Dutch parliament, the Staten-Generaal.

The North Shore has the borough’s most ethnically diverse population, its oldest infrastructure, and its densest housing.

The Parkhill section of my district is affectionately known as “Little Liberia” and has the largest Liberian population of any city outside of Africa, and the neighborhood of Tompkinsville has the largest Sri Lanka population outside Sri Lanka. Indeed, the North Shore is home to many immigrants from African countries, Central and South American countries, India, Albania, China, and Poland.

### Need for Civil Legal Services

While much of New York City has recovered from the great recession of 2008-2009, it was not an even recovery and the need for legal services for those still struggling to get by has remained stubbornly high. For example:

*“Keeping Constituents First”*

- 22.2% of New Yorkers turned to food stamps to get by in 2013, up from 14.9% in 2008;<sup>1</sup>
- Unemployment was 7.3% in 2008 and today is at 7.9%;<sup>2</sup> and
- the percentage of those living below poverty went from 18.4% in 2008 to 20.0% in 2012.<sup>3</sup>

Civil legal services attorneys provide critical services to thousands of low-income residents every year, serving as a lifeline to the many that, without their assistance, would otherwise have nowhere else to turn.

As an elected official, I know that the provision of civil legal services not only saves lives but saves money, as well. When someone does not have representation in our complex legal system, they are often unsuccessful or give up out of frustration. Their unmet legal needs invariably take a toll on local government and on the taxpayers; from housing to medical care to education, the long-term costs of unrepresented individuals in our legal system touch all aspects of a community.

#### Evolving Legal Needs on Staten Island

The need for legal services on Staten Island is large. Last year, the two major providers of free civil legal services on Staten Island – Legal Services NYC and the Legal Aid Society – handled 3,010 cases, assisting over 10,138 people. The major areas of services were housing, immigration, family/domestic violence, disaster assistance, benefits, and foreclosure.

For purposes of this testimony, I will focus on housing, immigration, domestic violence, and disaster assistance –

- **Housing:** Most housing problems on Staten Island stem from a critical lack of affordable housing on the island, which makes tenants fearful of losing their homes and thus more vulnerable to coercion and abuse from landlords. Addressing the affordable housing crisis in New York City is an important policy issue – who better to address this thorny issue than our civil legal services attorneys who have been in the trenches fighting for housing rights for low-income and working New Yorkers? Landlord/tenant issues we see commonly in my office include lack of apartment repairs and rodent and insect infestations. In the few SROs on Staten Island, the tenants are experiencing poor maintenance and dangerous, unsanitary living conditions. And increasingly, we are seeing discrimination claims related to refusal to rent to HIV/AIDS constituents receiving housing benefits. As you are aware, over 90% of landlords are represented in Housing Court, while less than five percent of tenants are

<sup>1</sup> Calculated average of monthly SNAP data obtained from NYS OTDA reports, <https://otda.ny.gov/resources/caseload/>

<sup>2</sup> Calculated from data obtained from the “NYC Seasonally Adjusted Employment Rate history” spreadsheet from the NYS Dept. of Labor: <http://labor.ny.gov/stats/nyc/index.shtm>

<sup>3</sup> “The CEO Poverty Measure, 2005-2012: An Annual Report from the Office of the Mayor,” Page iii. The New York City Center for Economic Opportunity. 28 April 2014. [http://www.nyc.gov/html/ceo/downloads/pdf/ceo\\_poverty\\_measure\\_2005\\_2012.pdf](http://www.nyc.gov/html/ceo/downloads/pdf/ceo_poverty_measure_2005_2012.pdf)

- represented – the OCA civil legal services funding does much to help address this imbalance. Constituents in public housing also have special problems:
- *NYCHA* – NYCHA tenants must work through the NYCHA system for repairs and concerns regarding their apartments. Serious concerns common amongst my constituents include mold remediation and appliance repair/replacement. When NYCHA is slow to respond, legal assistance can make a tremendous difference. For example, we had a constituent with constant mold issues. After two years, we were able to have the building inspected and the cause of the mold was identified: the heating system had not been cleaned in many years. On their own, constituents are often not able to achieve results or navigate the complicated NYCHA system.
  - *Section 8* – Many basement apartments on Staten Island have been approved for Section 8 despite the fact that they are not legally-approved rentals. When NYCHA inspects the apartment and finds an apartment uninhabitable, they discontinue payment of Section 8, after which tenants are sued by landlords for non-payment and evicted. It is also common for landlords to demand additional money from Section 8 tenants, which they often pay for fear of losing an affordable apartment. In these and many other instances, legal assistance can make the difference between home and homelessness for countless low-income New Yorkers.
  - ***Immigration***: The needs of the immigrants in my district include federal issues such as naturalization, citizenship, and deportation, but also include state court issues such as discrimination based upon immigrant status (particularly in the area of housing). And, low-income, immigrant victims of domestic violence are particularly vulnerable to oppression, exploitation and abuse because of their immigration status. Moreover, lack of legal immigration status deters victims from reporting crimes or accessing civil legal services. Immigrants also often lack proper employment credentials and are therefore more susceptible to exploitation by employers, and lack access to healthcare and other essential benefits. Language barriers also impede access to justice. The legal, economic and social barriers faced by immigrants in all of these areas can seem insurmountable without effective tools, support, and advocacy from civil legal services attorneys.
  - ***Domestic Violence***: Domestic Violence (“DV”) is a serious public health crisis in my district. In 2013, there were 9,549 domestic incidents in the precincts in my council district—that’s roughly 26 incidents every day. The Mayor’s Office to Combat Domestic Violence reports that 56% of felony assaults which occur in my Council District were DV-related.<sup>4</sup> Overall, the Richmond County District Attorney’s Special Victims Bureau has reported that 22% of 13,000 crimes every year on the Island are DV-related. Studies suggest that access to legal services is critical in helping victims escape from abusive relationships and could decrease the number of victims by as much as 21%.<sup>5</sup> In order to successfully separate from

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<sup>4</sup> “DV Snapshot: Staten Island, Councilmember Debbie Rose – 49.” Mayor’s Office to Combat Domestic Violence, September 2014.

<sup>5</sup> Farmer, Amy & Tiefenthaler, Jill, “Explaining the recent decline in domestic violence,” Contemporary Economic Policy (April 2003), at 21, 22.



- abusive relationships, domestic violence survivors must utilize multiple and diverse legal procedures, including securing orders of protection against their abusers, navigating complicated family law, waging child custody disputes, and accessing safe housing. Additionally, many DV victims are financially dependent on their abuser and need assistance accessing public benefits and other supports so that they can support themselves and their children when leaving an abuser.
- **Disaster Assistance:** As you all know, Superstorm Sandy wreaked havoc in New York City, particularly on Staten Island. Twenty-four Staten Island residents died as a result of the storm, the largest death toll of all the boroughs. <sup>6</sup>Approximately 16% of the borough was inundated with flooding, impacting approximately 75,651 residents<sup>7</sup>. The North Shore of Staten Island sustained significant damage from Hurricane Sandy: massive power outages, hundreds of downed trees and power lines, and substantial flooding of homes and businesses along the Shore, particularly on Richmond Terrace and along Bay Street. Disaster survivors have complex legal needs. In the wake of Sandy, legal services attorneys provided invaluable information on school transfers, transportation, and immigration and family matters related to lost documents. They required help filing FEMA and Disaster Unemployment Insurance claims, replacement of medications, assessment of health care needs, and assistance in obtaining Food Stamps and public assistance. Ongoing advice on a variety of housing-related subjects will be crucial, including landlord-tenant relations, public housing, Federal Section 8, homeowner issues, and foreclosure. In addition, recovery could not have moved forward without small business assistance, including help obtaining loans, provided free of charge by legal services attorneys.

### Conclusion

The Universal Declaration on Human Rights states the following:

*Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control.*

It is an elegant statement, and it is my fervent hope that someday New York City will be an exemplar of this standard for the entire world. I have and will continue to devote my life's work to making it so.

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<sup>6</sup> Yates, James, "Remembering 24 killed by Hurricane Sandy on Staten Island," Staten Island Advance, October 29, 2013, [http://www.silive.com/news/index.ssf/2013/10/remembering\\_hurricane\\_sandys\\_v.html](http://www.silive.com/news/index.ssf/2013/10/remembering_hurricane_sandys_v.html).

<sup>7</sup> Dejohn, Irving, "Hurricane Sandy: one year later," New York Daily News, October 26, 2013, <http://www.nydailynews.com/new-york/hurricane-sandy/hurricane-sandy-year-staten-island-article-1.1494052#ixzz3CqH1I6xt>

New York City is a City of extremes. It has the greatest disparities in income of any major United States city, with the top 1% of the population getting 44% of the income of the City, a share nearly four times as great as 30 years ago.<sup>8</sup>

It is crucial to our well-being as a society that all people, regardless of their income, have efficacious access to the courts. When a significant portion of the population is denied access, a justice system—no matter how well structured—fails to achieve its most basic aim.

Therefore, I fully and wholeheartedly support the efforts of The Task Force to Expand Access to Civil Legal Services in New York, and I look forward to continuing to work with you to ensure that low-income New Yorkers have true access to our court system.

A handwritten signature in black ink that reads "Deborah Rose". The signature is written in a cursive style with a large, stylized initial "D".

Councilmember Debi Rose  
NYCC, 49<sup>th</sup> District

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<sup>8</sup> Fiscal Policy Institute, "Grow Together or Pull Further Apart: A Fiscal Policy Institute Report," December 13, 2010, [http://www.fiscalpolicy.org/FPI\\_GrowTogetherOrPullFurtherApart\\_20101213.pdf](http://www.fiscalpolicy.org/FPI_GrowTogetherOrPullFurtherApart_20101213.pdf).

**Reverend Doctor**  
**Demetrius S. Carolina**  
Executive Director, Central Family Life Center

## **Biography of Reverend Dr. Demetrius Carolina**

Reverend Dr. Demetrius S. Carolina Sr. is widely recognized as a spiritual leader and advocate for justice and human rights. He maintains a respected reputation as a man of conviction, one who consistently demonstrates hands-on leadership and a commitment to his congregation and issues affecting all humanity. Having a deep concern for issues that relate to spiritual empowerment, economic equity, educational development and human rights, his work has taken him to several continents on behalf of these issues. Rev. Dr. Carolina is the recipient of the 2014 New York City Controller Trailblazer Award and is the leading advocate in bringing nationally recognized Eagle Academy to Staten Island. Dr. Carolina is the program director of nationally respected Cure Violence Initiative on Staten Island known as 49 Strong Saving Lives.

As an educator and active proponent of higher education, Reverend Dr. Carolina has received numerous awards and certificates for outstanding service, leadership, merit and scholastic excellence. He has served as an educator for over 20 years in the class room and in administration. A few of his posts include Adjunct and Associate Professor of Applied Science, Business Education, Educational Administration, World Religions, Sociology and Cross Cultural Diversity. A few of his administrative posts include Upward Bound Counselor, Student Advocate, Coordinator of Academic and Student Affairs, Dean of Student Affairs, and Senior Policy Advisor to two college presidents. He holds an Associate's Degree in Communications, a Bachelor of Science Degree in Social Science, History and Education, a Master's Degree in Educational Administration Leadership from Temple University, and a Doctoral in Educational Leadership/Management from the University of Phoenix. He also accomplished post graduate work at New York University, CUTS Theological Seminary, Westminster Seminary Graduate Studies Program, and Philadelphia College of the Bible. The title of Dr. Carolina's dissertation is: A qualitative study of the healthcare experiences and health information acquisition of African American men.

Reverend Dr. Carolina answered the call to gospel ministry at age 16. His missionary work has been world-wide and his preaching/teaching ministry has spanned the globe. He is known for his work on the behalf of underrepresented populations in the United States, Europe and Africa. He is also known to be an effectiveness leading pastor, having pastured in New Jersey, Philadelphia and New York City. Some highlights of his ministry includes being the youngest president in the history of the South Jersey Ministers' Alliance, building the social consciousness and ministry effectiveness of the congregations and surrounding communities of each church he has served. The implementation families centered ministries, the development and implementation of numerous community partnership initiatives and senior citizen's programming, pre-school programming and training ministers, pastors, deacons, teachers and educational administrators. Additionally, through local community workshops, seminars and

fairs, he administered programs to encourage health awareness, community involvement and financial freedom for numerous congregations and surrounding communities.

Reverend Dr. Carolina currently serves as Senior Pastor at First Central Baptist Church, Staten Island, New York since 2005. He constantly contributes to the betterment of the Staten Island community by providing strong educational advocacy, economic development and facilitating bold community partnership initiatives, benefiting various community organizations. As the Executive Director of the Central Family Life Center, with responsibility to develop corporate, public and private relationships, he has raised awareness of service needs and has sought to offer greater collaborative responds to the community by way of the center. Dr. Carolina oversees and administers strategies to ensure the operation and sustainability of the Life Center. Dr. Carolina oversees a state-funded after school program, and a senior citizens program. He promotes intergenerational programming such as the annual celebration of everyone's birthday, the annual philanthropic community holiday events, monthly collaborative leadership meetings, development of various borough-wide peace and self-empowerment demonstrations, advocacy and advisement to various political officials, and he has constantly built effective community sponsorship of events and programming to meet the diverse socioeconomic needs of surrounding communities.

The Reverend Dr. Carolina has co-authored several peer review research studies focused on prostate cancer and health literacy associated for underrepresented communities. He is currently the president of "Clergy with a Purpose," a city-wide ecumenical clergy empowerment organization. He is a member and award recipient of the NAACP. He also sits on numerous local and national boards. A few would include: M.B.D. House Corporation, the Baptist Ministers Conference of Greater New York & Vicinity, the United Missionary Baptist Association, Staten Island University Hospital Nursing Board and Regional Vice President of the Hampton University Ministers Conference.

Reverend, Dr. Demetrius S. Carolinas' new book is entitled "Let There Be Light, Creating a Life Worth Living".

**Testimony of Reverend Dr. Demetrius Carolina  
Executive Director at the Central Family Life Center  
The Chief Judge's Hearings on Civil Legal Services  
September 30, 2014**

Good morning and thank you for inviting me to address the Chief Judge and distinguished panelists on Expanding Access to Civil Legal Services in New York. I'm the Executive Director at the Central Family Life Center, which seeks to improve the lives and environment of Staten Island residents.

Our programs run the gamut of serving low income Staten Islanders. Our Anti-Gun Violence Program, 49 Strong, is based on the Cure Violence model that uses credible community

members, some of which have been involved with the criminal justice and have turned a new leaf, to identify potential violence in the community and interrupt it at its root. As a part of that model, the City Council funded “wrap around services” which include mental health services, hospital services and legal services that are provided by The Legal Aid Society. We also have a Reentry and Recidivism Prevention Program that supports our Cure Violence work, which promotes strong interpersonal and familial relationships, community engagement, economic self sufficiency, and healthy living for accused and formerly incarcerated people. Our After School Literacy and Tutoring Program serves a diverse population of students from nearby communities, many of whom speak English as a second language. We also have a community center for seniors where we host instruction, outings and concerts and where seniors can access information on health, wellness, voting, housing and legal issues.

I am here today to testify to the importance of funding for civil legal services programs and the need for increased funding to ensure that the low income population of Staten Island has access to legal services.

### **Background on Staten Island**

Staten Island is New York’s most underappreciated and often forgotten borough. We are connected to the rest of the boroughs by either ferry or by bridge. We often feel isolated from the other boroughs. As a result, before, during and after Hurricane Sandy, we have had a lack of services on the island available to our residents – especially our low income residents of color. Our low income residents are affected by the same issues as other low income New Yorkers such as poor conditions in their apartments and eviction proceedings; difficulties making payments to banks in order to keep their homes, or victims of predatory lending for their mortgages; and access to benefits such as public assistance, food stamps or health benefits like Medicaid/Medicare. Staten Island has a large immigrant community where individuals not only need assistance with navigating the federal immigration process, but in keeping their families together they have a tremendous need for civil legal services assistance. Our low income residents are equally confused by courts and other bureaucracies as other New Yorkers. Yet issues of poverty and social justice inequity are exacerbated on the island because of our isolation from the other boroughs. As a result, the need for civil legal services on Staten Island is heightened. We are grateful for the assistance provided by the civil legal services organizations on the island but it is not nearly enough to serve our low income communities.

### **Hurricane Sandy**

Hurricane Sandy struck the Northeast region on October 29, 2012, destroying homes and apartments, triggering massive power outages and flooding subways, stores and office buildings. The storm affected almost 300,000 New Yorkers, took 49 lives, and damaged over 27,000 homes, leaving 2.1 million people without power immediately after the storm. About 16% of Staten Island was inundated with flooding, impacting approximately 75,651 residents.

After Hurricane Sandy hit, civil legal services organizations began providing disaster relief legal assistance at the shelters for homeless and displaced residents, at the disaster centers, and at community-based organizations on Staten Island. Many were concerned and confused about their access to federal benefits, insurance claims, housing and jobs. The poor were the hardest hit by the storm. Legal services organizations – including The Legal Aid Society and Legal Services NYC – helped desperate families, whose lives were shattered by the storm, access benefits and programs. They have also greatly helped families with legal disputes that arose out of the destruction caused by the storm.

Two years after the storm, however, there are still many areas on Staten Island that have yet to be served. Low income residents of color on Staten Island are still trying to pull together their limited resources in an effort to re-build their communities. Without an expansion of the Legal Aid Society and other legal services organizations, those areas will remain underserved. An expansion of legal services for poor Staten Islanders is gravely needed so that meaningful support can be provided for underserved areas that were most affected by the storm.

### **Anti-Gun Violence and Community Development**

The New York City Council through its Taskforce to Combat Gun Violence identified a neighborhood in Staten Island that had a high rate of gun violence. The City funded the Central Family Life Center to bring to that neighborhood a Cure Violence model, which identifies and interrupts gun violence at its root. As a part of this City Council program, we also receive “wrap around services” which includes legal services from The Legal Aid Society. Through the Legal Aid Society’s Community Development Project, which helps non-profits and small businesses, the Central Family Life Center was able to fill capacity and develop 49 Strong – our Anti-Gun Violence project. Through the provision of legal services, our non-profit was able to better address social economic and social justice needs in the community through the Cure Violence. The legal services offered by The Legal Aid Society also continue to help our community members who have been greatly affected by violence.

While the target area our Cure Violence project has focused on has received great assistance, other neighborhoods and communities in Staten Island have not received the same benefits. The nature of Staten Island is such that one area affects other areas, and that can be seen through crime and violence. Our communities are interconnected and the assistance from the City Council has addressed only a small piece of a much larger issue in Staten Island. All Staten Islander’s affected by violence need resources – especially civil legal services – in order to repair their communities.

More civil legal services are needed however to be able to assist all low income Staten Islanders. Our isolation and lack of access to services exacerbates the needs of the low income people of color in our borough. We ask that you do not forget about Staten Island in the provision of legal services for the poor and instead extend civil legal services to all low-income Staten Islanders.

**Thomas Cunsolo**  
President, Staten Island Alliance



## Thomas Cunsolo

Thomas Cunsolo was a union carpenter for 26 years until he became disabled in 2002. After Hurricane Sandy, he helped organize Staten Island community members in the hardest hit areas to work together to help the many local residents whose homes were damaged or destroyed. From that, he founded the Staten Island Alliance, which helps people address the many problems they face including rebuilding, getting elevation certificates and getting assistance from the Build it Back program. The Staten Island Alliance registered 1,000 people for Build it Back.

**Chief Judge's Hearing on Access to Civil Legal Services**  
**September 30, 2014**  
**Testimony of Thomas Cunsolo, Director Staten Island Alliance**

My name is Thomas Cunsolo and I have been a client of Staten Island Legal Services since 2008 when I faced losing my home. I was a union carpenter for 26 years until I became disabled in 2002. It took me two years to start getting disability payments and in the meantime, after spending all of my savings, I fell behind on my mortgage. I am here to testify today as a former client of legal services and as Director of Staten Island Alliance.

In 2004, the bank filed a foreclosure case against me and I responded on my own. While the case was pending, my disability benefits finally started to come and I was able to get the bank to agree to a three year repayment agreement. Although the agreement was supposed to turn into a loan modification if I paid my mortgage on time for a year, it never did, even though I never missed a payment. I called the bank over and over about my loan but I could never get any answers. Then at the end of the three year repayment plan, the bank told me for the first time that I had to make a balloon payment of about \$41,000 to reinstate my mortgage.

I couldn't pay this and realized that I once again faced losing my home and I needed help. Finally someone referred me to Staten Island Legal Services and I was told I had a predatory loan. Among other problems, the bank had secretly raised the interest rate at the start of the loan in 2002 and I was paying a higher interest rate than what I had been told. Legal Services took my case to federal court and ultimately we got a great settlement. I ended up with an affordable interest rate and a reduction of my mortgage. This allowed me to keep my home.

Honestly, I don't know what I would have done if someone hadn't sent me to Legal Services. Everyone needs to know about them. But they don't have enough money to help

everyone who needs them. Look at the foreclosure rate on Staten Island and that alone tells you there's a great need for legal help here.

Two years after Legal Services saved my home from foreclosure, my house was destroyed by Sandy. Again Staten Island Legal Services was there—not just for me but for the entire community.

After Sandy hit I fled my home. Two feet of sewer water had backed up into my house and I got my wife, my dog and my handicapped sister and we drove to my nephew's house on higher ground. There was a 12 foot wave behind us but somehow we managed to take off. After I brought my family to safety I went back to see how others were faring. I saw a rescue boat with seven or eight people hanging from the boat and I piled everyone into my car and brought them someplace safe and dry. I went back and in the end pulled 31 people out of the water.

Hundreds of our homes were destroyed and nobody knew what to do. I got together with a few others in the community to try and figure out a plan. We realized we needed to organize ourselves and we began to go block by block in the affected areas to see what people needed and to help people start cleaning out their homes.

Eventually we formed the Staten Island Alliance and after many months of working out of my car, we finally got an office. We help people rebuild, get elevation certificates and deal with the Build it Back program among many other things. When people come to us we do research and try to get answers about what people need to do. So far we have signed up 1,000 people for the Build it Back program. Legal Services works hand in hand with us. We know how to do construction work, but desperately needed legal help. After Sandy, Legal Services

staff was out in the community every day and staffed a legal clinic every weekend at a local church. After we got an office, they came there every Sunday to help people.

People in the community still need a lot of legal help to repair and rebuild. They especially need insurance payments and Build it Back assistance. We can help them rebuild but we can't get around the barriers posed by insurance companies and the Build it Back program. We constantly send people to Legal Services and they are always responsive. Based on my experience over the past two years, it seems clear that Sandy victims are going to need lots of legal help for a long time to come and we hope we can keep counting on Legal Services to be there.

I hope you will help keep Legal Services solvent for many years—not just now but for the future. Legal help in civil matters is desperately needed at all times, but after natural disasters the need intensifies but often cannot be met because of lack of resources.

# **Scott M. Primiano**

President, The Insurance Advocates,  
Flood Direct National Insurance Program

Testimony before the Chief Judge's Hearings on Civil Legal Services  
SECOND DEPARTMENT  
Tuesday, September 30, 2014,  
Supreme Court, Richmond County  
Presented by Scott Primiano  
President, The Insurance Advocates  
Member, Touro Law School Disaster Relief Clinic, NY Rising Field Offices

Good Morning:

I am Scott Primiano, President of The Insurance Advocates, an insurance brokerage and flood insurance specialty firm located in Amityville, NY. It is an honor to present testimony today and to share a summary of the street-level experiences encountered by homeowners and communities in Nassau and Suffolk Counties that continue to this day as a result of Super Storm Sandy.

Since October 29<sup>th</sup>, 2012, members of our team have worked closely with The Touro Law School Disaster Relief Clinic, NY Rising Field Offices, and a myriad of community-based non-profit organizations to provide pro bono guidance and hands-on assistance to those struggling to process their insurance claims, apply for assistance, restart their lives, and return home.

We began our work expecting to provide a few hours of pro bono assistance and advocacy each day for a few months. Almost immediately our efforts to help became a full-time, seven-day per week mission and remain so to this day. Working with over 100 families still displaced or living in varying degrees of dilapidation, we find the road to proper indemnification and assistance clogged by a complicated bureaucracy, compromised by devious contractors, and inundated with crafty storm chasers attempting to make money on the backs of our victims by providing false hope and empty promises of assistance.

Most vulnerable and most likely to be victimized by "the system" and those who prey on it are the elderly, uneducated, disabled, and impoverished. Unlike those who have savings to fall back on, qualify for loans, have ample cash flow, and are savvy enough to advocate for proper settlements; these segments of our community haven't the time, ability, or resources necessary to successfully represent and protect their interests.

The common threads in all of their stories are summarized as follows:

1. The Insurance Claims Process

Filing a flood insurance claim necessarily requires a proper valuation of the damage. During a catastrophic event such as Sandy, insurance adjusters are flown in from all corners of the country to evaluate the damage and open the claim. Often arriving prior to the full extent of the damage being realized by either adjuster, homeowner, or tenant; the claim is opened with an understanding that undocumented damage can and should be added to the claim at a later date. While more than a cursory inspection, it is far from a precise evaluation as this initial visit by the claims adjuster is most often hurried and hectic. The adjuster has multiple properties to review in any given day and the claimant is still in shock from the event and wondering how they are going eat, sleep, wash, get to work, etc.

Testimony before the Chief Judge's Hearings on Civil Legal Services  
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Presented by Scott Primiano  
President, The Insurance Advocates  
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Unfortunately, this common scenario sets the stage for an under-valued and under-paid claim. As more damage becomes apparent and missing items are noticed, claimants are required to provide documentation to substantiate the additional request in the form of receipts for additional work done, photographs, and contracts with contractors along with their estimates. To abide, the claimant must then pay upfront to have the damage repaired or replaced, hire a contractor that requires a down payment, and, in the event of a dispute with the adjuster, choose between hiring an attorney, public adjuster, or self-advocating their claim.

Those with resources and the ability to wait out the elongated process eventually end up with a more favorable settlement. Those who are more desperate and can't afford to hire anybody or even attract their attention, nearly always fall victim to settling for less. It is here that pro bono legal representation and advocacy are most needed.

## 2. Grant Programs

In an attempt to fill the gap highlighted above and to provide help to those without any or proper insurance; Federal, State, and Local Grant programs have been established. Though well intended, these programs are very limited in scope and often come with participation requirements that are unachievable for those at, near, or below the poverty rate. Local or community-based assistance programs most often appear immediately following a catastrophe and are mainly focused on "blankets and bananas". This help is essential and much appreciated, however, it is usually not lasting and tends to be implemented rather randomly and haphazardly. State programs take much longer to evolve and require an extraordinary level of documentation, time, and patience to successfully participate in. Additionally, the programs currently in place such as NY Rising, Build It Back, and the Acquisition program require the participants to incur significant up-front expenses to pay for surveys, environmental tests, architects, contractors, and inspections prior to grants being released. Amounting to over \$10,000; these fees are simply not affordable and the process for applying too complicated for the vast majority of those who most need the help. They simply give up. Federal programs such as FEMA assistance and SBA Loans all require pre-qualification and come with mandates. FEMA will replace a heating and hot water system but requires the homeowner to purchase maximum flood insurance limits and doesn't address other damage to the property. SBA loans require good credit scores and sufficient income – our clients don't qualify. Rental assistance requires the homeowner to find a place to live, come up with a down payment, and move there. Because of demand, rental properties are extremely difficult to find and very expensive. Our clients can't begin to qualify.

Though the intentions of these programs are good and the assistance welcome; they are designed with the "average" flood victim in mind and assume too much about the participant's ability to qualify for and comply with program requirements. Only by working with a pro-bono advocate or attorney can a client breakthrough to policy makers, be heard, and have adjustments or exceptions made.

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### 3. Storm Chasers

This breed of contractor, public adjuster, and "assistance provider" feeds off of the most impoverished and vulnerable home owners and tenants who can't find or qualify for the help they desperately need. They show up at every catastrophic event, unlicensed and unaccountable, promising a quick and easy fix to whatever sufferings their victim is encountering. The promises range from removing mold and fixing a roof to getting more insurance or grant money. The victims of these scams are asked to provide a "modest" down payment and often sign a one-sided contract. Filled with the hope that help has arrived and prayers might be answered, our victims scrape together what little money they have and sign on. Then, a nightmare ensues. The contractor disappears or does partial work before demanding more money to finish the job. The public adjuster attaches the already existing claim without ever presenting a claim for additional money or even contacting the insurance company. The private advocate makes a few calls, "declares it is what it is", and moves on.

In the absence of legal representation, an already bad situation becomes profoundly worse. One could argue that "they should know better" and should always maintain a "buyer beware" frame of mind. Our experience has shown that under normal circumstances our clients do know better. However, faced with catastrophic loss and fading hope, desperate people will do desperate things.

Unfortunately the scenarios presented above are not incidental or mere anomalies. Instead, they are trends and commonalities. Those who can afford legal representation and legitimate advocacy can and do navigate the bureaucracies, receive better insurance settlements, and avoid becoming victims of the storm chasers. They can also better afford to wait out the process with the knowledge that, however annoying and frustrating it may be, dislocation is a temporary condition.

Those who do not have access to proper representation and guidance end up hopeless and forlorn. As we have seen in other major storms such as Katrina, their displacement becomes permanent and their daily subsistence tenuous. It has been two years since Sandy ravaged our communities and for those two years the only true hope our clients have had is being provided by the pro bono network of attorneys and legitimate advocates.



**Steven G. Leventhal, Esq.**

Access to Justice Program Chair, Nassau County Bar Association  
Leventhal, Cursio, Mullaney & Sliney, LLP

**STEVEN G. LEVENTHAL**

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(September 2014)

Steve is an attorney and CPA, and managing member of the Roslyn general practice firm of Leventhal, Cursio, Mullaney and Sliney, LLP. He serves as Village Attorney for the Village of Muttontown and as counsel to various county, town and village boards and commissions. Steve is the Associate Village Justice for two Long Island villages and an arbitrator for the Financial Industry Regulatory Authority (FINRA).

Steve formerly served as chair of the Nassau County Board of Ethics. He is co-chair of the Ethics and Professionalism Committee of the Municipal Law Section of the NYS Bar Association, served by Presidential appointment as a member of the NYS Bar Association Task Force on Local Government Ethics, and is a member of the Executive Committee of the Municipal Law Section, the House of Delegates, and the Committee on Standards of Attorney Conduct.

Steve is the Second Vice-President of the Nassau County Bar Association and a director of the Nassau Suffolk Legal Services Corporation. He served as an adjunct professor at Long Island University, where he taught graduate level courses in Regulatory Agencies, Administrative Responsibility and the Legal Environment in the Health Sector, and Environmental Law.

Steve is a graduate of New York University School of Law, and has lectured and written extensively on the subjects of government, legal, corporate and medical ethics. He is frequently engaged to provide ethics advice, training and continuing professional education programs to municipal officers and employees throughout the State, municipal associations, bar associations, law firms and universities.

**Testimony: Chief Judge Lippman's Hearings on Civil Legal Services**

**September 30, 2014**

**Steven G. Leventhal, Second Vice President & Access to Justice Chair**

**Nassau County Bar Association**

Chief Judge Lippman, Presiding Justice Eng, Chief Administrative Judge Prudenti, NYSBA President Lau-Kee, ladies and gentlemen.

My name is Steven G. Leventhal. I am honored to appear before you.

I am Second Vice President of the Nassau County Bar Association, and Chair of the Association's Access to Justice Committee. I am also a corporate director of the Nassau Suffolk Legal Services Committee, but I am here only in my capacity as an officer of the Nassau County Bar Association.

Our Association has over five thousand members. It is one of the largest suburban bar associations in the United States. Next month, we will host our fourth Annual Pro Bono Fair, at which Nassau County residents will have an opportunity to consult with lawyers knowledgeable in a wide range of legal disciplines, and fluent in a variety of languages.

The Nassau County Bar Association's commitment to justice for all is particularly demonstrated by the regular and frequent legal consultation clinics at

which our volunteer attorneys provide advice and guidance to Nassau County residents on issues involving elder law, bankruptcy law, mortgage foreclosure proceedings, and of course, issues related to recovery from the effects of Superstorm Sandy.

My testimony today will address the critical need for free civil legal services in a coordinated response to natural disasters. However, my focus is not limited to the surge in need that occurred in the days and weeks immediately following Superstorm Sandy. Instead, I address the continuing need for increased access to legal services providers that is still very much present almost two years later. And there is no end in sight.

Our experience in responding to Sandy has heightened our awareness of previously unforeseen problems. Many homeowners encountered obstacles in obtaining urgently needed compensation from government programs and insurance providers. Many residents are still struggling with delays in the processing of claims, and with confusing denials when claims are finally processed. For many, federal and state disaster relief remains elusive. For some, scarce resources were expended in lawsuits brought to compel payment from agencies or insurers.

Nassau County is densely populated in most areas. Many storm victims were unable to find adequate, affordable, temporary housing in proximity to their homes. Many had no alternative but to use personal funds previously allocated for

mortgage payments, to pay the cost of temporary housing, or to protect their storm-damaged homes from further deterioration, and to start the process of rebuilding.

As a result, many of these homeowners now face foreclosure.

To make matters worse, some unscrupulous contractors took money from storm victims and then disappeared without performing or, in other cases, without completing the work. Other contractors were unaware of new regulations regarding the elevation of homes, and performed their work inadequately.

Many homeowners are still struggling to recover from their losses and restore their families to normal lives. Recently FEMA has requested that some homeowners refund benefits that the agency claims were overpaid. We believe that some errors in payment may have occurred due to bureaucratic inefficiency, incomplete documentation, and other inadvertence, all of which may have been avoided or minimized if applicants had wider access to legal representation. Many storm victims had never before needed to seek government assistance and had no idea where to start. Some had claims that were complicated by inadequate documentation of generational transfers of ancestral homes, and the need to process applications for probate or administration.

In some cases, the program established to provide revitalization assistance to storm damaged communities, the New York Rising Community Reconstruction

Program, has declined to release funds to homeowners in foreclosure, while the mortgagee refuses to offer loan modifications until the houses are repaired. This results in a standstill that has frustrated both sides in the foreclosure proceedings, and promoted inefficiencies in the courts.

The Nassau County Bar Association has been able to provide assistance to storm victims through free clinics and by collaborating with providers such as Nassau Suffolk Law Services in a jointly sponsored Landlord/Tenant Attorney of the Day project, and the Nassau County Coalition Against Domestic Violence in a collaborative panel of matrimonial attorneys.

At our clinics, we engage in a form of legal triage, helping homeowners make preliminary determinations as to whom they should contact, what documents will be required, whether it is likely that they will be able to meet their burdens of proof, and what array of options may be available to them. Through our “Bridge Over Language Divides” program, known by its acronym, BOLD, we arrange for the participation of attorneys fluent in the Spanish, Korean, Haitian Creole, Russian and Urdu languages, among others.

On September 8, 2014, the Nassau County Bar Association held its 101st clinic. We have assisted over 1,000 Nassau County residents including over 500

children facing storm related issues other than foreclosure. Uncounted others have been assisted informally over the telephone, through email, and as walk-ins.

When disaster struck, the infrastructure already in place for our mortgage foreclosure clinics enabled us to mobilize attorneys quickly, and to deploy them at the home of the Association, and also at offsite locations to assist storm victims in the most heavily devastated areas of Long Island, such as Long Beach and Freeport.

However, despite these efforts and the efforts of our partner-providers, Nassau County residents continue to struggle with myriad challenges, including private insurance denials, disputes with unscrupulous contractors, landlord-tenant issues, bankruptcy and problems related to the stresses placed on their families.

It appears now that the need will continue indefinitely—and so will our free legal clinics. However, many difficult legal problems are unresolvable through clinic consultations. Legal service providers are essential partners in the relief process, working to meet the enormous need, and handling litigation for eligible clients, among other things.

In sum, there is a permanent and continuously evolving need for adequately funded legal service providers, as so many struggle to return to their homes and restore their lives.

Thank you.

# **Shaun Little**

Client of The Legal Aid Society  
Accompanied by Judith Goldiner



## Introduction by Judith Goldiner

Good morning Chief Judge Lippman, and members of the Hearing Panel. Thank you for this opportunity to testify regarding the need for increased access to civil legal services. My name is Judith Goldiner, and I am the Attorney in Charge of the Civil Law Reform Unit of The Legal Aid Society. I supervise Legal Aid's affirmative work in the civil area including homeless rights, housing, public benefits and prisoners' rights.

I am here today with my client, Shaun Little. I first met Ms. Little as part of Legal Aid's outreach to victims of Hurricane Sandy who were homeless and were placed in hotels by New York City. Ms. Little came to see me to avoid being evicted from the hotel when the City decided to discontinue payments to the hotel. As a class member in *Sapp et al v. New York City*, we were able to ensure that Ms. Little and 488 other families were successfully transitioned to permanent housing from the hotels. Ms. Little will now share her family's experience.

## **Testimony of Shaun Little**

### **Chief Judge's Hearing on Civil Legal Services**

**September 30, 2014**

Good morning. My name is Shaun Little. I live in Staten Island.

I am a survivor of Superstorm Sandy. Before the storm, my family and I lived in Averte, Queens. My house in Averte was five feet under water during Sandy. I lost everything. Before the storm, I was a home health aid. After the storm, it was very difficult for me to find and keep jobs. I was first placed in a mass shelter with my husband, daughter, disabled son, and disabled foster child. At the shelter, I ran into one of my former clients, a developmentally disabled woman who had also lost everything in the storm. The City was threatening to place her into an institution, so I took her in with her own family. We were then transferred to the Manhattan Inn, a hotel in Times Square.

In April 2013, I learned that the City was threatening to kick me and my family and 488 other families onto the street even though we had no where to go. I contacted Judith Goldiner at the Legal Aid Society. The Legal Aid Society, along with pro bono counsel Weil Gotshal, brought suit against the City. They stopped

the City from terminating the hotel payments and working with New York Disaster Interfaith Services, continued the hotel program until all the 488 families had permanent housing. The Legal Aid Society helped me obtain a federally funded housing voucher. When I found an apartment on Staten Island, Legal Aid helped me get furniture, moving expenses and first month rent. I now have a new job and my children and foster child are in school. My older daughter is in college.

I am very grateful that The Legal Aid Society agreed to help us. Without them, my family would not have a safe place to sleep at night, and it would be very difficult for me to keep my job and for my children to go to school and college. However, I know that there are still many families who are struggling to obtain housing. The Legal Aid Society is an incredible resource to New Yorkers like me who experience difficult times. Without The Legal Aid Society and other civil legal services programs, families will have nowhere to turn when the next disaster strikes. I am here in support of continued and increased funding for civil legal services in New York.

Thank you.

# **Taiwo Osinaike**

Client of Legal Services NYC

Accompanied by Rachel Hannaford

CHIEF JUDGE'S HEARINGS ON CIVIL LEGAL SERVICES SEPTEMBER 30, 2014:  
TAIWO OSINAIKE

My name is Taiwo Osinaike and I live in East New York, Brooklyn. I would like to talk about how much Legal Services NYC and South Brooklyn Legal Services helped me and my three children over the past two years. Being a survivor of domestic violence has made life hard in every way. When my husband left our home it was not just an emotional problem--it became a legal problem as well when I could not afford the rent and my landlord started two eviction cases against me. I did not anticipate how much I would go through in order to stay in my home with my three children.

I am a home daycare provider, and I don't make a lot of money. After my husband left our apartment, I qualified for a Section 8 subsidy, but my landlord kept delaying in signing me up. The people in the landlord's office treated me very badly. They asked me to bring in paperwork that I had already submitted. They told me my Section 8 would start, but it did not start. Meanwhile, I could not keep up with the rent and the bills kept piling up. They took me to court and I did not have a lawyer, so I signed a stipulation agreeing to pay over \$8,000 because I did not know my rights and was afraid I would be put out of my home. But I didn't know how I was going to get the money.

Then, the people in the landlord's office told me that I could not run the daycare out of my home. They started another eviction case against me. I did not understand this because I was fully licensed. I reached out to Legal Services NYC because I needed a lawyer's help. Luckily, Rachel Hannaford at South Brooklyn Legal Services became my attorney.

From the moment she got involved, things changed for the better. She made sure the landlord understood that they could not evict me for running a day care out of my apartment. She made sure that the stipulation I signed was not enforced. She even came with me to the landlord's office to meet with the manager about my Section 8. Finally, after over a year of waiting, I got the Section 8 subsidy.

After I got the Section 8, Rachel negotiated with the landlord to lower the amount of rent I owed. She got me assistance from the City and from charities to pay the back rent. It was such a relief to have someone fighting on my side. All of the stress that the landlord and my family situation caused was finally gone the day that Rachel told me we had paid the landlord the back rent and both eviction cases were over!

I know that without the help of a legal services lawyer I would have been evicted.

I am very grateful for the assistance of Legal Services NYC and South Brooklyn Legal Services. They helped me get through a very hard time, and now my children and I feel happy and safe in our home. I wish that everyone in my situation would also be able to get help from legal services.

# **Diego Parra**

Client of Legal Services NYC

Accompanied by Stephanie Taylor

Task Force to Expand Access to Civil Legal Services in New York  
Second Department Civil Legal Services Hearing

Testimony of Diego Parra | Queens Legal Services Client

September 30, 2014

Good Morning. My name is Diego Parra, and I am here today to tell you why we believe more resources are needed to support civil legal services. I am a client of Queens Legal Services. I am also a Board member of Legal Services NYC. In my role as client and Director, I have seen how important free civil legal services is to ensuring poor people have a fair shot at justice. I thank the Task Force for supporting offices like Queens Legal Services and hope my statement helps others see why this work is so important.

When I came to Queens Legal Services, I was very uncomfortable talking about what had happened in my life. I was very scared. My immigration status was going to expire and my marriage was in trouble. I was afraid I was going to lose my child and have to leave the United States. Stephanie, my lawyer, encouraged me to talk about everything happening in my life. I finally opened up and told her that I had been a victim of domestic violence.

I had suffered a lot of abuse, and it was hard for me to talk about it. Stephanie connected me with counseling and support services through QLS social workers. With them, I opened up and began the process of healing. I had never talked with anyone about some of the things that had happened to me.

Over the next few years, Stephanie filed many papers for me so that I could remain in the United States and be a father to my child. I went from almost losing my immigration status to becoming a citizen in 2011. I am now a student at Baruch College, studying finance and investments with a minor in law and policy. My child is now age 7, and I am proud to be an active father to him.

My work with Stephanie has shown me how important civil legal services are to communities. Not only have we had a fantastic lawyer in Stephanie, but we have her whole team. In addition to counseling, I also received legal assistance to help with government benefits so I had income support. We should have a system where talented lawyers like Stephanie are available to everyone who needs them. Our communities would be so much stronger. Thank you.

**Adam J. Halper, Esq.**  
Director of Legal Services, The Family Center





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**THE FAMILY CENTER**

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**Written Comments of Adam J. Halper  
Director of the Department of Legal Services  
The Family Center**

**Submitted to the  
Task Force to Expand Access to Civil Legal Services  
Hon. Jonathan Lippman, Chief Judge of the State of New York  
Hon. Randall T. Eng, Presiding Justice, Second Department  
Hon. A. Gail Prudenti, Chief Administrative Judge  
Glenn Lau-Kee, President, New York State Bar Association**

**September 23<sup>rd</sup>, 2014  
Supreme Court, Richmond County  
Richmond, New York**

Thank you to Judge Lippman and to the Taskforce for receiving these comments. I am the Director of Legal Services at The Family Center (TFC), a multidisciplinary agency in New York City serving individuals and families affected by severe illness. The Family Center's Department of Legal Services assists clients with a range of issues all connected to the "essentials of life."

Today, I submit comments on the challenge of resolving interconnected legal issues among low-income New Yorkers and the role of law students, particularly 50-hour rule *pro bono* students, in addressing them.

**The Family Center**

Founded in 1994, The Family Center (TFC) provides legal and social services to New York City individuals whose lives are marked by the intertwined challenges of poverty and illness. We address numerous socio-economic, health and legal problems so that clients can devote their energy to getting well and planning for the future. TFC's Legal Services Department provides clients with litigation and transactional services to ensure housing, economic and family stability, both during the clients' illness and after their passing. For practical purposes, this means we work with people whose chronic medical problems lead to significant difficulties in areas such housing, public benefits, family and matrimonial law and lifetime planning.

At the economic margins, our clients are remarkably vulnerable. Ninety-three percent of our clients have incomes below the federal poverty line. Our clients reside in all five boroughs of New York City, in neighborhoods with high rates of poverty, joblessness, drug use, and crime, and with huge unmet needs for legal services. These same neighborhoods also have with alarmingly high rates of chronic illness, poor access to medical care and premature death.<sup>1</sup>

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<sup>1</sup> New York State Minority Health Surveillance Report, NYS DOH, 94-100, 2012.

Clients are referred to us by hospitals, courts and CBO's and by word-of-mouth. Because many of our clients are too ill to travel, our attorneys are frequent visitors to hospitals and homes in the South Bronx, Hunts Point, Mott Haven, Central Brooklyn, East New York, Sunset Park, Inwood, Washington Heights, Jamaica, the Rockaways, Port Richmond, Stapleton and St. George. Last year we conducted over **624** home and hospital visits throughout the five boroughs.

TFC has been providing legal services to these communities for the last fifteen years. Last year, our Legal Services Department provided legal services to **1,134** individuals benefitting an additional **2,268** people. We closed over **1,400** cases. On their behalf, we obtained **\$3.9 million** dollars in judgments, settlements, awards and client and taxpayer savings.<sup>2</sup>

### **One Client, Many Issues**

One of the most difficult challenges in doing this work is that many clients present what appears to be one case, but is in fact a series of interwoven legal issues. Successfully resolving the case requires addressing multiple problems. In a 2010 report commissioned by the Fund for Modern Courts and conducted by Lake Research Partners, 47% of low-income New Yorkers queried stated they had experienced a civil legal problem in the last year.<sup>3</sup> Roughly 63% of those who reported any legal problem in the last year had more than one.<sup>4</sup> The unemployed, those living in publically subsidized housing and the disabled were among the most likely to have experienced multiple legal problems.<sup>5</sup>

In a similar vein, other studies note that among indigent communities, legal issues occur in groups, or "clusters." In studies in Canada as well as England, researchers have found that not only are some problems interrelated, i.e.: employment and consumer debt, but there are "trigger" experiences which create civil legal services issues, i.e.: sudden illness of a family member created problems with accessing public benefits and medical debt.<sup>6</sup> For low-income communities, one client's multiple legal problems are not just associated, they often are causally connected.

This is our experience at TFC where clients present approximately 1.8 discrete matters each. Most clients have more than one legal issue and the clusters are highly interconnected. For example, a housing non-payment matter often results from a public assistance issue that has gone unaddressed for some time. No one identified the public benefits issue – including the client. Clients view interruption and temporary termination of public benefits as a natural part of

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<sup>2</sup> We are IOLA and Judiciary Civil Legal Services grantees.

<sup>3</sup> See, Lake Research Partners, Civil Legal Needs Among Low-Income New York State Residents (2010), available at [www.nlada.org/DMS/Documents/1295715314.39/NY%20Legal%20Needs%20Survey%202010.pdf](http://www.nlada.org/DMS/Documents/1295715314.39/NY%20Legal%20Needs%20Survey%202010.pdf).

<sup>4</sup> *Id.* at 20. Overall, 53% of respondents reported no legal problems, 18% reported one legal problem, 11% reported two problems, and 19% reported three or more legal problems within the last year.

<sup>5</sup> *Id.* at 25-27.

<sup>6</sup> See, e.g., Ab Currie, The Legal Problems of Everyday Life: The Nature, Extent, and Consequences of Justiciable Problems Experienced by Canadians (2009), available at [http://www.justice.gc.ca/eng/rp-pr/csj-sjc/jsp-sjp/rr07\\_la1-rr07\\_aj1/rr07\\_la1.pdf](http://www.justice.gc.ca/eng/rp-pr/csj-sjc/jsp-sjp/rr07_la1-rr07_aj1/rr07_la1.pdf). See also, Richard Moorhead & Margaret Robinson with Matrix Research and Consultancy, A trouble shared- legal problems clusters in solicitors' and advice agencies, 8 U.K. Dep't for Const. Affairs Research Series 06 (2006) available at <http://www.law.cf.ac.uk/research/pubs/repository/1592.pdf>.

receiving them. Moreover, insufficient income and inability to pay rent may be viewed as less pressing an issue than end-of-life planning. Income and shelter instability easily lead to inter-family strife, DSS involvement, education issues for children and other problems.<sup>7</sup>

It is for these reasons that when a potential client comes to my agency for legal assistance on one issue, we take the time to run through an exhaustive case assessment with them. That assessment is 15 pages and includes 10 pages, single spaced, of area-specific questions related to legal matters. On its face, it looks like a set of interrogatories. In some ways, that is exactly what it is. It is a script to gather as much information as possible to uncover clusters, triggers, the problems behind the problem, so that we may resolve those issues effectively. Asking the right questions is often the key to getting our clients the answers they need and ultimately to solving the greater legal issue.

### **The Role of Law Students, Graduates and Fellows**

At our office, much of the work of identifying and untangling those clusters and triggers is done by law students. In any given year, The Family Center hosts approximately nine law student interns generally for the fall and spring semesters and the summer. Additionally, we developed a **50-hour** student *pro bono* project, Proficio. With IOLA and Access to Justice Funding, the Proficio Project has hosted **19** students. Collectively, the volunteers in the project provided roughly 1000 hours of service and helped resolve **114** client matters. In our small law office, students can have almost as much client-contact and direct work experience during their time here as staff attorneys.<sup>8</sup>

In the development of our 50-hour project, we had concerns about whether we would be able to properly teach, utilize and give meaningful experiences to students in such a short period. In the world of legal services that's about one week, or less. Our initial proposal was to have students accompany clients to HRA job centers to resolve administrative law matters. In its initial conception, it was a narrowly-defined project.

In part, that has happened.

What has also happened is that students have conducted dozens of client intakes and case assessments. During client engagement, they work on performing case assessment, meeting with clients and gathering documents to understand the full picture of the legal problem. This enhanced capacity helps get to the root of clients' legal issues more efficiently, thereby aiding resolution. As the case continues, their work on the many sub-issues presented by a client's primary case allows staff to focus on the trigger. Law students help clients execute advance directives, accompany staff attorneys to court, second-seat them at hearings, assist in conducting client workshops in public benefits and housing rights, write orders to show cause, memoranda

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<sup>7</sup> Notably, although my office does not do work specifically in the area of domestic violence, we see the issue frequently. A diagnosis of cancer, for example, especially for women, can be the spark for shocking and volatile behavior on the part of their spouses or partners. Domestic violence is a deeply destabilizing social issue as well as a legal issue and it has far-reaching consequences – safety; child behavioral issues, economic and shelter stability, among others.

<sup>8</sup> We have special practice orders in the First and Second Judicial Departments.

and final divorce papers and more – all in the space of 50 hours. Law students volunteer at TFC to assist clients with public benefits issues (calling and working with HRA to resolve an administrative issue), housing problems (drafting orders to show cause and one shot deal requests) and issues of family stability (drafting Family Court and matrimonial motions, papers and helping to execute end of life documents). The feedback from students is that this is a valuable learning experience for them. No less for us. We learned that even short-term commitments, enthusiastically given, can yield outsize results for clients and their families.

In part because of this experience, this year, in addition to hosting law student interns and 50-hour students, we are also hosting three graduate law fellows. From left to right: **Ifeoma Anunkor**, Social Justice Fellow (Columbia’ 14); **David Weiss**, Public Services Post-Graduate Fellow (Cardozo’ 14) and **Lauren Groetch**, Public Services Post-Graduate Fellow (NYU’ 14).



## Closing

We view law students as a valuable and indispensable resource. Over time, many that have interned with us later worked here as full-time staff or volunteered *pro bono*. The richness of the experience which includes the opportunity to work on many different types of cases and issues has great professional impact. All students should have this kind of experience, regardless of whether they ever practice law or do so for indigent clients.

Thank you for this opportunity to submit written comments on these issues. The Family Center wishes Judge Lippman and the Task Force good luck.

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# **Donna Dougherty**

Attorney in Charge, Legal Services for the Elderly in Queens  
Jewish Association for Services for the Aged

# **Outline of Proposed Testimony at Second Department By Donna Dougherty**

## **Affiliation**

Jewish Association for Services for the Aged (JASA) was established in 1968 to respond to the needs of the most vulnerable elderly – the frail, the poor and isolated. The agency's mission is to sustain and enrich the lives of the aging so that they can remain in the community with dignity and autonomy. JASA is New York's largest agency serving older adults in Manhattan, Queens, Brooklyn, Bronx, Nassau and Suffolk Counties.

I am the Attorney in Charge of JASA's Legal Services for the Elderly in Queens (LSEQ). Since 1981, JASA's legal services program has provided civil legal services to Queens County residents aged 60 and older who have the greatest social and economic need. LSEQ provides legal advocacy and direct legal representation to approximately 2000 older adults annually. Its focus is on those areas that affect low income New Yorkers, including evictions, foreclosures and real property fraud; SSI and Social Security; and healthcare (including Medicaid, Medicare and long-term care issues). LSEQ along with JASA social services has operated five elder abuse programs in Brooklyn, Manhattan and Queens through the LEAP program. The LEAP programs provide a social work/attorney collaborative team that offers legal expertise with social work supports to victims of elder abuse and financial exploitation.

## **The Impact of Judiciary Civil Legal Services Funding and the Current State and Scope of the Unmet Need for Civil Legal Services by Older Low Income New Yorkers Confronting Legal Problems Involving the Essentials of Life**

The impact of this funding is obviously immense in both its economic and human impact. In FY 2013-14 LSEQ with \$94,500 in JCLS funding was able to assist over 100 low income seniors confronting problems with the essentials of life including housing, healthcare and family. The legal cost of this program was less than \$1000 per person. To give a few examples of the benefit these funds provide, LSEQ obtained a 2 year exclusionary order of protection against a violent abusive son and obtained 24 hour continuous personal care services through the Medicaid program for a homebound chronically ill senior. As a result more expensive services such as hospitalization and police intervention were avoided and our clients' standard of living vastly is improved. LSEQ is only one of the many programs funded under JCLS. Clients we serve can remain safe and with dignity and autonomy in their homes and communities.

Despite this great impact, many still remain in need of assistance. Queens County alone, with over 400,000 individuals over the age of 60, has one of the largest concentration of older adults in New York City and is considered one of the most racially and ethnically diverse communities in the United States. There is a large, growing population of older adults in Queens who are isolated and financially unable to represent themselves in legal matters, and a lack of professionals available to provide these services Pro Bono. According to the latest census, seventeen percent (17%) of Queens' seniors are living below the poverty line, 23.5% of the population lives alone and almost 25% have self-care or mobility difficulties.

## **Enhanced Use of Technology**

In 2013-14 JASA undertook several initiatives to improve its capacity to reach seniors isolated by disability, language, income and other barriers that prevented them from accessing legal services and the courts. LSEQ implemented a courthouse project that provides free legal representation to elderly unrepresented tenants identified by Queens Housing Court judges as potentially in need of intensive social services. LSEQ is based inside the courthouse, allowing LSEQ to intervene immediately in cases where at-risk elderly tenants are navigating eviction proceedings unaided. The goal of the project is to achieve long-term housing stabilization through an interdisciplinary use of legal representation and social services, enabling allowing more elderly tenants to “age in place” at home. LSEQ assisted over 400 individuals referred by the court by providing legal advice, prose assistance, referrals and representation. . Due to limited resources direct legal representation was provided to 130 of the 400 low income seniors referred by the court.

JASA’s legal and social work staff also collaborated with the NY Office of Court Administration, Queens Housing Part, ProBono.net and Georgetown Law School as part of Judge Lippman’s Navigator Program. JASA social workers and lawyers using laptops and smart technology are now able to go into clients’ homes where the client and social worker interface **directly** with the Court in order to assist homebound seniors respond to court documents preventing evictions and defaults in consumer debt matters. Orders of Protection for homebound seniors are also obtained through a similar Family Court program. These programs have increased both the delivery and efficiency of legal services and have allowed individuals previously unable to access our courts to participate . These types of programs and resources should be expanded.



**APPENDIX 14:**

**Written Statements Submitted at the Third Department  
Hearing Held on October 6, 2014**

Written Statements Submitted at the  
Third Department Hearing on October 6, 2014

Dean Martha Minow (*Morgan & Helen Chu Dean & Professor of Law, Harvard Law School*)

Hon. Katherine M. Sheehan (*Mayor, City of Albany*)

Hon. A. Gail Prudenti (*Chief Administrative Judge, NYS Unified Court System*)

Corinda Crossdale (*Director, NYS Office for the Aging*)

Dr. Elizabeth Becker (*Senior Vice President, NERA Economic Consulting*)

Tajma Motley (*Client of Legal Aid Society of Northeastern New York, accompanied by Marlene Morales*)

Dideolu Olufunke Okediran (*Client of The Legal Project, accompanied by Lorraine Silverman*)

Cinnamin Schmitz (*Client of Legal Aid Society of Mid-New York, accompanied by Matthew Schreck*)

Deborah J. Wilcox Mabry (*President, Empire State Alliance of Paralegal Associations, Inc.*)

Lillian M. Moy (*Executive Director, Legal Aid Society of Northeastern New York, Inc.*)

Karen L. Murtagh, Esq. (*Executive Director, Prisoners' Legal Services of New York*)

Irene V. Villacci (*President, Women's Bar Association of the State of New York*)

# **Dean Martha Minow**

Morgan & Helen Chu Dean & Professor of Law  
Harvard Law School



**Martha Minow** is the Morgan and Helen Chu Dean and Professor of Law at Harvard Law School where she has taught since 1981. An expert in human rights with a focus on members of racial and religious minorities and women, children, and persons with disabilities, her scholarship also has addressed private military contractors, management of mass torts, transitional justice, and law, culture, and social change. She has published over 150 articles and her books include *In Brown's Wake: Legacies of America's Educational Landmark* (2010); *Partners, Not Rivals, Privatization and the Public Good* (2002); and *Between Vengeance and Forgiveness: Facing History After Genocide and Mass Violence* (1998); she is co-editor of law school casebooks on civil procedure, and on gender and the law.

A Phi Beta Kappa graduate of the University of Michigan and the Harvard Graduate School of Education, Minow received her law degree at Yale Law School before serving as a law clerk to Judge David Bazelon and Justice Thurgood Marshall. A member of the Academy of Arts and Sciences and the American Philosophical Society, her awards include the Sacks-Freund Teaching Award; the Holocaust Center Award; the Radcliffe Graduate Society Medal; Trinity College History Society Gold Medal; and seven honorary doctorates.

**Testimony of Martha Minow  
Morgan and Helen Chu Dean and Professor, Harvard Law School**

My name is Martha Minow. I am honored to serve both as the Dean of the Harvard Law School and as Vice Chair of the Legal Services Corporation Board of Directors. Thank you for the privilege of offering testimony here today; to be with Chief Judge Jonathan Lippman, Chief Administrative Judge A. Gail Prudenti, Presiding Justice Karen Peters, and Glenn Lau-Kee, President of the New York State Bar Association as you pursue your remarkable leadership gives me hope of real progress in tackling the crisis in access to justice. With your work improving access to lawyers, legal advice, and courts, you truly change lives every day.

This morning, and indeed on many occasions around the country over the past three years, I have had the opportunity to facilitate discussions of distinguished jurists about the crisis of access to justice. New York's judiciary is without doubt leading the way to narrow the justice gap. I so admire Chief Judge Lippman's bold and relentless efforts, including the Task Force to Expand Access to Civil Legal Services putting the spotlight on the facts and generating powerful proposals and initiatives. And Chief Judge, you found the right person in my friend Helaine Barnette, former President of the Legal Services Corporation and life-long leader in legal services for low-income people, as chair of this Task Force. You have

heard the call and now powerfully amplify the note sounded so well by Judge Learned Hand in his address to the Legal Aid Society of New York in 1951:

“It is the daily; it is the small; it is the cumulative injuries of little people we are here to protect...if we are to keep our democracy, there must be one commandment: thou shalt not ration justice.”<sup>1</sup>

The challenge is sadly even more severe now than it was in 1951. We have hit a sad historic record numbers in recent years in level of poverty, nearly 64 million-- 21% of Americans-- are now eligibility for federally-supported civil legal assistance because they have to make ends meet on income up to 125% of the poverty level.

The national data confirms New York’s finding that fewer than 20% of all civil legal needs of low-income families and individuals are met and more than 2.3 million unrepresented litigants in civil court proceedings in New York.

Americans who cannot afford legal help routinely forfeit basic rights. It is not the facts of their situations nor governing law that are to blame. It is their lack of legal

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<sup>1</sup> Judge Learned Hand, Address, 75<sup>th</sup> Anniversary of Legal Aid, New York City, 1951.

assistance. When people forfeit their rights simply due to absence of counsel, we all suffer. The law does not enforce itself. In civil cases, law requires litigants to proceed.

Justice Lewis Powell, Jr., well expressed the bi-partisan commitment that built civil legal services for the poor. He said, it is “fundamental that justice should be the same, in substance and availability, without regard to economic status.”<sup>2</sup> We do not live up to this standard. Eligible clients are turned away daily from legal services offices. One office I visited closes intake each month after 2 days.

Who is turned away? Victims of the financial crisis, veterans returning from the brutality of armed combat to the cruel indifference of the nation they defended, paying tenants living in buildings subject to foreclosure, domestic violence survivors at risk of new violence which we know increases with each economic downturn. Those turned away also include individuals whose race, ethnicity, or language knowledge exposes them to the micro-aggression of direct and indirect exclusions and bias.

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<sup>2</sup> Legal Services Corporation, Documenting the Justice Gap in America: The Current Unmet Civil Legal Needs of Low-Income Americans 2009, p.1, [http://www.lsc.gov/sites/default/files/LSC/pdfs/documenting\\_the\\_justice\\_gap\\_in\\_america\\_2009.pdf](http://www.lsc.gov/sites/default/files/LSC/pdfs/documenting_the_justice_gap_in_america_2009.pdf).

I know that we have so many students graduating from law school each year who want to pursue legal services for the poor but cannot secure jobs doing so even though the jobs pay much less than other jobs for lawyers. Finding steady and secure funding for legal services for low income people has been a persistent challenge. The bi-partisan commitment producing the Legal Services Corporation 40 years ago remains an inspiration, but the federal funding for LSC funding declined 19% between 2010 and 2013.<sup>3</sup> Another key source of support, Interest on Lawyers Trust Accounts (IOLTA), uses interest earned on funds held by lawyers in trust for clients could to strengthen justice by supporting legal services for those who cannot afford legal representation. It has been a great program. But, as the returns fall to record lows due to both to low interest rates and lower deposits.<sup>4</sup>

So unfortunately, at this time of increasing need, 56 programs supported by the federal government have had to close offices since 2009.<sup>5</sup> When it is an office in a rural area that closes, the next closet office may be two days away, literally

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<sup>3</sup> John G. Levi: Remarks at White House Forum on the State of Civil Legal Assistance, April 17, 2012, <http://www.lsc.gov/board-directors/chairmans-page/statements/john-g-levi-remarks-white-house-forum-state-civil-legal>.

<sup>4</sup> Remarks of John G. Levi, Legal Services Corporation meeting, April 17, 2012.

<sup>5</sup> During the same time period, several grantees have opened at least one office in that time frame, reducing the total number of office closures by 38.



inaccessible to a poor person. Further reductions are likely this year and next.

I honestly know of no better or more inspiring efforts than the work of this Task Force. Under the vigorous leadership of Chief Judge Jonathan Lippman, this Task Force over the last five years has undertaken comprehensive, creative, and fruitful work, including the pursuit ongoing funding through the judicial budget for civil legal assistance. Your work demonstrates the devastating effects on the most vulnerable people resulting from lack of counsel in eviction, domestic violence, consumer matters, and other cases involving life's essentials. Lack of counsel for low-income people also produces delays and inefficiencies for the courts, like a broken-down car in the middle of a highway. In a recent survey of trial judges from 37 states, Puerto Rico, and one American Court, more than 60 percent of the responding judges reported that unrepresented litigants failed to present necessary evidence, committed procedural errors, performed ineffective cross-examination, and failed to proffer enforceable orders to the court.<sup>6</sup> Unequal justice, falling heavily on the most vulnerable, damages justice for the entire society.<sup>7</sup>

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<sup>6</sup>ABA Coalition for Justice, Report on the Survey of Judges on the Impact of the Economic Downturn on Representation in the Courts (2010), <http://www.americanbar.org/content/dam/aba/migrated/JusticeCenter/PublicDocuments/CoalitionforJusticeSurveyReport.authcheckdam.pdf>.

Your Access to Justice Task Force has done a superb job making the case for civil legal assistance. What could be better evidence than your success in securing \$70 million in funding for civil legal assistance – a sum notably higher than the commitments made in any other state in the nation? In addition, the Task Force ensures steady public attention to basic human needs of low income clients for housing, safety, stability, access to health care, education, and financial resources. In so doing, you recognize the equal dignity of those who simply happen to lack resources and the fundamental commitment to equality before the law that is the hallmark of our nation.

What your Task Force knows is that ensuring civil legal assistance for low income people is not only the right thing to do; it is the smart and economical thing to do. You have demonstrated that for each \$1 in funding, legal aid providers generate \$6 in economic benefits for all new Yorkers. Your study last year reveals that \$85 million has been saved through civil legal services for domestic violence survivors; \$116 million saved in preventing homelessness; and \$457 saved in helping New Yorkers secure federal disability, health care and other benefits for which they are

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<sup>7</sup> Chief Judge Jonathan Lippman, New York State Unified Court System Fiscal Year 2014-2015, <http://www.nycourts.gov/admin/financialops/BGT14-15/2014-15-Budget.pdf>.

qualified. We will all save money by allowing people to pay their bills, avoid foreclosure, eviction, foster care placements, obtain health care before there is a crisis, and keep kids in school with appropriate services. Comporting with your research, in Florida, a 2010 study estimated savings of \$4.24 million due to legal services responding to domestic violence and homelessness risks.<sup>8</sup> And in Nebraska, legal aid clients received more than \$2.5 million in parental child support, alimony, unemployment, and other nonfederal awards in one year.<sup>9</sup> Similarly, research shows how preventing homelessness and domestic violence helps keep kids in school, reduces the shift of children to foster care, and improves their access to health care, healthier housing, and hence to health and school attendance.

Other states look to your leadership, your empirical study, and your unwavering commitment to justice for all. I believe and hope that other states seek to follow New York's steady steps toward closing the justice gap. Crucial in this leadership is pursuing the vital and steady commitment of public dollars from the state. The former chief judge in my state of Massachusetts—Chief Justice Margaret

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<sup>8</sup> Florida Tax Watch, The Economic Impact of Legal Aid Services in the State of Florida 2010, <http://www.nlada.org/DMS/Documents/1309704171.89/florida%20legal%20aid%20economic%20impact%20study%202010.pdf>.

<sup>9</sup> Rod Feelhaver and Jerome A. Deichert, The Economic Impact of Legal Aid of Nebraska 2007, [http://www.campaignforlegalaid.com/library/research\\_files/Nebraska%20Impact%20Study.pdf](http://www.campaignforlegalaid.com/library/research_files/Nebraska%20Impact%20Study.pdf).

Marshall—strikingly observed that no one questioned funding when the Commonwealth needed to hold a special election to fill the Senate seat when Senator Edward Kennedy passed away. If funding to make elections work is unquestioned as a public duty, why not funding to keep the courts working? And the courts cannot work if a whole class of litigants cannot use them without public assistance.

Other avenues to meet the justice gap include pro bono services, partnerships with law firms, law schools, and companies, innovations that use technology and new staffing approaches, and private philanthropy. The New York Task Force is taking pioneering steps along each of these avenues.

From my own work as co-chair of the Legal Services Corporation's national Pro Bono Task Force, I have followed closely the New York Task Force recommendations 1) increasing the aspirational pro bono goal for attorneys from 20 hours to 50 hours; 2) requiring the 50-hour pro bono admission rule; 3) mandatory reporting by lawyers of pro bono hours and contributions; and 4) the Pro Bono Scholars Program. There is much here to inspire the whole nation and the Legal Services Corporation is proud to collaborate. For example, I led a national effort as co-chair of the Legal Services Corporations Pro Bono Task

Force, and admire the ideas behind the New York Task Force recommendations 1) increasing the aspirational pro bono goal for attorneys from 20 hours to 50 hours; 2) requiring the 50-hour pro bono admission rule; 3) mandatory reporting by lawyers of pro bono hours and contributions; and 4) the Pro Bono Scholars Program. We can work hand-in-hand in such efforts.

For example, the Legal Services Corporation has awarded one of our very first Pro Bono Innovation funds grants to that Legal Assistance of Western New York, Inc. (LawNY) working along with other LSC grantees: the Legal Aid Society of Mid-New York, Legal Aid Society of Northeastern New York, Legal Services of the Hudson Valley, Nassau/Suffolk Law Services Committee, and Neighborhood Legal Services of Buffalo. Pursuing both the new 50 hours of pro bono for applicants admitted to the New York State Bar and the Attorney Emeritus Program to encourage experienced attorneys to offer their skills to legal aid providers, the six LSC grantees will create a new pro bono practice group across organizations to coordinate pro bono opportunities among their 33 offices and 9 New York law schools, including the Feerick Center for Social Justice at Fordham University School of Law, which staffs the Attorney Emeritus Program for the Office of Court Administration. Through the partnership created by the six LSC grantees – which provide legal services to every urban, suburban and rural community outside of

New York City – thousands of hours will be donated to help low-income New Yorkers. The 18-month \$314,068 grant is the largest given by the Legal Services Corporation following a competitive process designed, as our President James Sandman explains, to promote innovation.<sup>10</sup> Congratulations and good luck to Legal Assistance of Western NY in this timely and path-breaking project, implementing ideas generated by this Task Force.

Partnerships can leverage the energy of new lawyers and emeritus lawyers and the knowledge of law school faculties and experienced legal services providers to combine pro bono work with expertise to meet the needs of low income clients. Partnerships are also at the heart of your Task Force’s Annual Law School Conference, joining the 15 New York law schools, providers, representatives from the private Bar and the courts to focus on quality supervision of law students engaged in New York’s pro bono programs. Finding ways to integrate access to justice issues into the first year the law school curriculum, bar exam questions with access to justice, summer and post-graduate opportunities offers crucial educational opportunities for students who can develop skills relevant to any future

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<sup>10</sup> See more at: <http://www.lsc.gov/media/press-releases/11-lsc-grantees-awarded-pro-bono-innovation-fund-grant#newyork>

career while also learning how to contribute time, money, and other kinds of support to help close the justice gap.

Another critical avenue promising is innovative technology to tackle the justice gap. Our Legal Services Corporation Summit on the Use of Technology last year suggested five ways to use technology to help meet the legal needs of low income individuals:

- Create in each state a unified digital “legal portal” to connect individuals who need legal with guides through the entire legal process and ways to access professional help;
- Support the creation of legal documents through digital document assembly applications;
- Develop apps useable by mobile technologies to reach more persons more effectively.
- Apply business process analysis to improve the efficiency of access to justice efforts;

- Develop “expert systems” to give lawyers and other service providers access authoritative knowledge rendered relevant to particular factual situations.<sup>11</sup>

Your Task Force is well on this promising path toward using technology to promote access to justice. The inventory identifying urgent, medium and long term technology needs of New York’s legal services providers is an excellent step. Another powerful effort will be the first statewide technology summit which I understand you support. The Legal Services Corporation’s Technology Innovation Grant staff –affectionately known as “The TIG Staff”—is eager to help with that conference and your further efforts. Law schools, engineering and computer schools, corporations and corporate legal departments would also have expertise and talents relevant to deploying technology in valuable ways to address the needs of low income people. Many states are finding that public libraries offer low income people crucial access to technology and collaborations with libraries, including training programs for library staff, could be a promising initiative.

In this and other ways, people other than lawyers can provide invaluable help to meet the justice needs of low income people. How wonderful that your Task Force

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<sup>11</sup> “Report of the Summit on the Use of Technology to Expand Access to Justice,” Legal Services Corporation, December 2013.



is boldly considering potential roles for non-lawyers to advance justice for low income people. I and so many others around the country are following closely your study of the subject, the Court Navigator programs in the Bronx and Brooklyn on consumer and housing issues, and the upcoming pilot on-line dispute resolution program for consumer cases. We might also find ways to combine on-line tools with pro bono resources, as have some teams in California; to work with religious and civic organizations to offer legal clinics, as the Access to Justice Commission in Tennessee is pursuing.

It is a privilege for me to see the work of your Task Force first hand. John Levi, chair of the Legal Services Corporation, recently said, "The cracks in [our civil justice system] may not be as visible as those in our bridges and highways, but we all know that they exist. And because they are not as easy to see, we in the profession have a responsibility to speak up and let the country know the risk to one of the fundamental pillars of our great democracy."<sup>12</sup> The judges and lawyers in New York show us all what it looks like to take up this responsibility.

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<sup>12</sup> John G. Levi, Speech, Reception and Pro Bono Awards Ceremony, Chicago, Ill. (Oct 17 2011); see excerpts at <http://www.lsc.gov/sites/default/files/LSC/pdfs/2011-10-17%20John%20Levi%20Excerpted%20Remarks%20Chicago%20Pro%20Bono%20Reception.pdf>.

At stake is the rule of law which means stability and security, strengthening the climate for businesses, serving workers, their families, consumers; avoiding the risks of unrest. My own experiences on transitional societies emerging from violent conflict-- former Yugoslavia, Rwanda--underscore the centrality of working legal systems. You cannot get or sustain economic investment without operational courts and perceptions that the rule of law is in force. People cannot keep their homes safe, and cannot build trust without it.

We strengthen our own best selves and avoid the worst. My old boss Justice Thurgood Marshall talked of courts as the protector of the powerless.<sup>13</sup> He said:

"in recognizing the humanity of our fellow beings, we pay ourselves the highest tribute."<sup>14</sup> That is what you who provide legal help to the poor do, that is what the rule of law does, that is what access to justice is all about, and that is what we can advance if we all work together,

Chief Judge Hunstein of Georgia put the case affirmatively:

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<sup>13</sup> Payne v. Tennessee 501 US 808, 856 (1991) (Marshall, J., dissenting)).

<sup>14</sup> Biography of Thurgood Marshall, [www.biography.com/black history/featured-biography/Thurgood-Marshall](http://www.biography.com/black-history/featured-biography/Thurgood-Marshall).

"Equal access to justice contributes to healthy communities and a vibrant economy.

No community thrives when people are homeless, children are out of school, sick people are unable to get health care, or families experience violence. Likewise, when a person's legal problem is addressed in a timely and effective way, the benefit ripples out and helps that person's family, neighbors, employer and community."

These are challenging times that remind us that any of us could be in sudden need, as could be our parents, our siblings, our children. What would we want for them?

For us? Justice, after all, is JUST US.

Together we can get closer to it. Thank you all for the work you do to advance justice every day.

**Hon. Katherine M. Sheehan**  
Mayor, City of Albany

## **Mayor Kathy M. Sheehan - Bio**

On January 1<sup>st</sup> 2014, Kathy M. Sheehan became the first woman Mayor in Albany's history.



In 2010, after winning a city-wide election, Kathy became Albany's Treasurer and Chief Fiscal Officer. Kathy modernized the City's tax collection system and completely overhauled its scandal-plagued parking ticket system. She serves on the Boards of the Central Avenue and Downtown Business Improvement Districts, Albany Industrial Development Agency and Albany Community Development Agency.

Kathy grew up in a family that valued hard work and community service. Her parents stressed the importance of education to Kathy and her five brothers and sisters. She put herself through college, earning a bachelor's degree in journalism. After a five year career in communications, Kathy went back to school in 1991, attending Albany Law School on an academic scholarship. She graduated magna cum laude in 1994.

Kathy started her legal career as an attorney in the Albany office of Bond, Schoeneck & King. In 1996 she joined Intermagnetics General Corporation, a leading medical device manufacturer based in Latham. As vice president, general counsel and corporate secretary, Kathy helped grow the company from 500 employees to more than 1,200 and from \$90 million to more than \$300 million in sales. In 2006, she helped negotiate the \$1.3 billion acquisition of Intermagnetics by its largest customer, Philips Medical Systems.

Kathy married her husband, Bob, in 1992 at St. Vincent DePaul Church on Madison Avenue. They have dedicated countless hours serving our community. Bob was the president of the Helderberg Neighborhood Association and served on the board of Albany Youth Soccer. Kathy was a Trustee of St. Vincent DePaul Church and served as Treasurer of the School 19 (now New Scotland Elementary) PTA. She is a founding member of the Albany Promise, a coalition of community members, educators, service providers and business leaders working to ensure that every child in our City succeeds academically. Kathy also served on the board and executive committee of Proctors Theater and is a Trustee of Albany Law School. Kathy and Bob live in the 8th ward with their 14 year old son and a rambunctious Boston Terrier.

Kathy is proud to become the 75th Mayor of Albany, New York!

Katherine M. Sheehan,  
Mayor of Albany

My name is Kathy Sheehan and I am Mayor of the City of Albany. I want to thank Chief Judge Jonathan Lippman, Administrative Judge Gail Prudente, Presiding Justice Karen Peters and Glen Lau-Kee, President of the New York State Bar Association for once again holding the Third Department Hearing in Albany. I also want to thank Chief Judge Lippman for his unwavering support for civil legal services and for securing unprecedented funding for the City of Albany's civil legal services providers and for providers throughout the state.

I want to acknowledge with pleasure the presence of the Board of Directors and President of the Legal Services Corporation this morning. I am delighted to welcome them to the City of Albany. I'm particularly glad to welcome Jim Sandman, one of our own, back to Albany. Thanks to John Levi, Dean Martha Minow and all the other members of the Board of Directors for their support of civil legal services.

Albany is a beautiful city and we are proud to be the Capital of the State of New York. Despite being New York's Capital, we are not without the problems that face most cities today. The City of Albany's population is about 98,000; a staggering 25,000, or 25.4% of our citizens live in poverty. A heartbreaking 34% of all the children in Albany are living in poverty. Similarly, our substantial elder population also has a very high poverty rate. All of these people and more face the burden of maintaining the essentials of life: shelter, safety, stability, income, consumer debt and access to education and health care.

With so many Albany residents in need, I am very pleased that Albany is home to a number of the finest civil legal services providers, each of whom provide vital services to low income residents. As an attorney in private practice and as General Counsel to Intermagnetics, I was only rarely able to provide direct legal assistance to low income people in need, although it was some of the most gratifying work that I did. That is the situation for many local lawyers and that is why the ongoing fiscal and programmatic health of all these agencies is essential to life in the City of Albany.

The Legal Aid Society of Northeastern New York provides the full range of civil legal services to protect essential needs. Legal Aid provides general legal services to all low income people. Their housing attorneys partner with the City through our Emergency Solutions Grant Program and Albany County to provide comprehensive homelessness prevention services. They also administer several special projects which respond to acute needs in our City; for example, their Homelessness Prevention Project, Foreclosure Prevention Project, Disability Advocacy Project, Children's Law Project, HIV/AIDs Law Consortium, Nutrition Outreach & Education Program, Upstate New York Immigration Law Project, Senior Legal Services Program and Low Income Taxpayer Clinic.

The Legal Project of the Capital District Women's Bar Association (TLP) provides essential legal services to victims of domestic violence and stalking. TLP leverages pro bono volunteers throughout the Capital Region to provide services to low and moderate income New Yorkers, including the working poor. They also provide services to prevent foreclosures, do affordable home closings, wills and appellate cases. They sponsor a reduced fee matrimonial program,

small business advice bureau, speakers program, pro bono bankruptcy program and also host an incubator project with the Albany Law School.

The Albany Law School Clinic and Justice Center provides free civil legal services through a variety of clinics, including the Health Law Clinic, Tax & Transactions Clinic, Field Placement Clinic, Civil Rights & Disabilities Law Clinic, Domestic Violence Prosecution Hybrid Clinic, Family Violence Litigation Clinic and Immigration Project and Introduction to Litigation Clinic. The City of Albany is also home to the Empire Justice Center, a statewide advocacy organization that provides back-up services to local legal services providers and direct representation in some appellate and public benefit cases. Disability Rights New York, also located within the City of Albany, provides Protection and Advocacy services to the developmentally disabled, the mentally ill and other disabled people.

It is gratifying to see that all the local legal services providers collaborate among themselves to minimize duplication of services, and best coordinate the provision of services to low income residents of Albany. I am proud to serve on the Board of the Albany Law School and note their commitment to community partnership and collaboration with local legal services providers. The benefit of the services delivered by these providers is best demonstrated by the first-hand accounts of the clients that they serve.

The Legal Aid Society of Northeastern New York represented “Christine”, a disabled woman, after her eviction for non-payment of rent. They appealed the termination of her Section 8 voucher. After an administrative hearing, her housing voucher was reinstated after Legal Aid set



forth Christine's many attempts to pay her rent. The hearing officer agreed and restored her voucher.

This testimonial is just one example of why the work of the Chief Judge's Task Force in securing funding for our local providers is essential. I also applaud the Task Force for the long reach of all its activities. The Task Force's commitment to developing non-economic access to justice initiatives is brilliant. For example, the 50-hour admission requirement was the first in the nation and I am proud to say that in Albany, local law students have responded eagerly to the new initiative. I believe that the Task Force's commitment to increasing pro bono and using non-lawyers, on-line dispute resolution, training and technology to promote access to justice will enure to our benefit for generations to come. I eagerly await the results of today's hearings and this year's Task Force Report.

If I can provide you with any additional information, please do not hesitate to contact me.

**Hon. A. Gail Prudenti**

Chief Administrative Judge  
NYS Unified Court System

**Presentation at Chief Judge's Hearing on Civil Legal Services**  
**Third Department Hearing**  
**October 6, 2014**  
**Hon. A. Gail Prudenti**

Good afternoon. I am Gail Prudenti, Chief Administrative Judge of the State of New York.

It is my great pleasure to appear before this Panel. These annual hearings play such an important role in helping us assess and address unmet legal needs. My plan today is to offer my testimony about some of the available statistics that help show the progress we have made in New York through the Chief Judge's initiatives to expand access to civil legal services.

I will start with our Judicial Civil Legal Services Funding, which is central to the Judiciary's fulfilling its core mission of assuring equal justice for all. You have heard from the Chief Judge's introductory remarks today about the importance of access to justice to the Judiciary and the wide range of initiatives that are under way to help us try to close the justice gap.

### **JUDICIARY CLS FUNDING**

For the past four years, we have succeeded in obtaining increasing amounts of funding for civil legal services for low-income New Yorkers through our partners in government. Through the Judiciary Budget, we obtained \$27.5 million in the first year, \$40 million in the second year, \$55 million in the third year, and \$70 million for the current fiscal year ending in March 2015. In each of those years, we passed on to IOLA \$15 million in rescue funding, and distributed the rest, which we refer to as Judiciary Civil Legal Services Funding, through an Oversight Board, on which I serve, using an RFP process.

The Judiciary Funding is designated for use only in matters involving the "essentials of life," such as

- housing (including evictions, foreclosures, and homelessness),
- family matters (including domestic violence, children, and family stability),
- access to healthcare and education, and
- subsistence income (including wages, disability, and other benefits, and consumer debts).

Eligibility for services from the Funding grantees is limited to persons living at or below 200% of the federal poverty level, and the distribution of such persons living in each of the four Judicial Departments determines the geographic allocation of Funding.

Direct legal services are a Funding priority, collaboration among civil legal services providers is encouraged, and preventive and early-intervention legal assistance is supported; additionally, grantees may use a portion of their award to give “other legal assistance,” by which we mean the variety of educational and information programs that help those who do not receive direct representation, such as seminars, trainings, workshops, clinics, help desks, hotlines, helplines and other brief legal advice or referral to other providers or agencies.

The Oversight Board allocated the latest Judiciary Funding of \$55 million to a total of 75 civil legal services providers serving low-income New Yorkers in every county in the State. The grants ranged in size from \$15,082 to \$6,310,544.

I would be remiss if I did not thank Helaine Barnett, Chair of the Task Force to Expand Access to Civil Legal Services in New York – and a member of the Oversight Board – for her leadership of the Task Force and its extraordinary efforts to assess the legal needs and develop creative solutions which are covered in their informative and comprehensive report each year.

## **THE FUNDING IS HELPING MILLIONS OF NEW YORKERS**

The increasing levels of Judiciary Funding have resulted in increasing numbers of New Yorkers being helped.

### **Many More New Yorkers Are Receiving Direct Legal Assistance**

Grantees of Judiciary Civil Legal Services Funding report to us on the number of cases they handle in which they provided “direct legal assistance” in an attorney-client relationship, with full or limited representation in an actual or potential action or proceeding, or specific legal advice and counsel in another type of matter. For the fiscal year ending in March 2014, they handled 385,000 cases involving essentials of life issues.

We know that we are seeing steady improvement each year. In the two earlier years, when we required grantees to count clients instead of case, the number of clients served more than doubled from 125,000 in 2011-12 to 268,000 in 2012-13, which shows that the increase in Funding each year has a dramatic impact.

There are many examples of how the lives of individuals New Yorkers have been helped by providers of civil legal services who are Judiciary Funding grantees. Many of the situations concern families in crisis with more than one legal problem.

**Housing/Elderly.** A 75-year old man on a fixed income resided with an aunt in a rent-stabilized apartment for 60 years, but when the aunt died, he was unable to afford the apartment without succeeding to her rights to a Senior Citizen Rent Increase Exemption. Arrears started to accrue. He had very little proof to document his position, but a provider became

involved, assisted with his documentation, obtained a renewal lease for him and helped him succeed to his aunt's exemption rights.

**Subsistence Income/Immigrant.** A Nepalese immigrant who worked as a nanny, housekeeper and cook for a wealthy couple for three years, and suffered from overwork and physical injury during that time, was fired in December 2012. After a provider sued the couple in federal court, adverse publicity and inquiries from the New York State Workers Compensation Board ensued, and a favorable settlement was reached.

**Disaster Relief/Homelessness.** A Queens resident testified about losing the family home in Superstorm Sandy and then living in a mass shelter with her husband, daughter, disabled son and disabled foster child, before the family was moved by the City to a hotel in Manhattan. When the City decided it was going to stop making payments to the hotel, her family was threatened with homelessness. A provider with the help of a pro bono law firm sued the City and obtained agreement that it would continue to make payments until each family found permanent housing. The family stayed at the hotel until the provider helped them obtain the federal benefits that enabled them to rent an apartment in Staten Island. Incidentally, 488 other families living in that hotel were also beneficiaries of the City's agreement.

**Housing/Predatory Landlord.** A New York City Chinatown renter testified that she was subject to predatory practices by a landlord trying unlawfully to remove rent-protected tenants from his property. In an eviction case, the landlord wrongfully claimed that her apartment was not her primary residence, even though she had lived there for 14 years. Providers assist her with documenting her position, getting the eviction case dismissed and securing a rent-stabilized lease for her.

**Homeless/Disability.** We heard tearful testimony from a woman who had been living in a homeless shelter with her teenage daughter since her landlord lost his house to foreclosure. When joint surgery required a hospital stay, she sent her daughter to stay her mother-in-law temporarily because the shelter would not permit her to remain there alone. When released from the hospital and needing to use a walker to get around, she returned to the shelter but was told she should stay with her mother-in-law instead. In fact, not only would the apartment not accommodate her walker, but also the mother-in-law's landlord would not permit them to stay. With a provider's assistance, she obtained a placement in a suitable shelter, but a year later was moved to one that could not accommodate her walker. She was forced to go to her church each day to use the handicap-accessible bathroom and shower. Once again, the provider assisted her in obtaining a suitable shelter, but that did not last long because the shelter was being transitioned into one for families with small children. Once again, the provider not only assisted her with getting appropriate shelter, but put her in touch with Coalition for the Homeless, which helped her apply for supportive housing, and she was approved and is now waiting for an apartment.

**Education Access/Housing.** A woman whose son has multiple disabilities, including autism, struggled to find an appropriate school and services for him, but the effort was taking its

toll on her and threatening her ability to keep her job and her Section 8 apartment. A provider helped her find suitable school placement for the child, but soon after she was threatened with eviction and loss of her Section 8 benefits. Once again, the provider represented her, found that the landlord's calculation of monies owed was based on an incorrect rent amount – the landlord actually owed her money – and her Section 8 status was restored.

**Domestic Violence/Housing.** A Brooklyn woman with three children could no longer afford rent after her abusive husband moved out. Her livelihood depended on providing home-based day care, for which she was licensed. Her landlord delayed in acknowledging her Section 8 subsidy, and when she went into arrears, the landlord brought an eviction proceeding. Unrepresented in housing court, she signed an onerous stipulation requiring payments she would have great difficulty making. Another eviction action followed when the landlord challenged her right to provide day care from her apartment. A provider obtained agreement from the landlord that she could not be evicted for running the day care service and that the onerous stipulation should not be enforced. When the Section 8 subsidy came through, the provider negotiated a lower back rent amount and connected her with assistance from the City and charities to pay the back rent. Both eviction cases were dismissed.

**Disability/Foreclosure.** A woman with memory problems related to dementia due to HIV/AIDS sometimes forgot to make mortgage payments. A grantee volunteer lawyers program arranged for a Power of Attorney for her friend to help her resolve the mortgage arrears. The friend was unsuccessful in obtaining any resolution after many months of effort. When a foreclosure action was begun and a notice of mandatory settlement conference dates was sent, a provider represented the woman, resolved an issue involving a lien on the property, and received a loan modification reducing the interest rate and monthly payments. And the provider helped set up automatic monthly payments so she did not have to be concerned about forgetting to make payments.

**Disability/Foreclosure.** When a man forced to retire because of his disability suffered a two-year delay in receiving his disability payments, he had difficulty making mortgage payments, but the lender would not make the concessions needed to allow him to keep his home. After the foreclosure case was begun and the notice of Settlement Conference received, he and his wife obtained the services of a provider. It took several months of providing documentation and several complaints to the Attorney General, before they were offered a trial modification. When the lender discovered a lien on the property and demanded full payment before offering a final modification, the provider went through an arduous process of trying to resolve the lien issue. In the end, the couple received a permanent loan modification reducing their interest rate and monthly payments to manageable levels. Their family home was saved for the couple, their two daughters, and a stepdaughter's ten-month old twins that are living with them full time.

**Domestic Violence/Divorce.** A domestic violence victim who had suffered many years of physical abuse was trapped in her marriage without any financial resources. After experiencing yet another violent incident, she sought help from a provider, which documented

the history of abuse and brought a divorce petition. In her words, “Many layers of abuse occurred, including alienation from friends and family, thus eroding my vital support systems. (This leaves a victim with nowhere to go or no one to turn to when the decision is made to leave and the time is appropriate. This is when support and money are needed. Civil Legal services provide a lifeline for me at this susceptible moment.)”

**Immigrant Male Domestic Violence Victim.** A Queens man testified about the difficulties he felt as a man complaining about domestic abuse, both physical and emotional. A provider linked him with counseling and support services, represented him in Family Court so that he could continue to be a father to his young son, and help him obtain government benefits to which he was entitled.

All of those who testified at the Chief Judge’s hearings spoke of their tremendous gratitude for the legal services they received and the life changing results they experience.

### **Many More New Yorkers Who Do Not Received Direct Representation Are Still Getting Some Help**

Another impact of the cases handled is that many persons benefitted indirectly from direct legal assistance, such as the 488 family members benefitting from a single case involving post-Sandy shelter, class action members other than a lead plaintiff, or household members in a foreclosure or eviction proceeding. Last year, close to 1.4 million individuals benefitted in one of those ways.

Additionally, because grantee resources are far from sufficient to provide all eligible individuals with direct representation, Judiciary Funding also supports “other legal assistance” provided by its grantees. That covers help that is not the “direct legal assistance” given in an attorney-client relationship, but is of a more general variety, like

- Educational help such as seminars, trainings, workshops, clinics, etc.
- Informational assistance such as receipt of materials at help desks, etc.
- Miscellaneous other assistance through hotlines, helplines and other brief legal advice or referral to other providers or agencies.

The number of individuals taking advantage of this kind of assistance has also grown dramatically, more than doubling each year – from 730,000 in the first year, 1.9 million in the second year, and four million in the third year. Of the four million people receiving this kind of assistance in the Fiscal Year ending 2014,

- 2.6 million were helped in housing matters
- 152,000 in family matters
- 669,000 in matters involving subsistence income
- 216,000 had issues involving access to education or healthcare, and
- 367,000 had one or more of those or other issues.

The data does not and cannot tell us how many of those four million people managed to solve their legal problems without the need for counsel and how many would have done much better with direct representation by an attorney. But over the past four years judges, business lawyers, public officials and community leaders who have appeared before the Chief Judge's hearing repeatedly testified that so many individuals who appear in court without representation are at a distinct disadvantage.

## **UNREPRESENTED LITIGANTS**

An important indicator of New Yorkers' access to justice is the data on the number of unrepresented litigants in our courts.

When we last calculated the number of unrepresented litigants in New York State trial courts, we estimated that more than 2.3 million unrepresented litigants appeared in civil cases statewide in 2009. While I am delighted to report that new data for 2013 shows a dramatic decline – to 1.8 million – a half million fewer than just four years earlier, we still are seeing far too many unrepresented litigants.

Here are examples of changes:

- Tenants in eviction cases outside New York City were unrepresented in 91% of cases in 2013, as compared to 98% in 2009.
- Tenants in eviction cases in New York City remain unrepresented at the same high rate of 99% of cases.
- Child support petitioners in Family Court outside New York City were unrepresented in 87% cases, and respondents in 86% of the cases last year, a substantial improvement over 2009 when 95% percent of child support litigants were unrepresented. In New York City child support matters in 2013 91% of petitioners and 92% of respondents were unrepresented, an improvement over the 97% of parents unrepresented in 2009.
- Defendants in consumer credit cases closed last year were unrepresented in 96% of New York City cases and 97% of cases outside New York City.

Although some of these unrepresented litigants may have received limited representation through court-based pro bono programs or other legal information and assistance available at the courthouse or through Judiciary Funding grantees, the number of unrepresented litigants in these important cases remains extremely high.

## **FORECLOSURE CASES AND FORECLOSURE CONFERENCES**

Foreclosure is another critical subject involving an essential of life – the roof over one's head. I think the best measure of how we're doing is to look at the mandatory settlement conferences held in residential foreclosures. In 2013 there were 87,000 pending residential



foreclosure cases. In 68,106 of those cases, 100,334 foreclosure settlement conferences were held. In the conferences, 49,246 (49%) of defendants were represented while 39,314 (39%) were not represented. The remainder defaulted. So far this year, we see that there is a slight improvement in the number represented in the conferences, which is good news.

## **Conclusion**

In closing, I think it is perfectly clear – and we have heard it time and time again during the Chief Judge’s hearings in the First, Second and Fourth Department this year from public officials and community leaders – current resources are still insufficient to meet the legal needs of our communities. We must build upon our advances and redouble our efforts going forward. It is fundamental to our core mission.

## Annexed Exhibits:

- A. Report on Judiciary Civil Legal Services Funding Grantees
- B. Report on Unrepresented Litigants in the Unified Court System

Exhibit A  
to  
Testimony of Hon. A. Gail Prudenti  
Chief Administrative Judge of the Courts of New York State

**Report on Judiciary Civil Legal Services Funding Grantees**

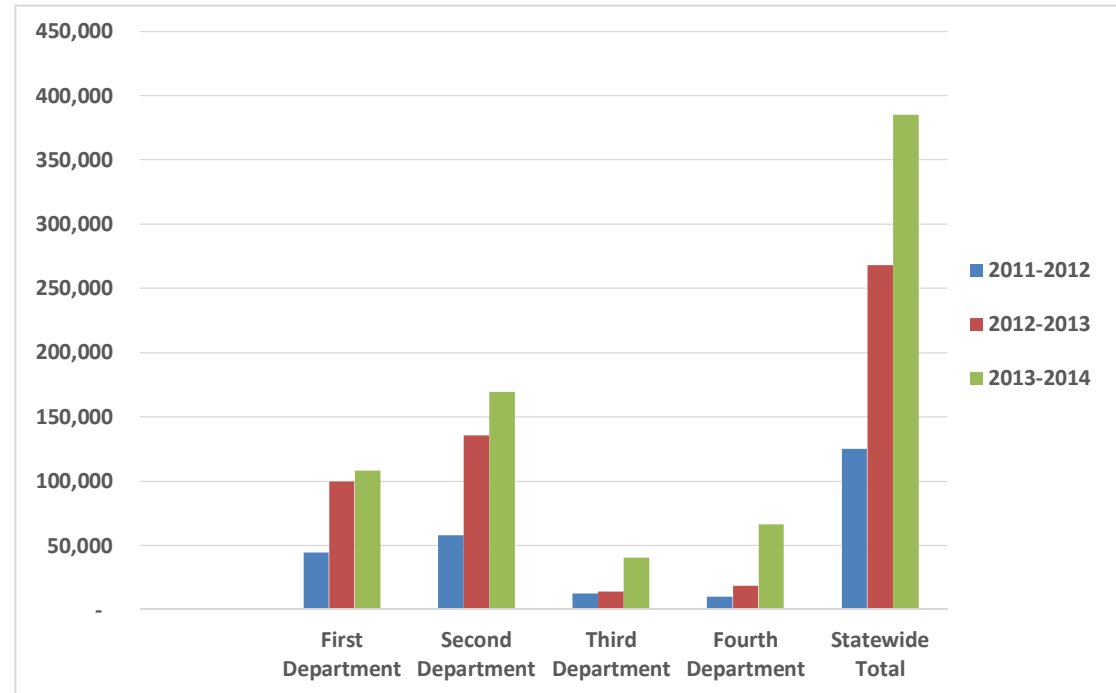
**JUDICIARY CIVIL LEGAL SERVICES GRANTEES**

DIRECT LEGAL ASSISTANCE

	2011-2012 Clients Served	2012-2013 Clients Served	2013-2014 Cases Handled
First Department	44,402	99,778	108,350
Second Department	57,975	135,387	169,631
Third Department	12,731	14,206	40,482
Fourth Department	10,061	18,594	66,511
<b>Statewide Total</b>	125,169	267,965	384,974

**Judiciary Civil Legal Services Grantees**

Direct Legal Assistance



**Notes to Table and Accompanying Graph:**

"Clients Served," the measure used in 2011-2012 and 2012-2013, refers to the number of individuals receiving direct legal assistance from the grantees.

"Cases Handled," the measure used in 2013-2014, refers to the number of cases in which grantees provided legal assistance.

The large increase in 2012-2013 in the Second Department was due both to the increased funding and to delivery of services to communities impacted by Hurricane Sandy.

For 2013-2014, nine new grantees did not report data for the first 6 months because the timing of the grant awards and approval process delayed distribution of the funds.

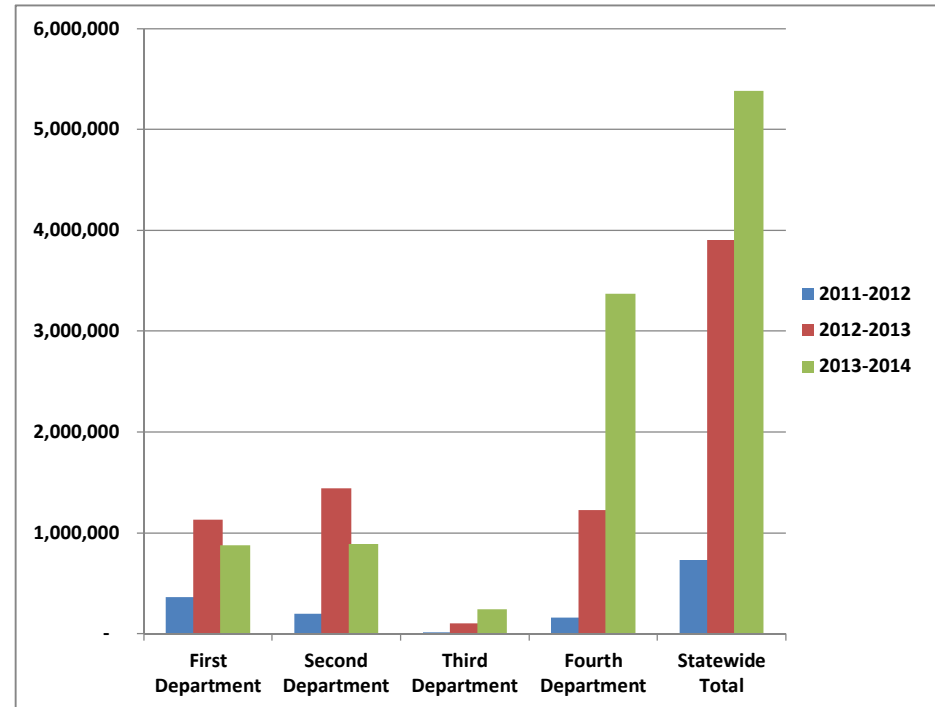
**JUDICIARY CIVIL LEGAL SERVICES GRANTEES**

INDIVIDUALS RECEIVING "OTHER LEGAL ASSISTANCE" &  
PERSONS BENEFITTING FROM DIRECT LEGAL ASSISTANCE

	2011-2012	2012-2013	2013-2014
First Department	360,748	1,131,314	876,500
Second Department	200,811	1,443,316	889,843
Third Department	13,900	101,670	241,972
Fourth Department	158,177	1,226,274	3,371,510
<b>Statewide Total</b>	<b>733,636</b>	<b>3,902,574</b>	<b>5,379,825</b>

**Judiciary Civil Legal Services Grantees**

INDIVIDUALS RECEIVING "OTHER LEGAL ASSISTANCE" &  
PERSONS BENEFITTING FROM DIRECT LEGAL ASSISTANCE



**Notes to Table and Accompanying Graph:**

"Other Legal Assistance" refers to assistance that does not constitute "direct legal assistance", such as training, seminars, workshops, clinics, distribution of legal material, help desks, hotlines, brief legal advice, or referrals to other providers.

"Persons Benefitting" refers to the number of persons who benefitted indirectly from direct legal assistance, such as class action members other than the lead plaintiff or household members in foreclosures or eviction proceeding.

The large increase in 2012-2013 in the Second Department was due both to increased funding and the delivery of services to communities impacted by Hurricane Sandy.

For 2013-2014, nine new grantees did not report data for the first 6 months because the timing of the grant awards and approval process delayed distribution of the funds.

Exhibit B  
to  
Testimony of Hon. A. Gail Prudenti  
Chief Administrative Judge of the Courts of New York State

**Report on Unrepresented Litigants in the Unified Court System**

**New York State Unified Court System  
Representation of Parties in  
Supreme Civil, Family and Local Civil Court Cases**

**Supreme Civil Cases Disposed in 2013**

Representation of Plaintiffs.....	Page 1
Representation of Defendants.....	Page 2

**Local Civil Court Cases Disposed in 2013**

Representation of Parties.....	Page 3
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**Family Court Cases Disposed in 2013**

Representation of Individual Petitioners.....	Page 4
Representation of Individual Respondents.....	Page 5

NEW YORK STATE UNIFIED COURT SYSTEM  
 SUPREME CIVIL CASES DISPOSED IN 2013  
 REPRESENTATION OF PLAINTIFFS

Case Type	Total Cases	At Least One Attorney No Pro Se		At Least One Attorney and One Pro Se		No Attorneys Possible Pro Se	
		#	%	#	%	#	%
<b>NYC</b>							
Motor Vehicle	19,084	18,985	99%	14	0%	85	0%
Medical Malpractice	2,541	2,490	98%	8	0%	43	2%
Other Torts	14,924	14,551	98%	36	0%	337	2%
Contract	4,668	4,438	95%	20	0%	210	4%
Contested Matrimonial	3,431	2,869	84%	131	4%	431	13%
Tax Certiorari	1,754	1,742	99%	1	0%	11	1%
Foreclosure	13,326	12,731	96%	7	0%	588	4%
Uncontested Matrimonial	25,702	4,573	18%	20	0%	21,109	82%
Other	22,121	14,747	67%	57	0%	7,317	33%
<b>Total Cases</b>	<b>107,551</b>	<b>77,126</b>	<b>72%</b>	<b>294</b>	<b>0%</b>	<b>30,131</b>	<b>28%</b>
<b>ONYC</b>							
Motor Vehicle	10,857	10,725	99%	34	0%	98	1%
Medical Malpractice	1,583	1,522	96%	24	2%	37	2%
Other Torts	8,020	7,747	97%	67	1%	206	3%
Contract	10,943	10,624	97%	54	0%	265	2%
Contested Matrimonial	12,095	11,370	94%	468	4%	257	2%
Tax Certiorari	15,409	15,300	99%	2	0%	107	1%
Foreclosure	19,676	19,487	99%	20	0%	169	1%
Uncontested Matrimonial	22,703	14,426	64%	203	1%	8,074	36%
Other	28,540	22,963	80%	155	1%	5,422	19%
<b>Total Cases</b>	<b>129,826</b>	<b>114,164</b>	<b>88%</b>	<b>1,027</b>	<b>1%</b>	<b>14,635</b>	<b>11%</b>
<b>Statewide</b>							
Motor Vehicle	29,941	29,710	99%	48	0%	183	1%
Medical Malpractice	4,124	4,012	97%	32	1%	80	2%
Other Torts	22,944	22,298	97%	103	0%	543	2%
Contract	15,611	15,062	96%	74	0%	475	3%
Contested Matrimonial	15,526	14,239	92%	599	4%	688	4%
Tax Certiorari	17,163	17,042	99%	3	0%	118	1%
Foreclosure	33,002	32,218	98%	27	0%	757	2%
Uncontested Matrimonial	48,405	18,999	39%	223	0%	29,183	60%
Other	50,661	37,710	74%	212	0%	12,739	25%
<b>Total Cases</b>	<b>237,377</b>	<b>191,290</b>	<b>81%</b>	<b>1,321</b>	<b>1%</b>	<b>44,766</b>	<b>19%</b>

**Data Note:** Attorney/firm names are listed in case files in the Civil Caseload Management System. Each listed attorney/firm is marked P for representation of one or more Plaintiffs or D for representation of one or more Defendants. Any party who informs the court of pro se appearance is listed as pro se. Representation data are not always reported in full to the court by litigants or by counsel. In the final column: "No Attorneys" means that no attorney/firm name appears in the file for this side; "Possible Pro Se" means that there may or may not be a pro se party listed for the cases in this column.

NEW YORK STATE UNIFIED COURT SYSTEM  
SUPREME CIVIL CASES DISPOSED IN 2013  
REPRESENTATION OF DEFENDANTS

Case Type	Total Cases	At Least One Attorney No Pro Se		At Least One Attorney and One Pro Se		No Attorneys Possible Pro Se	
		#	%	#	%	#	%
<b>NYC</b>							
Motor Vehicle	19,084	17,360	91%	969	5%	755	4%
Medical Malpractice	2,541	2,258	89%	125	5%	158	6%
Other Torts	14,924	12,962	87%	914	6%	1,048	7%
Contract	4,668	2,659	57%	201	4%	1,808	39%
Contested Matrimonial	3,431	2,025	59%	277	8%	1,129	33%
Tax Certiorari	1,754	1,710	97%	-	0%	44	3%
Foreclosure	13,326	1,571	12%	1,509	11%	10,246	77%
Uncontested Matrimonial	25,702	249	1%	9	0%	25,444	99%
Other	22,121	8,037	36%	652	3%	13,432	61%
<b>NYC</b>	<b>107,551</b>	<b>48,831</b>	<b>45%</b>	<b>4,656</b>	<b>4%</b>	<b>54,064</b>	<b>50%</b>
<b>ONYS</b>							
Motor Vehicle	10,857	9,866	91%	359	3%	632	6%
Medical Malpractice	1,583	1,495	94%	36	2%	52	3%
Other Torts	8,020	6,747	84%	424	5%	849	11%
Contract	10,943	4,915	45%	578	5%	5,450	50%
Contested Matrimonial	12,095	8,527	71%	1,827	15%	1,741	14%
Tax Certiorari	15,409	14,034	91%	37	0%	1,338	9%
Foreclosure	19,676	3,161	16%	6,159	31%	10,356	53%
Uncontested Matrimonial	22,703	4,230	19%	456	2%	18,017	79%
Other	28,540	14,626	51%	1,269	4%	12,645	44%
<b>ONYS</b>	<b>129,826</b>	<b>67,601</b>	<b>52%</b>	<b>11,145</b>	<b>9%</b>	<b>51,080</b>	<b>39%</b>
<b>Statewide</b>							
Motor Vehicle	29,941	27,226	91%	1,328	4%	1,387	5%
Medical Malpractice	4,124	3,753	91%	161	4%	210	5%
Other Torts	22,944	19,709	86%	1,338	6%	1,897	8%
Contract	15,611	7,574	49%	779	5%	7,258	46%
Contested Matrimonial	15,526	10,552	68%	2,104	14%	2,870	18%
Tax Certiorari	17,163	15,744	92%	37	0%	1,382	8%
Foreclosure	33,002	4,732	14%	7,668	23%	20,602	62%
Uncontested Matrimonial	48,405	4,479	9%	465	1%	43,461	90%
Other	50,661	22,663	45%	1,921	4%	26,077	51%
<b>Total Cases</b>	<b>237,377</b>	<b>116,432</b>	<b>49%</b>	<b>15,801</b>	<b>7%</b>	<b>105,144</b>	<b>44%</b>

**Data Note:** Attorney/firm names are listed in case files in the Civil Caseload Management System. Each listed attorney/firm is marked P for representation of one or more Plaintiffs or D for representation of one or more Defendants. Any party who informs the court of pro se appearance is listed as pro se. Representation data are not always reported in full to the court by litigants or by counsel. In the final column: "No Attorneys" means that no attorney/firm name appears in the file for this side; "Possible Pro Se" means that there may or may not be a pro se party listed for the cases in this column.



NEW YORK STATE UNIFIED COURT SYSTEM  
LOCAL CIVIL COURT CASES DISPOSED IN 2013  
REPRESENTATION OF PARTIES

Case Type	PLAINTIFF					DEFENDANT				
	Represented		Self-Represented/ No Appearance		Total	Represented		Self-Represented/ No Appearance		Total
NYC*	#	%	#	%	%	#	%	#	%	
Civil Total	192,733	98%	3,179	2%	195,912	91,585	45%	111,296	55%	202,881
Commercial	1,903	99%	19	1%	1,922	948	35%	1,756	65%	2,704
Consumer Credit	70,616	100%	106	0%	70,722	2,763	4%	69,699	96%	72,462
Ejectment	56	65%	30	35%	86	6	5%	110	95%	116
General	30,288	91%	2,853	9%	33,141	10,491	25%	30,891	75%	41,382
No Fault	88,196	100%	86	0%	88,282	76,919	91%	7,381	9%	84,300
Tort	5	83%	1	17%	6	7	100%	0	0%	7
Part 137	1	50%	1	50%	2	1	50%	1	50%	2
Not Specified	1,668	95%	83	5%	1,751	450	24%	1,458	76%	1,908
Landlord and Tenant	260,619	95%	12,659	5%	273,278	1,536	1%	271,680	99%	273,216
Name Change	365	8%	4,289	92%	4,654	0		0		0
Replevin	100	100%	0	0%	100	7	7%	96	93%	103
Supreme Court Transfer	1,644	97%	51	3%	1,695	2,405	91%	250	9%	2,655
Miscellaneous	1	100%	0	0%	1	0	0%	1	100%	1
<b>Total</b>	<b>455,462</b>	<b>96%</b>	<b>20,178</b>	<b>4%</b>	<b>475,640</b>	<b>95,533</b>	<b>20%</b>	<b>383,323</b>	<b>80%</b>	<b>478,856</b>
<b>Outside NYC</b>	<b>#</b>	<b>%</b>	<b>#</b>	<b>%</b>	<b>%</b>	<b>#</b>	<b>%</b>	<b>#</b>	<b>%</b>	
Civil Total	111,769	99%	1,058	1%	112,827	14,221	12%	105,004	88%	119,225
Commercial	764	97%	26	3%	790	66	8%	813	92%	879
Consumer Credit	52,922	99%	322	1%	53,244	1,566	3%	53,644	97%	55,210
Ejectment	23	96%	1	4%	24	0	0%	29	100%	29
General	27,781	98%	425	2%	28,206	4,588	14%	27,552	86%	32,140
No Fault	10,529	100%	28	0%	10,557	4,959	52%	4,567	48%	9,526
Tort	14	48%	15	52%	29	0	0%	16	100%	16
Part 137	16	100%	0	0%	16	7	22%	25	78%	32
Not Specified	19,720	99%	241	1%	19,961	3,035	14%	18,358	86%	21,393
Commercial Claim	2,097	24%	6,539	76%	8,636	616	6%	9,273	94%	9,889
Landlord and Tenant	66,011	78%	18,102	22%	84,113	10,190	9%	100,049	91%	110,239
Replevin	1,237	100%	0	0%	1,237	1	0%	1,323	100%	1,324
Small Claim	1,923	8%	22,498	92%	24,421	3,642	13%	23,783	87%	27,425
Supreme Court Transfer	155	98%	3	2%	158	113	56%	89	44%	202
<b>Total</b>	<b>183,192</b>	<b>79%</b>	<b>48,200</b>	<b>21%</b>	<b>231,392</b>	<b>28,783</b>	<b>11%</b>	<b>239,521</b>	<b>89%</b>	<b>268,304</b>

**Data Note:** Representation status of parties in Local Civil Courts is marked as follows: Counsel, Self-Represented or No Appearance. A party's representation status is marked as No Appearance when the court has not been notified that the party is represented by counsel.

NEW YORK STATE UNIFIED COURT SYSTEM  
FAMILY COURT CASES DISPOSED IN 2013  
REPRESENTATION OF INDIVIDUAL PETITIONERS

Case Type	ATTORNEY FOR PETITIONER PRESENT FOR							PETITIONER APPEARANCES				
	Total Cases	All Appearances		One or More But Not All Appearances		No Appearances		Total Appearances	Attorney Present		No Attorney Present	
NYC		#	%	#	%	#	%		#	%	#	%
Support (F)	60,310	1,455	2%	2,622	4%	56,233	93%	135,507	11,533	9%	123,974	91%
Guardianship (G)	2,846	186	7%	401	14%	2,259	79%	10,393	2,350	23%	8,043	77%
Family Offense (O)	25,430	743	3%	6,877	27%	17,810	70%	93,446	25,813	28%	67,633	72%
Paternity (P)	8,687	255	3%	506	6%	7,926	91%	20,843	2,379	11%	18,464	89%
UIFSA (U)	5,503	1,820	33%	764	14%	2,919	53%	15,331	7,125	46%	8,206	54%
Custody/Visitation (V)	53,716	3,735	7%	14,012	26%	35,969	67%	229,429	85,091	37%	144,338	63%
<b>Total Cases</b>	<b>156,492</b>	<b>8,194</b>	<b>5%</b>	<b>25,182</b>	<b>16%</b>	<b>123,116</b>	<b>79%</b>	<b>504,949</b>	<b>134,291</b>	<b>27%</b>	<b>370,658</b>	<b>73%</b>
<b>Outside NYC</b>		#	%	#	%	#	%		#	%	#	%
Support (F)	115,498	5,164	4%	9,508	8%	100,826	87%	257,197	34,168	13%	223,029	87%
Guardianship (G)	2,318	374	16%	513	22%	1,431	62%	7,283	2,512	34%	4,771	66%
Family Offense (O)	37,833	2,050	5%	14,996	40%	20,787	55%	135,139	46,377	34%	88,762	66%
Paternity (P)	9,097	571	6%	991	11%	7,535	83%	22,464	3,504	16%	18,960	84%
UIFSA (U)	3,438	496	14%	323	9%	2,619	76%	8,667	2,276	26%	6,391	74%
Custody/Visitation (V)	144,114	18,308	13%	52,315	36%	73,491	51%	527,415	222,760	42%	304,655	58%
<b>Total Cases</b>	<b>312,298</b>	<b>26,963</b>	<b>9%</b>	<b>78,646</b>	<b>25%</b>	<b>206,689</b>	<b>66%</b>	<b>958,165</b>	<b>311,597</b>	<b>33%</b>	<b>646,568</b>	<b>67%</b>
<b>STATEWIDE</b>		#	%	#	%	#	%		#	%	#	%
Support (F)	175,808	6,619	4%	12,130	7%	157,059	89%	392,704	45,701	12%	347,003	88%
Guardianship (G)	5,164	560	11%	914	18%	3,690	71%	17,676	4,862	28%	12,814	72%
Family Offense (O)	63,263	2,793	4%	21,873	35%	38,597	61%	228,585	72,190	32%	156,395	68%
Paternity (P)	17,784	826	5%	1,497	8%	15,461	87%	43,307	5,883	14%	37,424	86%
UIFSA (U)	8,941	2,316	26%	1,087	12%	5,538	62%	23,998	9,401	39%	14,597	61%
Custody/Visitation (V)	197,830	22,043	11%	66,327	34%	109,460	55%	756,844	307,851	41%	448,993	59%
<b>Total Cases</b>	<b>468,790</b>	<b>35,157</b>	<b>7%</b>	<b>103,828</b>	<b>22%</b>	<b>329,805</b>	<b>70%</b>	<b>1,463,114</b>	<b>445,888</b>	<b>30%</b>	<b>1,017,226</b>	<b>70%</b>

**Data Note:** These data are based on attendance records which are recorded in the Family Caseload Management System by court personnel for every Family Court appearance. They are not based on notices of appearance or statements by litigants or counsel concerning representation.

NEW YORK STATE UNIFIED COURT SYSTEM  
FAMILY COURT CASES DISPOSED IN 2013  
REPRESENTATION OF INDIVIDUAL RESPONDENTS

Case Type	ATTORNEY FOR RESPONDENT PRESENT FOR							RESPONDENT APPEARANCES				
	Total Cases	All Appearances		One or More But Not All Appearances		No Appearances		Total Appearances	Attorney Present		No Attorney Present	
NYC		#	%	#	%	#	%		#	%	#	%
Support (F)	77,761	1,508	2%	3,859	5%	72,394	93%	180,592	14,738	8%	165,854	92%
Guardianship (G)	2,770	89	3%	287	10%	2,394	86%	10,184	1,634	16%	8,550	84%
Family Offense (O)	25,431	91	0%	6,452	25%	18,888	74%	93,454	21,643	23%	71,811	77%
Paternity (P)	18,539	224	1%	763	4%	17,552	95%	46,901	2,677	6%	44,224	94%
UIFSA (U)	5,517	1,113	20%	661	12%	3,743	68%	15,372	3,779	25%	11,593	75%
Custody/Visitation (V)	53,646	3,019	6%	13,411	25%	37,216	69%	229,217	78,145	34%	151,072	66%
<b>Total Cases</b>	<b>183,664</b>	<b>6,044</b>	<b>3%</b>	<b>25,433</b>	<b>14%</b>	<b>152,187</b>	<b>83%</b>	<b>575,720</b>	<b>122,616</b>	<b>21%</b>	<b>453,104</b>	<b>79%</b>
<b>Outside NYC</b>		#	%	#	%	#	%		#	%	#	%
Support (F)	166,178	5,630	3%	17,873	11%	142,675	86%	373,460	52,112	14%	321,348	86%
Guardianship (G)	1,884	229	12%	380	20%	1,275	68%	6,312	1,881	30%	4,431	70%
Family Offense (O)	37,847	1,270	3%	14,389	38%	22,188	59%	135,187	41,027	30%	94,160	70%
Paternity (P)	15,883	527	3%	1,777	11%	13,579	85%	42,373	4,989	12%	37,384	88%
UIFSA (U)	4,215	194	5%	502	12%	3,519	83%	10,939	1,631	15%	9,308	85%
Custody/Visitation (V)	142,909	16,618	12%	53,147	37%	73,144	51%	522,417	215,799	41%	306,618	59%
<b>Total Cases</b>	<b>368,916</b>	<b>24,468</b>	<b>7%</b>	<b>88,068</b>	<b>24%</b>	<b>256,380</b>	<b>69%</b>	<b>1,090,688</b>	<b>317,439</b>	<b>29%</b>	<b>773,249</b>	<b>71%</b>
<b>STATEWIDE</b>		#	%	#	%	#	%		#	%	#	%
Support (F)	243,939	7,138	3%	21,732	9%	215,069	88%	554,052	66,850	12%	487,202	88%
Guardianship (G)	4,654	318	7%	667	14%	3,669	79%	16,496	3,515	21%	12,981	79%
Family Offense (O)	63,278	1,361	2%	20,841	33%	41,076	65%	228,641	62,670	27%	165,971	73%
Paternity (P)	34,422	751	2%	2,540	7%	31,131	90%	89,274	7,666	9%	81,608	91%
UIFSA (U)	9,732	1,307	13%	1,163	12%	7,262	75%	26,311	5,410	21%	20,901	79%
Custody/Visitation (V)	196,555	19,637	10%	66,558	34%	110,360	56%	751,634	293,944	39%	457,690	61%
<b>Total Cases</b>	<b>552,580</b>	<b>30,512</b>	<b>6%</b>	<b>113,501</b>	<b>21%</b>	<b>408,567</b>	<b>74%</b>	<b>1,666,408</b>	<b>440,055</b>	<b>26%</b>	<b>1,226,353</b>	<b>74%</b>

**Data Note:** These data are based on attendance records which are recorded in the Family Caseload Management System by court personnel for every Family Court appearance. They are not based on notices of appearance or statements by litigants or counsel concerning representation.

**Corinda Crossdale**  
Director, NYS Office for the Aging

*Andrew M. Cuomo  
Governor*

*Corinda Crossdale  
Director*



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Good Afternoon Honorable Chief Judge Lippman; Honorable Chief Administrative Judge Prudenti, Justice Peters and New York State Bar Association President Lou-Kee and Judicial Department members. My name is Corinda Crossdale and I am the Director of the New York State Office for the Aging and I am here today to speak about New York State's Legal Services Initiative, which is a private/public effort announced in September of 2012 by Governor Andrew Cuomo. The intent of this Initiative is to find new ways to better provide affordable legal services to older New Yorkers, individuals of all ages with all types of disabilities, and their caregivers; with the goal of advancing "equal access to justice".

The partnership established to implement this Initiative includes, the New York State Office for the Aging, the NY State Office of Court Administration, the NY State Bar Association, and the NY State Office



for People with Developmental Disabilities. In an effort to achieve greater and more diverse involvement in this statewide effort, our partnership is collaborating with a Think Group of experienced individuals from across the State to define the barriers these populations encounter when they need legal assistance and to identify strategies to address them.

In accordance with the Older Americans Act, the New York State Office for the Aging administers a Legal Assistance Program for older adults who, due to economic or social need, would not likely be able to obtain the assistance of an attorney. At the community level, each area agency on aging is required to dedicate a portion of federal funds to provide legal assistance under this program.

Individuals with disabilities (including mental, developmental, intellectual, emotional, and physical) account for 2 million of New York State residents; there are currently 3.7 million adults aged 60 and over in New York State; and informal caregivers number over 3 million. It is



expected that all of these population will increase over the next decade. People are living longer and increasing numbers of people are living alone at all stages of life. Health and long-term services and supports have moved away from institutional care to home and community based care. For some older New Yorkers and individuals with disabilities access to legal services can be a critical factor in their ability to continue to live in the community of their choice.

These Shifts in demographic and policy trends provided the impetus for the development of the Legal Services Initiative. Some of the reports received from across the state underlie the importance of working on these initiatives, activities and goals which include:

- Lack of awareness regarding the legal framework underlying many of the problems encountered, therefore legal rights and protections are not considered when addressing these concerns;
- Many older adults and individuals with disabilities enter the court systems without the benefit of legal representation;



- Numerous residents cannot afford the costs of legal help, and there is a growing gap in the availability of affordable legal assistance;
- Many residents do not know where or how to contact the legal help that is most appropriate to address their particular needs;
- Many members of the legal community and of the Judiciary are not knowledgeable about the traits, conditions, and circumstances characterizing aging individuals and persons with disabilities, and are often unaware of the extent to which these elements have a significant impact on the ability to gain successful access to the legal systems or to achieve just outcomes.

Based on these reports the legal initiative collaborative looks to a successful partnership that will advance the following goals:

- Ensure that New York's older adults, individuals with disabilities, and caregivers have practical access to sufficient and affordable legal assistance.
- Increase awareness among these populations and their services providers of legal rights regarding a variety of topic areas.





- Increase attorneys', Judiciary members', and law students' awareness of the traits, characteristics and circumstances of these populations, as well as increase understanding of how these elements impact the ability of older adults and those with disabilities to successfully engage with the legal community and the court systems;
- Increase attorneys', Judiciary members', and law students' awareness of the very diverse types of legal concerns impacting the targeted populations on a daily basis;
- Increase the number of attorneys who will include the needs of this population in their practices;
- Explore the provision of pro bono legal services, as well as other non-attorney alternatives, as a means of increasing access to affordable legal assistance; and
- Strengthen and better coordinate the aging network's Legal Assistance Program.

To date the legal services collaborative has completed six statewide exploratory surveys.



The goal of these surveys is to describe the status of legal assistance for these three population groups.

The information obtained from the six surveys is still being analyzed and will soon be reviewed by a public/private “Think Group” which will be convening this month; this will be a group of about 120 individuals that will comprise a wide variety of experts from across the State, including representatives from:

- state agencies,
- community aging and health networks,
- community disabilities networks,
- caregiver organizations,
- members of the legal and Judiciary communities,
- law schools, and
- Consumers.



The findings from the surveys and think group will be used to develop strategies, activities, and steps to achieve the initiative's goals of equal access to justice.

We are anticipating that the next steps for the Legal Services Initiative's partners and Think Group will be to establish voluntary work groups that will take recommended strategies developed and begin implementation.

The final goal is to increase availability, affordability and accessibility of legal assistance for older adults and people with disabilities, particularly those with great economic and social need, as well as the informal unpaid family members and friends who provide the majority of care for these individuals.

The legal services collaborative will continue to be proactive in working to improve legal services and advocacy for older adults and those with disabilities of any age. By increasing partnerships and integrating the work of the initiative with other agencies and entities to maximize the utilization of resources, we will continue down this path to create systems that are seamless for the consumer and their caregivers.

Thank you for the opportunity to share my comments.



# **Dr. Elizabeth Becker**

Senior Vice President, NERA Economic Consulting

**Executive Summary of Testimony by Elizabeth Becker to  
The Task Force to Expand Access to Civil Legal Services in New York  
Presented at the 3rd Judicial Department Hearing  
October 6th, 2014**

NERA Economic Consulting was asked by the Task Force to Expand Access to Civil Legal Services in New York to update the estimates of the value of federal funds brought into New York State from the provision of civil legal services using data for cases closed through 2013. Using the same methodology described in testimony in September 2012, but relying on more recent data through 2013, the updated value of federal funds brought into the State has risen to \$518.5 million dollars. This represents a \$60 million increase in value relative to the estimate using data only through 2012. Considering the multiplier effect this flow of funds has for the State, the total economic stimulus deriving from activity through 2013 comes to \$769 million, compared with an economic stimulus of \$679 million previously estimated for cases closed through 2012. Activity in 2013 has generated more than a 13 percent increase in economic benefit for the State relative to the prior year.

NERA was also asked by the Task Force to assess the value created by the provision of civil legal services in two additional categories of service. In the first of these new categories, the provision of extended legal representation to assist clients in securing Child and Spousal Support generated over \$6.2 million in benefits. In the second category, the provision of Advice and Brief Legal Services provided either in person or by phone to assist clients in securing Supplemental Security Income, Social Security Disability Income, Medicaid and Child and Spousal Support generated \$36 million in benefits to low-income New Yorkers. All analyses performed at the request of the Task Force were done pro bono.

**Report by Elizabeth Becker to**  
**The Task Force to Expand Access to Civil Legal Services in New York**  
**Presented at the 3rd Judicial Department Hearing**  
**October 6, 2014**

**I. Qualifications**

1. I am a Senior Vice President at NERA Economic Consulting, a global firm of experts dedicated to applying economic, finance, and quantitative principles to complex business and legal challenges. I hold a Ph.D. in applied economics from Clemson University. I am experienced in preparing economic and statistical assessments for both plaintiffs and defendants in numerous matters involving single plaintiff and class action allegations of employment discrimination, class action allegations of violations of wage and hour regulations, warranty claim and consumer class action matters. I have testified in deposition, at trial, or in arbitration more than 35 times. My empirical research has been published in peer-reviewed academic publications.

**II. Assignment and Summary of Findings**

2. I was asked by the Task Force to Expand Access to Civil Legal Services in New York to evaluate the economic benefits to low-income New Yorkers and to New York State overall from the provision of civil legal services to low-income New Yorkers and their families to assist them in obtaining access to various benefits for which they are eligible. I performed the above analyses for the Task Force pro bono. Specifically, I was asked to:

- Evaluate the current year's financial impact of increased access to several federal programs on the direct recipients of those benefits and their families;
- Estimate the long-term financial impact on the direct recipients and their families of increased access to certain federal programs for which they can expect long-term, on-going eligibility and benefits;
- Evaluate the economic impact of the flow of federal benefits into the New York State economy as a whole;

- Compare the flow of federal benefits into New York State to the excess federal tax burden borne by residents of New York State;
- Estimate the current year's and long-term impact of Child and Spousal Support payments obtained due to Extended Representation civil legal services on the direct recipients of those benefits and their families; and
- Estimate the financial impact on the direct recipients of Advice and Brief services.

3. Representatives from the Interest on Lawyers Account Fund (“ IOLA”) provided me with summaries of the dollar value of federal benefits as well as Child and Spousal Support received by low-income New Yorkers as a result of the provision of civil legal services by grantee organizations from 2007 until 2013. I have reviewed these data, as well as publicly available data. Having reviewed this information, I find:

- The financial impact in 2013 of increased access to federal benefits on the direct recipients of those benefits and their families is conservatively estimated as \$518.5 million.
- The long-term future financial impact of increased access from the provision of civil legal services in recent years ranges as high as \$1 billion, depending upon the expected duration of continued participation in key federal programs and other support payments.
- Multiplier effects for the in-flow of federal resources in the amount of \$518.5 million to New York State result in estimated economic benefits to the State of \$769 million and estimated creation of about 7,675 jobs.
- These economic benefits derived from additional federal funds effectively reduce New York State's excess tax burden of approximately \$21.9 billion by about 2.4 percent.
- The additional economic benefit in 2013 from Child and Spousal Support payments on the direct recipients of those benefits and their families is estimated as \$6.2 million.
- Advice and Brief services to low-income New Yorkers provided approximately \$36 million in value.

4. In this report, I summarize the various benefits evaluated, the data received from IOLA regarding increased access to these benefits and publicly available data, my methodology for evaluating financial and economic impacts from this increased access, and the overall financial and economic impacts.

### **III. Summary of Benefits Evaluated**

5. Provision of civil legal assistance enables low-income New Yorkers to obtain access to benefits under several key federal programs that are targeted at the neediest in our population.

Among these are the following benefits:

- **Supplemental Security Income:** SSI is a federal program that makes monthly payments to people who have low-income and few resources and are age 65 or older, blind or disabled. Eligibility for SSI depends upon income and certain assets.
- **Social Security Disability Income:** SSD is a federal program that pays monthly benefits to people who cannot work because they have a medical condition that is expected to last at least one year or result in death. Eligibility is tested with specific rules regarding recent work and duration of work, as well as a determination of disability by doctors and disability specialists.
- **Unemployment compensation provided by the federal government:** The Emergency Unemployment Compensation program is a federal extension of unemployment benefits that provides additional weeks of unemployment benefits after regular state unemployment benefits have been exhausted.
- **Medicaid funded by the federal government:** Some portion of Medicaid benefits is funded by the State, but some is reimbursed by the federal government.
- **Earned Income Tax Credits:** EITC is a benefit for certain people who work and have low to moderate wages that reduces the amount of federal tax owed and may also provide a refund.
- **Various other federal benefits:** In addition to these major federal benefit programs, low-income New Yorkers may be eligible for other programs such as Veteran's benefits and Medicare.

6. Access to these programs and payments may be barred for low-income New Yorkers for a number of reasons. They may not be aware of the programs or of their eligibility. Determining eligibility can be complicated and require knowledge of complex rules and regulations. Proof of eligibility may require documents and/or information that are difficult for low-income persons to access or obtain. As a result, provision of civil legal assistance may be the only avenue available to low-income New Yorkers to ensure that they qualify for federal benefits and other payments they are entitled to. Provision of these resources results in substantial cost savings for State and local governments to whom these needy families would likely turn to instead.



7. I also analyzed Child Support and Spousal Support payments. These payments are as follows:

- Child Support: A parent who has custody of a child and who lives separate from the other child's parent may file a petition in Family Court asking the court to enter an order for the "non-custodial parent" to pay Child Support.
- Spousal Support: In New York State, a married person may file a petition in Family Court seeking Spousal Support from a current husband or wife. While a divorced person may not seek a new order of support from an ex-spouse in Family Court, a petition may be filed seeking to modify an already existing order for an ex-spouse.

8. IOLA provided me with data reported by grantee organizations detailing the dollar value of benefits from cases completed in 2013 for SSI, SSD, state unemployment benefits, federal reimbursement for Medicaid benefits, earned income tax credits and various other federal benefits. Where appropriate, the value of these benefits was reported separately for back awards and on-going monthly benefits. IOLA also provided information for on-going monthly benefits for SSI/SSD to include cases closed back to 2007 and for "other" federal benefits to include cases closed back to 2009. For the second year IOLA also provided me with data on Child Support and Spousal Support payments. I used the benefits and support payments data to estimate the value of benefits obtained and support payments received by New Yorkers as a result of the provision of civil legal services. Furthermore, as last year I used the information provided to me by IOLA regarding the success of Advice and Brief Services in Pennsylvania's legal assistance programs in order to approximate the additional impact of such services in New York.

### **Estimated Value of Benefits and Payments Received as a Result of Civil Legal Services**

#### ***A. Supplemental Security Income and Social Security Disability Income***

9. The largest category of federal funds brought into New York State by the provision of civil legal services to low-income New Yorkers is SSI and SSD income. These amounts may include back awards as well as on-going monthly benefits for cases closed in 2013. These amounts are reported in columns (1) and (2) of rows (B) and (C) in Table 1. Federal funds also may be received in 2013 as on-going benefits for cases closed in recent years. On-going receipt

of benefits under these programs occurs because the duration of participation, once a person is qualified and enrolled, is quite lengthy. The estimated duration of participation prior to retirement age 65 is 9.7 years for SSD and 10.5 years for SSI.<sup>1</sup> Monthly benefits received in 2013 from cases closed between 2007 through 2012 are reported in columns (3) to (8) in row (C) of Table 1.

10. I evaluated the total economic impact of the receipt of these amounts for 2013 by annualizing the monthly benefits for each year. As benefits under these federal programs are routinely adjusted for inflation, I adjusted the monthly benefits received from past case closings upward using the Consumer Price Index.<sup>2</sup> I then added the value of the back awards from 2013 to this total value of monthly benefits. The estimated 2013 value of federal benefits brought into New York under these two programs is approximately \$218 million.

***B. Child Support and Spousal Support***

11. In 2013 the provision of civil legal services helped clients claim a total of \$4.8 million in Child Support and \$1.4 million in Spousal Support, together totalling \$6.2 million. Both Child Support and Spousal Support are broken down into back awards and monthly payments. The breakdown of the two types of awards is presented in Table 2. Back awards account for approximately \$1.3 million of the total amount. Under the prudent assumption that monthly Child Support and Spousal Support granted will continue to be received for the next 12 months, I annualized the monthly benefits by multiplying by 12 which adds up to \$3.7 million in annualized monthly payments in Child Support and \$1.2 million in Spousal Support.

***C. Expected Future Value from SSI/SSD and Child/Spousal Support***

12. Note that the estimation of both the SSI/SSD benefits and the value of Child and Spousal Support payments described in sections A and B are conservative estimates of the value provided

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<sup>1</sup>Kalman Rupp and Charles G. Scott, "Trends in the Characteristics of DI and SSI Disability Awardees and Duration of Program Participation," *Social Security Bulletin*, vol.59, No.1, Spring 1996: pp. 3 – 21.

<sup>2</sup> St. Louis Federal Reserve Bank.

to clients as a result of the provision of civil legal services. It captures the value of payments paid only in 2013 and in the case of the SSI/SSD benefits includes benefits received as a result of case closings for only the past five years of completed cases. This is an understatement of financial impact because the expected duration of Child and/or Spousal Support receipt as well as the expected on-going participation in the SSI/SSD is considerably longer than five years. An alternative method for estimating the value of these closed cases is to consider the value of the expected future stream of benefits, given the long expected duration of future participation and receipt for low-income New Yorkers that have been found eligible. Several alternative estimates of the value of these expected future benefits are shown in Table 3.

13. In the first approach, I estimated future value of SSI/SSD benefits as well as Child and Spousal Support as a result of the provision of civil legal services provided on cases closed in 2013 alone. I projected over five years the value of the on-going monthly benefits from cases closed in 2013. These amounts are shown in columns (2) through (6) of rows (A) and (E) for the SSI/SSD benefits and Child and Spousal Support payments. In order to convert these future values to present value, I have discounted using the prime rate of interest at 3.25 percent, with SSI/SSD discounted values shown in row (B) and the Child and Spousal Support discounted values in row (F). The 5-year future value of cases closed in 2013 is \$113 million. Alternatively, the value of the cases closed in 2013 could be projected for 10 years, as in columns (2) through (10) of row (A) and row (E). The assumed average duration of time on Child and Spousal Support is 9 years based on the average age of children during divorce.<sup>3</sup> Hence I assign a zero value to the Child and Spousal Support for the 10<sup>th</sup> year of the projection. This would yield a present value of future benefits of about \$187.4 million.

14. In the second approach, I estimated the present value of expected on-going future benefits from all cases closed between 2007 through 2012 for SSI/SSD. These amounts are shown in columns (2) through (6) of row (C) for a five-year projection and columns (2) through (10) of row (C) for a ten-year projection. Again the values are converted to present value using the prime rate and presented in row (D). The estimated values are \$718 million for the five-year

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<sup>3</sup> Liu, Shirley H., *The Effect Parental Divorce and Its Timing on Child Educational Attainment: A Dynamic Approach*, 2007, available at [http://moya.bus.miami.edu/~sliu/Research\\_files/divorcetiming.pdf](http://moya.bus.miami.edu/~sliu/Research_files/divorcetiming.pdf).

projection and \$851 million for the ten-year projection, respectively. The future value of recently closed cases far exceeds the more conservative estimate from a methodology that only measures benefits received in 2013.<sup>4</sup>

#### ***D. Federal Benefits Other Than SSI/SSD***

15. The provision of civil legal services also helps low-income New Yorkers access a variety of other federal benefits, such as Veteran's benefits and Medicare. As with SSI/SSD, there were both back awards paid and enrollment for on-going monthly benefits in 2013. Persons enrolled in these programs in previous years also sometimes enjoyed receipt of on-going benefits in 2013. I have estimated the value of the cases closed in 2013 and for the prior two years by assuming the average duration of these benefits is three years. Table 4 reports the conversion of monthly benefits to annual amounts and the adjustment of past benefit amount for inflation using the CPI. The total estimated value of the monthly benefits from cases closed over a three-year period, plus the 2013 back awards is about \$167 million.<sup>5</sup>

#### ***E. Federal Emergency Unemployment Compensation Extension***

16. The Emergency Unemployment Compensation program is a federal extension of unemployment benefits that provides additional weeks of unemployment benefits after regular state unemployment benefits have been exhausted. In New York State, unemployed persons are generally eligible for 26 weeks of benefits. Extended federal benefits may be available from the federal program for 6, 9, 13, 14 or 20 weeks, depending upon the circumstances of the unemployed person. IOLA reports that the provision of civil legal services has assisted unemployed New Yorkers in gaining awards to state unemployment compensation benefits of \$4.9 million in back awards and nearly \$970,000 in monthly awards. If one were to assume that these state unemployment benefits are for the full 26-week eligibility, then the federal extension

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<sup>4</sup> Data regarding the future value of Child and Spousal Support cases closed in recent years were not available to me. If recently closed cases of this type provide on-going future benefits these are understated.

<sup>5</sup> About \$89 million of this amount is due to back awards from cases closed in 2013. More than \$80 million of this figure is attributed to a large state-wide class action settlement won by the National Center for Law and Economic Justice regarding retroactive food stamps.

would be worth about half the value of the state benefits. Thus, the value of the federal extension of unemployment benefits would be about \$8.28 million. See Table 5.

***F. Total Value of Benefits Granted to and Support Payments Received by Service Participants, Including Medicaid and EITC***

17. IOLA has provided me with estimates of the amount of federal reimbursement for Medicaid benefits and Earned Income Tax Credits received by low-income New Yorkers assisted as a result of the provision of civil legal services. These amounts are approximately \$101.2 million and \$23.8 million, respectively. When the value of these benefits is added to the value of the federal funds brought into the State under the other programs discussed above, the total value of federal funds brought into New York State in 2013 is \$518.5 million. The value of benefits increases further to \$524.7 once accounting for Child and Spousal Support obtained with the help of the civil legal services. See Table 6.

***G. Impact of Advice or Brief Services***

18. All previous estimates relate to value added from Extended Representation civil legal services. Low-income New Yorkers also have access to Advice and Brief services in person or by phone. In order to approximate the additional benefits granted as consequence of these services I was given information by IOLA regarding the outcomes of similar services in Pennsylvania since such information was not recorded in New York in 2013. Information regarding Pennsylvania's Advice and Brief services was collected through a survey of a randomly selected sample of 400 program participants in 2011. Benefits gained by the Advice and Brief services include additional SSI/SSD benefits and Medicaid benefits, as well as additional Child and Spousal Supports. Table 7 presents the numbers provided to me by IOLA as well as my calculations.

19. To proxy the additional benefits gained in SSI/SSD due to the Advice and Brief services I utilize the success rate of such cases in Pennsylvania in 2011 according to the survey. The components of my estimation are presented in rows (A) through (F) of Table 7. According to the survey, 41% of SSI/SSD cases closed received the right to benefits or increased the amounts of

benefits received for the service participants. In 2013 New York's IOLA grantees closed 3,936 Advice and Brief services SSI/SSD cases. Using the 41% success rate found in the survey, 1,621 of these cases were estimated to be successful. To approximate the additional benefits gained in each successful case I use the average back awards and annualized monthly benefits per case from New York's Extended Representation civil legal services in 2013 of \$8,578 and \$6,761, respectively. Multiplying the estimated number of successful cases due to Advice and Brief services and the average benefits per case suggests that \$13.9 million in back awards and \$10.9 million in annualized monthly benefits were generated from such services in New York.

20. Advice and Brief services have also assisted New Yorkers to obtain Medicaid benefits. In 2013 a total of 1,531 standalone Medicaid cases were closed by the Advice and Brief services program in New York. According to the Pennsylvania survey such cases had a 6.5% success rate. This would suggest that in total 99 cases out of all closed in New York were likely to obtain or maintain Medicaid benefits for the clients. Medicaid benefits may also be obtained through successful SSI/SSD cases. In 2013, a total of 3,011 combined cases were closed by the Advice and Brief services in New York. Using the success rate of SSI/SSD cases of 41%, a total of 1,240 were likely to be successful. I add the two numbers of successful Medicaid cases and estimate that a total of 1,339 successful Medicaid cases were closed by the Advice and Brief services in New York. Using the average annual Medicaid benefits per case of \$8,030 provided to me by IOLA I estimate that an additional \$10.7 million in Medicaid benefits could have been generated from the civil legal programs.

21. Finally, I use the same methodology described above to estimate the additional value gained for Child and Spousal Support from Advice and Brief services. According to the survey 4% of Child and Spousal Support cases handled by Advice and Brief services close with the desirable outcome. Using this success rate and applying it to the number of such cases closed in New York in 2013, I estimate that approximately 78 cases closed with additional benefits to the client. The average amount of Child and Spousal Support payments for successful Extended Representation cases in New York is \$1,414 in back awards and \$450 in monthly payments. Assuming that monthly payments will be received for at least 12 months, the total estimated

Child and Spousal Support benefits generated from Advice and Brief services adds up to about \$530,000 in 2013.<sup>6</sup>

22. In total, utilizing the success rate of Advice and Brief services reported in the Pennsylvania survey and the average benefits per case documented in Extended Representation cases in New York, the aggregate value of additional SSI/SSD, Medicaid, and Child and Spousal Support benefits add up to \$36 million. Although this number is only an approximation of the potential value added from Advice and Brief Services in New York it may be regarded as conservative as New York has a greater low-income population than Pennsylvania. In comparison in 2013 New York had approximately 1.8 times the number of SSI recipients and 1.3 times the number of SSD recipients compared to Pennsylvania.<sup>7</sup> The 2012 and 2013 average poverty rate in New York was 15.9% relative to Pennsylvania's 13.1%.<sup>8</sup> Accordingly, New York also provided more aid services and had about 8 times more attorneys and paralegals funded by the IOLA relative to the IOLTA funded attorneys and paralegals in Pennsylvania.<sup>9</sup> See Table 8.

## **VI. Economic Impact on the New York State Economy**

23. Provision of federal benefits to eligible low-income New Yorkers provides benefits not only to them and their families, but to the State as a whole. Beneficiaries are empowered to spend money on housing, food, clothing and other support for their families. Thus, every extra dollar brought into in the State results in a stimulus to the State economy overall and benefits all New Yorkers.

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<sup>6</sup> This figure is significant lower than the \$10 million amount reported last year which did not correctly apply the 4% success rate to the number of cases.

<sup>7</sup> Social Security Administration, SSI Annual Statistical Report, 2013, available at [www.ssa.gov/policy/docs/statcomps/ssi\\_asr/2013/ssi\\_asr13.pdf](http://www.ssa.gov/policy/docs/statcomps/ssi_asr/2013/ssi_asr13.pdf); Social Security Administration, OASDI.

Beneficiaries by State and County, 2013, available at [www.ssa.gov/policy/docs/statcomps/oasdi\\_sc/2013/oasdi\\_sc13.pdf](http://www.ssa.gov/policy/docs/statcomps/oasdi_sc/2013/oasdi_sc13.pdf).

<sup>8</sup> U.S. Census Bureau, Current Population Survey, 2011 to 2014 Annual Social and Economic Supplements, available at: <http://www.census.gov/hhes/www/poverty/data/incpovhlth/2013/tables.html>.

<sup>9</sup> Pennsylvania Interest on Lawyers Trust Account Board, Survey of the Provision of Civil Legal Assistance of IOLTA Funded Organizations, November 2011. The Interest On Lawyer Account Fund of the State of New York, Annual Report 2012.

24. The United States Department of Commerce reports that every dollar brought into the New York economy generates an extra 48 cents of value in stimulus to the economy overall.<sup>10</sup> Applying this multiplier to the \$518.5 million in incremental benefits yields an overall positive impact on the State economy of \$769 million. The Department of Commerce also provides a “jobs factor” enabling estimation of overall job creation due to the stimulus to the economy. The average cost of a job supported by funds brought into the State is \$100,224. Thus, the number of new jobs that are created by a stimulus of \$769 million is about 7,675 jobs. See Table 9.

## **VII. Reduction in Excess New York Federal Tax Burden**

25. Last, I evaluated the value of the incremental federal benefits brought into New York State from the provision of civil legal services, relative to New York’s excess federal tax burden. The Tax Foundation reports that New York State sends a great deal more money to Washington in taxes than it receives back in federal expenditures. New York receives only 79 cents for every dollar that it pays in federal tax.<sup>11</sup> New York’s total federal income tax liability is approximately \$104.5 billion, making this excess tax liability about \$22 billion.<sup>12</sup> The \$518.5 million in incremental federal expenditures in New York from access to the federal benefits discussed above is about 2.4 percent of that excess federal tax liability.

## **VIII. Conclusion**

26. Provision of Extended Representation and Advice and Brief civil legal services provides substantial economic value to help support low-income and disabled New Yorkers. The economic value to the beneficiaries and their families of benefits secured as a result of Extended Legal Representation is conservatively estimated at \$524.7 million for 2013 alone. The estimated additional benefit of Advice and Brief services is \$36 million. The provision of civil legal services to needy families to assist them in obtaining benefits also provides a significant stimulus to the New York State economy overall and creates thousands of jobs. Considering the

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<sup>10</sup>U.S. Department of Commerce "RIMS II" data. Multiplier and average cost of a job were provided by IOLA.

<sup>11</sup>Curtis S. Dubay, “Federal Tax Burdens and Expenditures by State: Which States Gain the Most from Federal Fiscal Operations?” *Tax Foundation Special Report*, March 2006.

<sup>12</sup>IRS, Statistics of Income Division, Individual Master File System, December 2012.



multiplier effect of the federal funds brought into New York State, the positive impact is about \$769.2 million and the creation of approximately 7,675 jobs. Moreover, the extra federal expenditure in New York State moves the State modestly towards fairness in terms of its relative burden of federal taxation. Finally, the provision of civil legal services represents an investment for the future. The expected future value of on-going participation in programs like SSI and SSD and Child and Spousal Support for services provided in 2013 and recent years has an estimated value of more than \$1 billion over the coming ten years.

**Table 1. Value of SSI/SSD Federal Funds Received**

	<u>Cases Completed in 2013</u>		<u>Benefits Received in</u> <u>2013 From Past Years' Cases</u>					<u>Total</u> <u>Impact</u> <u>in 2013</u>	
	<u>Back</u> <u>Awards</u>	<u>Monthly</u> <u>Benefits</u>	<u>2012</u>	<u>2011</u>	<u>2010</u>	<u>2009</u>	<u>2008</u>		<u>2007</u>
	(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)
A. Inflation Rate (2013 Dollars) <sup>1</sup>	0.00 %	0.00 %	1.46 %	3.57 %	6.82 %	8.57 %	8.23 %	12.35 %	
<b>SSI/SSD</b>									
B. SSI/SSD back awards	\$ 25.26								
C. SSI/SSD monthly benefits		\$ 1.66	\$ 1.71	\$ 2.61	\$ 2.90	\$ 2.20	\$ 2.23	\$ 1.83	
D. Annualized SSI/SSD monthly benefits going forward		19.91	20.53	31.28	34.78	26.37	26.72	22.02	
E. Inflation-adj. SSI/SSD Benefits (2013 Dollars)	\$ 25.26	\$ 19.91	\$ 20.83	\$ 32.40	\$ 37.16	\$ 28.63	\$ 28.91	\$ 24.74	\$ <b>217.85</b>

Notes: <sup>1</sup> Year-over-year percent change in average monthly CPI index value.  
Numbers may not add up due to rounding.

Source: The CPI Index is from the St. Louis Federal Reserve.

## Table 2. Impact of Child and Spousal Support

<b>A.</b>	Child Support Dollar Benefits in 2013		
<b>(a)</b>	Back awards	\$	1,040,196
<b>(b)</b>	Annualized monthly benefits	\$	3,717,775
<b>B.</b>	Spousal Support Dollar Benefits in 2013		
<b>(a)</b>	Back awards	\$	246,702
<b>(b)</b>	Annualized monthly benefits	\$	1,200,396
<b>C.</b>	<b>Total Child and Spousal Support Benefits in 2013</b>	<b>\$</b>	<b>6,205,069</b>

Notes: Numbers may not add up due to rounding.

**Table 3. Economic Value Created from Expected Future Participation in SSI/SSD and Child and Spousal Support**

	Current	Projected Future Benefits								
	Year	2014	2015	2016	2017	2018	2019	2020	2021	2022
2013	------(Dollars in Millions)-----									
	(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)
A. SSI/SSD Cases Completed in 2013 (Annualized Monthly Benefits)	\$ 19.91	\$ 19.91	\$ 19.91	\$ 19.91	\$ 19.91	\$ 19.91	\$ 19.91	\$ 19.91	\$ 19.91	\$ 19.91
B. Discounted at Prime Rate (3.25%)		19.29	18.68	18.09	17.52	16.97	16.44	15.92	15.42	14.93
C. SSI/SSD Benefit Received in 2013 From Past Years' Cases	\$ 172.68	172.68	172.68	172.68	147.94	119.02	90.39	53.23	20.83	0.00
D. Discounted at Prime Rate (3.25%)		\$ 167.24	\$ 161.98	\$ 156.88	\$ 130.17	\$ 101.43	\$ 74.61	\$ 42.56	\$ 16.13	\$ 0.00
E. Child and Spousal Support in 2013 (Annualized Monthly Benefits)	\$ 4.92	\$ 4.92	\$ 4.92	\$ 4.92	\$ 4.92	\$ 4.92	\$ 4.92	\$ 4.92	\$ 4.92	\$ 0.00
F. Discounted at Prime Rate (3.25%)		4.76	4.61	4.47	4.33	4.19	4.06	3.93	3.81	0.00
<b>G. Current Value of Projected Future Benefits: 5-Year Projection</b>										
H. Cases Completed in 2013	\$ 112.91									
I. Benefits from Past Years' Cases	\$ 717.70									
<b>J. Current Value of Projected Future Benefits: 10-Year Projection</b>										
K. Cases Completed in 2013	\$ 187.41									
L. Benefits from Past Years' Cases	\$ 850.99									

Notes: Assumed duration of Child and Spousal Support is 9 years based on the number of years between the average age of children at divorce and age of majority. Numbers may not add up due to rounding.

Source: WSJ Prime rate available at <http://www.bankrate.com/rates/interest-rates/prime-rate.aspx>  
Average age of children at divorce taken from Liu, Shirley H., The Effect Parental Divorce and Its Timing on Child Educational Attainment: A Dynamic Approach, 2007, available at [http://moya.bus.miami.edu/~sliu/Research\\_files/divorcetiming.pdf](http://moya.bus.miami.edu/~sliu/Research_files/divorcetiming.pdf).

**Table 4. Value of Other Federal Benefits Received**

	<u>Cases Completed in 2013</u>		<u>Benefits Received in 2012 From Past Years' Cases</u>					<u>Total Impact in</u>	
	<u>Back Awards</u>	<u>Monthly Benefits</u>	<u>2012</u>	<u>2011</u>	<u>2010</u>	<u>2009</u>	<u>2008</u>	<u>2007</u>	<u>2013</u>
	(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)
A. Inflation Rate (2013 Dollars) <sup>1</sup>	0.00 %	0.00 %	1.46 %	3.57 %	6.82 %	8.57 %	8.23 %	12.35 %	
<b>Other Federal Benefits</b>									
B. Other Federal Benefits back awards <sup>2</sup>	\$ 88.64								
C. Other Federal Benefits monthly benefits going forward		\$1.91	\$ 1.54	\$ 1.80	\$ 1.14	n/a	n/a	n/a	
D. Annualized Other Federal Benefits going forward		\$22.91	18.45	21.61	13.74				
E. Inflation-adj. Other Federal Benefits (2013 Dollars)	\$ 88.64	\$22.91	\$ 18.72	\$ 22.38	\$ 14.67				\$ 167.33

Notes: <sup>1</sup> Year-over-year percent change in average monthly CPI index value.

<sup>2</sup> More than \$80 million of the other federal benefits are attributed to a settlement in a state-wide class action lawsuit regarding retroactive food stamps. Numbers may not add up due to rounding.

Source: The CPI Index is from the St. Louis Federal Reserve.

**Table 5. Estimated Value of Federal Unemployment Compensation Extensions**

	<u>Cases Completed in 2013</u>		<u>Total Impact in 2013</u>
	<u>Back Awards</u>	<u>Monthly Benefits</u>	
	------(Dollars in Millions)-----		
	(1)	(2)	(3)
<b>Federal Unemployment Compensation</b>			
<b>A.</b> State Unemployment Compensation (6 months)	\$ 4.89	\$ 0.97	
<b>B.</b> Federal Unemployment Compensation back awards <sup>1</sup>	2.45		
<b>C.</b> Federal Unemployment Compensation monthly benefits <sup>1</sup>		0.49	
<b>D.</b> Annualized Federal Unemployment Compensation		5.84	
<b>E.</b> Inflation-Adj. Federal Unemployment Compensation	\$ 2.45	\$ 5.84	\$ <b>8.28</b>

Notes: <sup>1</sup> Estimated assuming Federal Unemployment Compensation benefits extend for an additional 3 months.

Numbers may not add up due to rounding.

Source: The CPI Index is from the St. Louis Federal Reserve.

**Table 6. Total Benefits Received by Low- Income New Yorkers  
Due to the Provision of Civil Legal Services: 2013**

	<u>Cases Completed in 2013</u>		<u>Benefits Received in 2013 From Past Years' Cases</u>					<u>Total Impact in 2013</u>	
	<u>Back Awards</u>	<u>Monthly Benefits</u>	<u>2012</u>	<u>2011</u>	<u>2010</u>	<u>2009</u>	<u>2008</u>		<u>2007</u>
	(1)	(2)	(3)	(4)	(5)	(6)	(7)		(8)
A. Inflation Rate (2013 Dollars) <sup>1</sup>	0.00 %	0.00 %	1.46 %	3.57 %	6.82 %	8.57 %	8.23 %	12.35 %	
<b>SSI/SSD</b>									
B. SSI/SSD back awards	\$ 25.26								
C. SSI/SSD monthly benefits		\$1.66	\$ 1.71	\$ 2.61	\$ 2.90	\$ 2.20	\$ 2.23	\$ 1.83	
D. Annualized SSI/SSD monthly benefits going forward		19.91	20.53	31.28	34.78	26.37	26.72	22.02	
E. Inflation-adj. SSI/SSD Benefits (2013 Dollars)	\$ 25.26	\$ 19.91	\$ 20.83	\$ 32.40	\$ 37.16	\$ 28.63	\$ 28.91	\$ 24.74	\$ 217.85
<b>Child and Spousal Support</b>									
F. Total Child and Spousal Support Benefits in 2013									\$ 6.21
<b>Other Federal Benefits</b>									
G. Other Federal Benefits back awards	\$ 88.64								
H. Other Federal Benefits monthly benefits going forward		\$1.91	\$ 1.54	\$ 1.80	\$ 1.14				
I. Annualized Other Federal Benefits going forward		\$22.91	18.45	21.61	13.74				
J. Inflation-adj. Other Federal Benefits (2013 Dollars)	\$ 88.64	\$22.91	\$ 18.72	\$ 22.38	\$ 14.67				\$ 167.33
<b>Federal Unemployment Compensation</b>									
K. State Unemployment Compensation (6 months)	\$ 4.89	\$ 0.97							
L. Federal Unemployment Compensation back awards <sup>2</sup>	2.45								
M. Federal Unemployment Compensation monthly benefits <sup>2</sup>		0.49							
N. Annualized Federal Unemployment Compensation		5.84							
O. Inflation-Adj. Federal Unemployment Compensation	\$ 2.45	\$ 5.84							\$ 8.28
<b>Other</b>									
P. Federal share of Medicaid benefits received in 2013 <sup>3</sup>									\$ 101.22
Q. Earned Income Tax Credits									\$ 23.81
<b>R. Total benefits received in 2013</b>									\$ 524.69

Notes: <sup>1</sup> Year-over-year percent change in average monthly CPI index value.

<sup>2</sup> Estimated assuming Federal Unemployment Compensation benefits extend for an additional 3 months.

<sup>3</sup> Includes benefits received in cases closed in 2010 through 2013 under the assumptions that benefits from the past four years continue to recur annually.

Numbers may not add up due to rounding.

Source: The CPI Index is from the St. Louis Federal Reserve.

**Table 7. Impact of Advice and Brief Service Cases**

<b>SSI/SSD</b>		
A.	Number of SSI/SSD advice/brief service cases closed by IOLA grantees in 2013	3,936
B.	Success rate measured in 2011 Pennsylvania Client Survey for SSI/SSD advice/brief service cases	41 %
C.	Estimated number of successful SSI/SSD advice/brief service cases	1,621
D.	Average SSI/SSD awards and benefits achieved per successful case in New York:	
	(a) Back awards	\$ 8,578
	(b) Monthly benefits	\$ 563
	(c) Annualized monthly benefits	\$ 6,761
E.	Estimated dollar benefits produced by successful SSI/SSD advice/brief cases in 2013	
	(a) Back awards	\$ 13,904,229
	(b) Annualized monthly benefits	\$ 10,960,376
F.	<b>Total SSI/SSD from Advice and Brief Service Cases</b>	<b>\$ 24,864,605</b>
<b>Medicaid Benefits</b>		
G.	Number of Medicaid Benefit cases closed by IOLA grantees in 2013	1,531
H.	Success rate in 2011 Pennsylvania Client Survey for advice/brief service Medicaid cases	6.5 %
I.	Estimated number of successful Medicaid cases	99
J.	Number of Medicaid and SSI/SSD combined cases closed by IOLA grantees in 2013	3,011
K.	Success rate measured in 2011 Pennsylvania Client Survey for SSI/SSD advice/brief service cases	41 %
L.	Estimated number of successful Medicaid and SSI/SSD combined advice/brief service cases	1,240
M.	Total estimated Medicaid stand alone and combined advice/brief cases	1,339
N.	Average annual Medicaid benefits	\$ 8,030
O.	<b>Total Medicaid Benefits from Advice and Brief Service Benefits</b>	<b>\$ 10,748,940</b>
<b>Child and Spousal Support</b>		
P.	Number of Child and Spousal Support cases closed by Advice/Brief Services	1,945
Q.	Success rate measured in 2011 Pennsylvania Client Survey	4 %
R.	Estimated number of successful Child and Spousal Support cases	78
S.	Average Child and Spousal Support Benefits	
	(a) Back awards	\$ 1,414
	(b) Monthly support payments	\$ 450
	(c) Annualized monthly support payment	\$ 5,400
T.	Estimated payment produced by successful Child and Spousal Advice/brief cases	
	(a) Back awards	\$ 110,009
	(b) Annualized monthly support payment	\$ 420,120
U.	<b>Total Child and Spousal Support Obtained from Advice and Brief Services</b>	<b>\$ 530,129</b>
V.	<b>Total Estimated benefits from Advice and Brief Services</b>	<b>\$ 36,143,674</b>

Note: A successful case is defined as a case in which the client obtained, preserved, or increased benefit or right.  
Numbers may not add up due to rounding.

Source: Number of cases closed, Pennsylvania success rates and average benefits per case provided by IOLA.



**Table 8. New York and Pennsylvania Statistics**

	New York	Pennsylvania
<b>Number of SSI Recipients 2013</b>	700,175	378,938
<b>Number of SSD Recipients 2013</b>	643,951	503,440
<b>Poverty Rate (2012-2013)<sup>1</sup></b>	15.9 %	13.1 %
<b>IOLA/IOLTA Funded Attorneys and Paralegals</b>	1,617 <sup>2</sup>	208 <sup>3</sup>

Notes: <sup>1</sup> Percentage of people in poverty using 2-Year average of 2012 and 2013.

<sup>2</sup> Number of IOLA guarantees in New York that provided direct legal assistance between April 1, 2011 and March 31,2012

<sup>3</sup> Number of Full Time Equivalent IOLTA funded attorneys and paralegals in Pennsylvania in 2009.

Sources: Social Security Administration, SSI Annual Statistical Report: Table 10, 2013, available at [www.ssa.gov/policy/docs/statcomps/ssi\\_asr/2013/ssi\\_asr13.pdf](http://www.ssa.gov/policy/docs/statcomps/ssi_asr/2013/ssi_asr13.pdf)  
 Social Security Administration, OASDI Beneficiaries by State and County: Table 2, 2013, available at [http://www.ssa.gov/policy/docs/statcomps/oasdi\\_sc/2013/oasdi\\_sc13.pdf](http://www.ssa.gov/policy/docs/statcomps/oasdi_sc/2013/oasdi_sc13.pdf)  
 U.S. Census Bureau, Current Population Survey, 2011 to 2014 Annual Social and Economic Supplements, available at <http://www.census.gov/hhes/www/poverty/data/incpovhlth/2013/tables.html>  
 Pennsylvania Interest on Lawyers Trust Account Board, Survey of the Provision of Civil Legal Assistance of IOLTA Funded Organizations, November 2011.  
 The Interest On Lawyer Account Fund of the State of New York, Annual Report 2012.

### **Table 9. Economic Impact on New York State and Job Creation**

<b>A.</b>	Total Federal Funds Brought Into State	\$	518,486,966
<b>B.</b>	Multiplier		1.484
<b>C.</b>	<b>Total Economic Stimulus Effect of Federal Funds</b>	<b>\$</b>	<b>769,227,263</b>
<b>D.</b>	Jobs Factor	\$	100,224
<b>E.</b>	<b>Total Jobs</b>		<b>7,675</b>

Notes: Total federal funds exclude child and spousal support.  
Numbers may not add up due to rounding.

Source: U.S. Department of Commerce "RIMS II" data. Multiplier and average cost of job were provided by IOLA.

### Table 10. Reduction in Federal Excess Tax Burden

A.	Total NY State Tax Burden <sup>1</sup>	\$ 104,552,744,000
B.	NY State Ratio of Federal Spending to Tax Collected <sup>2</sup>	0.79
C.	Federal Spending Received	\$ 82,596,667,760
D.	Net Tax Payment	\$ 21,956,076,240
E.	Federal Funds Brought Into State in 2013	\$ 518,486,966
<b>F.</b>	<b>Federal Funds as Percentage of Net Tax Payments</b>	<b>2.4 %</b>

Notes: Numbers may not add up due to rounding.

Sources: <sup>1</sup> IRS, Statistics of Income Division, Individual Master File System, December 2013.

<sup>2</sup> "Federal Tax Burdens and Expenditures by State: Which States Gain Most from Federal Fiscal Operations?," Special Report No. 139, March 2006.

# **Tajma Motley**

Client of Legal Aid Society of Northeastern New York

Accompanied by Marlene Morales

**TESTIMONY BY**  
**TAJMA MOTLEY**  
**CLIENT OF**  
**THE LEGAL AID SOCIETY OF NORTHEASTERN NEW YORK, ALBANY, NY**

**SUBMITTED TO:**  
**HON. CHIEF JUDGE JONATHAN LIPPMAN**  
**TASK FORCE TO EXPAND ACCESS TO CIVIL LEGAL SERVICES**

**THIRD DEPARTMENT**  
**OCTOBER 6, 2014**  
**NYS COURT OF APPEALS**  
**ALBANY, NEW YORK**

My name is Tajma Motley. I am here today to tell you how the Legal Aid Society of Northeastern New York prevented me from becoming homeless and gave me back my dignity. I am 41 years old, and I have fibromyalgia, diabetes, and back pain. My back pain prevents me from walking or sitting for long periods of time without pain. My health limits me in the types of work that I am able to perform. I can only do clerical-type jobs.

I used to be a secretary at Hudson Park Rehabilitation & Nursing Center. I worked there for two years. I met and greeted the patients, conducted inventory and kept the medical records and doctors' schedules up to date. I really liked my job. I worked with helpful staff that would assist me when I needed to carry heavy inventory. Without their help, I could not have completed some of my assigned tasks. After I lost my job at Hudson Park, I received unemployment benefits until they ran out. Without any income to support myself and pay my rent, I applied for temporary assistance. During my eligibility interview at the Department of Social Services, I told the caseworker about my disability.

I did everything the caseworker at DSS asked. I brought in all the documentation that was requested. I was assigned to the Job Search Program, and told to search for 15 jobs and return the completed job search form in a week. The form says that ten of the employment applications had to be filed in person. After doing job searches while receiving Unemployment Benefits, I knew that employers would not let me apply for the types of jobs I could perform. Nevertheless, I tried applying in person, but was directed to apply online.

I returned the completed form with 17 online job applications. The person who took the job search form did not give me a new job search log or a bus pass to continue the job search. I was only told that I would get a response in the mail.

Later I received a denial notice from the Department of Social Services for failing to comply with the job search assignment. I felt that I had done everything I was supposed to do, but I was still denied benefits. Because of my lack of income, I was not able to pay my rent. I received an eviction notice from my landlord. I was afraid of losing my housing and becoming homeless.

I requested a fair hearing but had no idea what to do to prepare. So I called the Legal Aid for help. Ms. Marlene Morales was my lawyer. She explained the fair hearing process to me.

Marlene also explained the rules that applied to my case. She told me that because I told my caseworker about my medical limitations, she should have asked me to submit proof or send me for a medical examination before assigning me to the job search program.

Marlene represented me at the hearing. We won. My temporary assistance case was opened, and I received retroactive benefits. I was given the opportunity to submit medical documentation about my disabilities and my work limitations. I also received emergency assistance to prevent my eviction.

Even though I did my best to comply with what was asked of me at the Department of Social Services, they did not follow their own rules. I am grateful that Legal Aid helped me get the benefits I needed to stay in my home. Thank you for helping to keep funds going to Legal Aid so that they can help others like me.

# **Dideolu Olufunke Okediran**

Client of The Legal Project

Accompanied by Lorraine Silverman



Testimony by

Dideolu Adegoke

Client of The Legal Project, Albany, NY

Civil Legal Services in New York State

Submitted to:

Hon. Chief Judge Jonathan Lippman

Panel on Civil Legal Services

October 6, 2014

NYS Court of Appeals

Albany, New York

## It Was a Sorry Case

My story may not be new in terms of domestic violence experienced by women around the world, but what I went through was the most horrific encounter of my life.

It all started in 2006 when I married a man that I thought would be my partner, friend and husband. Instead, he turned out to be the devil in human skin. I soon realized that I made the greatest mistake of my life. This man promised me that if I left my family in Nigeria and moved with him to the United States, that I would find employment, using my credentials as a qualified social worker. Trusting the man I loved, I resigned from my job in Nigeria and moved away from everything I knew.

But, as soon as we reached the States, he immediately broke his promise. He never allowed me to work. I soon realized I was in my own hell. He emotionally and physically abused me; his goal was to belittle me and my capabilities, he called me all sorts of derogatory words almost every day and I was blamed for everything. He would always tell me that, here, in the United States, "things are done differently." Everything I did or wanted to do, was not right by him. He regularly showed me that my opinions did not count and I soon realized that all of my self-esteem was gone.

This man controlled and monitored my every move. I had no privacy. He would constantly ask me if I called or talked to my family. If I said yes he wanted to know every detail. If I said no, he would force me to call them so he could pick up the other phone, interfere and take over the whole conversation. His jealousy only worsened as time went on. I was only allowed to call and receive calls on my cell phone from him; all other calls had to wait until I got home.

Things eventually turned physical. He would demand sex on a daily basis – whether or not I wanted it. But, I was too scared to fight back. Instead I would get down on my knees and beg him. I always tried to console myself – I’d say, “Dee, things is going to get better, just continuing to pray as child of God”. But unknown to me, I was only deceiving myself. In time I grew very weary of him, I grew afraid – afraid that while asleep he could hit or even kill me. At times I would relapse and feel horrible, my pride was deeply shaken as was my faith, for which I had to struggle to hold on to it. I was fervent in my prayers to God to release me from the lion’s den because I was so scared. I believed that he could kill me, chop me up, put me in a box and throw me into Hudson River on his way to work. Then, he would lie to people that I walked out of the marriage. But, no matter how bad it got, I couldn’t leave – I was financially unable too. Every time I received money as gift from people he would cunningly take it from me by telling me he was broke. I married a controlling, pathological liar.

Then one night, I finally found the courage to fight back. In March of 2010, he came home from work, and as usual the table was already set for his dinner. While he was eating he demanded sex. After washing the dishes, I went to him the way I always did when he demanded sex– but this time, he demanded that I caress him before the actual thing and I said, “No! Just have me the way you been doing it.” That is when all hell broke loose. He told me to get out of his house. He was literally kicking me out of the door because finally I stood up to him. I told him not to touch me and that I would leave, even though I didn’t know where to go. I had no friends or family to help me. He isolated me from day one. I had no one to turn too. I was only with him and him alone.

So, I picked up my backpack, went out in the cold, crossed the lawn and went to a neighbor’s house, who took me in, and allowed me to spend the night. She was my Guardian

Angel! We both then called the domestic violence hotline that I gave to her, which I cut out of the school bulletin and kept in my wallet. The next day, I was taken to a domestic violence safe house, where I stayed for six months, until I got my own apartment.

I finally realized I needed help getting a divorce. First, I sought help from the domestic violence agency, and then I went to family court, hoping I would get an attorney to help me file for divorce. Instead, I was told to go Supreme Court, where I was given a big packet called NYS unified Court System – Uncontested Divorce Forms and Instructions. When I got home I looked through this packet...it was so overwhelming for me to digest and process, that I broke down and cried for days.

I knew I needed an attorney desperately if I had any chance of getting divorced, but I had no money. In the course of time, I was given a phone number to The Legal Project. I called the number and was immediately set up to meet with Lorraine Silverman, the managing attorney for the Kathryn D. Katz Fellowship Program. That was the beginning of the end of my sorrow to an estranged husband. I went to the office and I met with this beautiful lady who treated me like a queen, she listened to my plight, collected previous court orders from me and told me that she or her law fellows would get back to me. And they did exactly as they promised.

The experience I had with them throughout the divorce process was awesome! They beat my imagination! It was when I went for the second meeting that I met my attorney with her bunch of beautiful, handsome and intelligent fellows who represented me in the divorce case. They came to my rescue when I least expected. Their straightforward tact and sympathetic understanding approach, which was so calm and clear, eased my scares and concerns. I finally realized that this divorce was actually possible. They provided support and excellent advice throughout the filing of the divorce papers. They made the whole process easy by explaining

things in a way simple enough for me to understand. On the day of the divorce I was rallied around by my attorney and her fellows. They kept assuring me that there would be no problem and everything would be fine.

In fact, their display of honesty, dignity, humility and compassion during this trial period has left a deep and lasting impression on me. I truly value their guidance and counsel. I thank them all for being my friend through such a hard and pressing time. I also, give thanks to God that I finally came out of it alive. I would say that I was so lucky to have them as my attorneys and if ever I need an attorney in the future, I will certainly be going back to them. More powers to your elbows!

# **Cinnamin Schmitz**

Client of Legal Aid Society of Mid-New York

Accompanied by Matthew Schreck

Good afternoon,

My name is Cinnamin Schmitz and I'm here today to talk about how the Legal Aid Society of Mid New York helped me to save my home. I live in the home with my husband, 4 children, and my disabled father. I originally bought my home in July 2004, and the only loan type I qualified for was an interest only for the first 5 years at \$698 per month. When the interest only period ended on September 1<sup>st</sup> 2009, my payments increased to \$797 per month, which we did not have a problem with.

About 4 months after this increase, I was informed by my employer that my entire department would be relocating, resulting in me losing my job, and when I contacted American Home Mortgage Servicing Inc., my mortgage servicer, to ask what I could do, they told me there wasn't much I could do until I fell behind on payments. Starting April 1<sup>st</sup>, my mortgage payment was increased to \$1235 per month. This left my family less than \$200 a month to live on after the mortgage payment. Scared and desperate, I filled out the paperwork and tried for a loan modification. Believe it or not, I sent paperwork in to AHMSI a total of 22 times within the following 18 months. Claiming that they never received all the paperwork from me, I had to restart the modification process a total of 3 times, and didn't get any closer to a modification.

In the middle of dealing with a bad job market, 7 people in the household, and having no luck attempting to modify my mortgage, my mortgage servicer changed from AHMSI to Homeward. They said I would need to start the entire modification process again. I had the same struggles with the new servicer. Soon after, I received notice that a foreclosure had been initiated and that the court had scheduled a settlement conference to begin foreclosing procedures on my house. Scared to death that I'd gotten nowhere, I contacted housing counselor Mary Kilmer of Delaware Opportunities who accompanied us to the first settlement conference. The judge's court attorney told us that we needed to have jobs or no one would be willing to work with us and we would not get a modification. Mary Kilmer eventually suggested we contact Legal Aid before we lost our house. I was getting so worried, and not sleeping well. I was actually getting sick and put on depression medication by my doctor.

At the first conference where Legal Aid assisted me in May 2013, the Ocwen's attorney asked that the case to be removed from conferences claiming that I had been evaluated and denied for a modification twice, already had 5 conferences with no resolution, and that the foreclosure should be allowed to proceed. They even brought a deed in lieu of foreclosure paperwork to court, marked with tabs where they wanted us to sign off to agree to hand over our house to them. Legal Aid was not only able to keep the case in conferences, but after about a year of more conferences and discussions with Ocwen, they finally gave us a modification. My attorney at Legal Aid, Matthew Schreck, made repeated requests for information which Ocwen seemed reluctant to give, and he strongly advocated on my behalf in these conferences, demonstrating to the servicer that the information they were basing their case on was

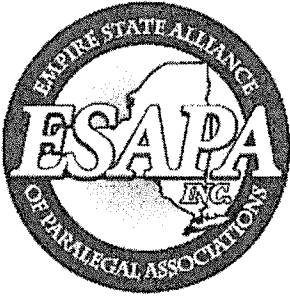
incorrect. I had believed from the start that everyone who had held my mortgage, including and especially Ocwen, was not servicing my loan properly, and with the help of Legal Aid we were able to eventually get Ocwen to acknowledge that their numbers were incorrect and that a modification was in fact affordable for us.

When the modification papers arrived I was very pleased; my monthly payment was reduced by roughly 400 dollars, the interest rate was changed from an adjustable rate to a 4.5 percent fixed rate, and just under \$34,000 was taken off the principal. Because of the help I received from my housing counselor at Delaware Opportunities and from my attorney at Legal Aid, I no longer have to worry about losing my home to foreclosure. My health has improved, I'm off my depression medication, and my life is back on track. I am so very grateful for the assistance I received and hope that other people who find themselves in positions similar to mine can also get the same help I did. Thank you.



# **Deborah J. Wilcox Mabry**

President, Empire State Alliance of Paralegal Associations, Inc.



Empire State Alliance of Paralegal Associations, Inc.  
P.O. Box 14262, Albany, New York 12212-4262  
[www.empirestateparalegals.org](http://www.empirestateparalegals.org)

September 12, 2014

The Honorable Jonathan Lippman  
The Task Force to Expand Access to Civil Legal Services  
c/o Chiansan Ma, Esq.  
Sullivan & Cromwell  
125 Broad Street  
New York, NY 10004-2498

**RE: The Task Force to Expand Access to Civil Services in New York**

Dear Chief Judge Lippman,

The Empire State Alliance of Paralegal Associations, Inc. ("ESAPA") is a non-profit professional paralegal organization founded on January 30, 1988, by five paralegal associations in New York State, which included Long Island, Manhattan, Buffalo, Binghamton and Rochester. The statewide alliance has grown over the years and paralegal associations representing the Adirondack, Syracuse and Albany areas of New York State have since become part of ESAPA.

From the beginning, the founders of ESAPA envisioned a continuously developing and working relationship with local/state bar associations, paralegal associations, paralegal schools, educators and other law-related entities to strengthen the paralegal profession in New York State.

ESAPA has continued its efforts to support continuing legal education and leadership, which are vitally important to its member associations and paralegal members respectively. A combination of education and training resulting in specialized skills has enabled paralegals to perform paraprofessional duties with competence within the legal organizations and communities they serve. Paralegals are employed within various business sectors, public, private law firms, and non-profit organizations to name a few and are heavily relied upon for their expertise.

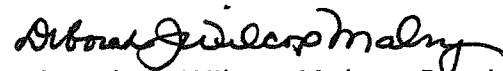
It is with this expertise and discipline that ESAPA continues to strive for excellence to support its member associations. With this said, we learned of the "Task Force to Expand Access to Civil Services in New York" and its goal of bridging the gap to assist with the unmet needs of New York residents. ESAPA offers its support to join you with this cause because paralegals encounter issues every day, for example, providing in-court assistance to litigants in housing court proceedings, coordinating citizenship and immigration clinics, as translators since many paralegals speak foreign languages, and these are just a few of the needs that paralegals from ESAPA member associations have to offer.

We are already performing the work for our employers and participating in pro bono activities within our local associations and with an expansion of resources available that paralegals bring to the table, the "Task Force to Expand Access to Civil Services in New York" could utilize our business acumen and technical skills to help generate funding needs and equally important legal services to New York State residents. Working together, the member associations of ESAPA would have a significant impact with lessening the burden and shortages by providing competent legal professionals to meet a host of challenges outlined in the public hearing notice and also summarized in this letter.

In conclusion, as a result of the creation of your initiative, ESAPA has created its own Mini-Task Force to extend its support for additional pro bono opportunities in New York State. ESAPA is willing, able and ready to assist you now in these efforts. We are upwards 600 paralegals strong!

Please let us know how we might be of service.

Respectfully submitted,



Deborah J. Wilcox Mabry, President

cc via e-mail:

[CivilLegalServices@NYCourts.gov](mailto:CivilLegalServices@NYCourts.gov)

[sgaddis@vlsprochester.org](mailto:sgaddis@vlsprochester.org)

Adirondack Paralegal Association

Capital District Paralegal Association, Inc.

New York City Paralegal Association, Inc.

Onondaga County Bar Association Paralegals Committee

Paralegal Association of Rochester, Inc.

Paralegal Society of Long Island, Inc.

Western New York Paralegal Association, Inc.

**Lillian M. Moy**

Executive Director

Legal Aid Society of Northeastern New York, Inc.



Legal Aid  
Society  
of Northeastern  
New York, Inc.

*Serving Northeastern New York with offices in  
Albany, Amsterdam, Canton, Plattsburgh and Saratoga Springs*

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E. Stewart Jones, Jr.  
*President*

Lillian M. Moy  
*Executive Director*

Peter D. Racette  
*Deputy Director*

Wendy Wahlberg  
*Deputy Director*

Testimony of  
The Legal Aid Society of Northeastern New York  
By Lillian M. Moy

To The

Chief Judge's Task Force to Expand Access to Civil Legal Services



**Main Office:** 55 Colvin Avenue, Albany, New York 12206  
(518) 462-6765 • (800) 462-2922 • Fax (518) 427-8352



This is the testimony of the Legal Aid Society of Northeastern New York (LASNNY), through its Executive Director, Lillian M. Moy. I am privileged to serve as a member of the Chief Judge's Task Force and submit this written testimony to highlight the benefits of the Judiciary Civil Legal Services funding to northeastern New York. LASNNY serves 16 counties in northeastern New York (Albany, Clinton, Columbia, Essex, Franklin, Fulton, Greene, Hamilton, Montgomery, Rensselaer, Saint Lawrence, Saratoga, Schenectady, Schoharie, Warren and Washington) with offices in Albany, Amsterdam, Canton, Plattsburgh and Saratoga Springs. Our service area is a mix of urban, rural and suburban communities, each with its own services challenges.

In fiscal year 2013-14, the Legal Aid Society of Northeastern New York was privileged to receive \$2,062,610. With these funds, LASNNY provided direct legal services to preserve essential legal needs to 9,423 households, benefitting 20,610 people. The cases were in a range, with the majority being housing (2,716 cases or 29%); the next most requested need was family (2,423 cases or 26%). We also provided a broad range of preventative legal advice in housing, consumer, family stability, domestic violence and public benefit matters. Other legal assistance includes community legal education and referrals for about 4,724 people.

A snapshot of our accomplishments includes:

- LASNNY represented a family of five, including four children under age 10, tenants of a small public housing authority. They had received a notice of termination of lease subsequent to issuance of code violations by the local Fire Department for housekeeping issues and subsequent failed inspections. LASNNY represented the clients at the housing authority's administrative/ grievance procedure. We marshalled evidence (documentary, videotape d and oral) in support of factual contest of code violation issues while at the same time made a reasonable accommodation request on behalf of the disabled parent at an administrative hearing and in writing. The housing authority withdrew the notice of termination and the family's housing was stabilized.
- We represented a single mother with a ten year old son in a manufactured home owned by the client. She contacted LASNNY after 3:30 pm on the eve of the physical execution of a warrant of eviction from the mobile home park, arising out of a prior summary proceeding for non-payment. The landlord was about to move/seize the client's manufactured home. LASNNY filed an emergency motion to stay/vacate the warrant of eviction after meeting with our client and developing factual and legal arguments in support of the motion. The motion was granted at 7 pm that evening by a local town court justice who set the hearing days later. Thereafter LASNNY negotiated a settlement with the landlord's attorney and presented the settlement to the court. Our client was not evicted, and had time to arrange the transport of her mobile home to a new lot. Our client's mobile home was safeguarded and her housing was stabilized.

- We represented a victim of domestic violence from Guyana, who was granted a VAWA self-petition in September 2013. USCIS had originally issued a Notice of Intent to Deny the Application for fraud she committed over ten years ago under pressure by her abusive husband. We submitted a detailed legal brief arguing against their findings and the petition was approved. Our client had gone through many years of physical and verbal abuse. She is currently caring for their two US citizen daughters on her own. The client finally decided to report the abuse to the police, and we are exploring a U-Visa application for her as well. The application will be partially based on her cooperation with the police investigation.
- We represented a mother of two middle school aged children. She and the children became homeless last year due to domestic violence. Fortunately, the client's mother was able to temporarily house the children. However, the grandmother lived outside of the children's school district. Transportation was a challenge and the children were regularly absent during the upheaval. The school reported our client to CPS and when the principal learned where the children were living, he told the grandmother that they would not be able to continue at the school. The client called Legal Aid to see if we could help her maintain a stable educational placement for her children, in spite of their homelessness. LASNNY demanded that the children be allowed back into their original school. LASNNY met with the principal and counsel for the district which resulted in the immediate re-enrollment of the children in their original school, transportation to and from the temporary home, enrollment in the breakfast/lunch program and after hours academic support to get them caught up.
- LASNNY represented a victim of domestic violence obtaining a divorce from an abusive husband. The client's husband constantly called her derogatory names and treated her in a degrading manner. The client reported that her husband would go into rages and destroy their property. The client suffered from anxiety attacks and eventually required hospitalization. The divorce severed the unhealthy marital relationship and allowed the client to move forward.
- LASNNY represented a client with a Section 8 voucher. A retaliatory eviction was brought against her after she had National Grid conduct an inspection of the furnace that heated her apartment. The conclusion of the inspection was that the furnace was emitting dangerous levels of carbon monoxide, which resulted in the furnace being red-tagged. Once LASNNY got involved, the Court forced the landlord to accept the rent the client had been attempting to tender and dismissed the petition. After a second retaliatory eviction was filed, our client decided to move. The LASNNY attorney ensured that her Section 8 voucher would be intact and she recently moved into new Section 8 housing.
- LASNNY represented a single mother with a teenage son and six year old granddaughter in her household. She was being evicted for holding over when she received a termination notice following the local code enforcement's discovery that her apartment lacked a certificate of occupancy. After determining that the landlord had accepted rent twice after the notice of termination date and before commencing a summary proceeding for holdover, we prepared a motion to dismiss. As a result of negotiations with the landlord's counsel, the eviction case was settled to allow the client's tenancy to continue long enough to locate adequate alternative permanent housing. The client maintained her Section 8 voucher and she is now resettled into new housing. We also helped the client obtain a refund of almost all of her security deposit.

At the October 6, 2014 hearing, Tajma Motley, a Legal Aid client, testified about LASNNY's representation in our public assistance case.

JCLS funds will be used to support and expand our Private Attorney Involvement (PAI) Program, helping us to leverage pro bono services to help clients meet their essential legal needs. For example, JCLS funds now support our Attorney For The Day program in Albany City Court. Pro bono volunteers represent tenants on their first appearance. We will also support increased pro bono through law students and other initiatives. LASNNY is a subrecipient to the Legal Assistance of Western New York in its Pro Bono Innovations grant. We will help implement a statewide pro bono practice to recruit more law students and attorneys emeritus to provide pro bono services to LASNNY clients.

With additional funding in Fiscal year 2014-15, we will continue to expand our attorney staff throughout the program. This includes two of our most rural offices, Plattsburgh and Amsterdam. We will also provide increased public assistance representation, and other representation to meet our client's essential needs.

It's important to know that when LASNNY uses JCLS funds to meet a client's essential legal needs, it is often able to address more than one legal need. Low income people so often have multiple legal problems. LASNNY is also a member of the NY consortium. LASNNY staff use LawHelpNY regularly to enhance referrals and provide clients with legal information. We believe LawHelpNY is an integral part of the delivery system throughout the state.

In addition to the direct benefits of the JCLS grant, the work of the Task Force is helpful to legal services providers in the Third Department and throughout New York. Task Force hearings and the Task Force Report itself highlight the human, legal and economic benefit of civil legal services. The Task Force has involved local business leaders as well as judges from every corner of our large Department. Understanding the impact that a huge volume of pro se litigants have on the operation of a court has been crucial to building support for funding for civil legal services through the Judiciary budget.



In the Third Department, we have also been able to tell the story of partnerships between legal services providers and agencies that serve the elderly, veterans, victims of domestic violence or sexual assault. Highlighting the broad range of support that civil legal services providers enjoy is essential to supporting the efforts of civil legal services providers.

If I can provide you with any additional information, please do not hesitate to contact me.

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# **Karen L. Murtagh**

Executive Director, Prisoners' Legal Services of New York

**PROPOSED TESTIMONY OF  
PRISONERS' LEGAL SERVICES OF NEW YORK  
BEFORE  
THE CHIEF JUDGE'S HEARINGS  
ON CIVIL LEGAL SERVICES**

**Presented by:  
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## INTRODUCTION

I would first like to thank Judge Lippman and the members of the Task Force for once again holding public hearings to evaluate the continuing unmet civil legal services needs throughout New York State and to assess the level of resources necessary to meet those needs.

I would also like to share the fact that just this past week, on September 11, 2014, the New York State Bar Association's Committee on Legal Aid presented Prisoners' Legal Services of New York with the 2014 Denison Ray Nonprofit Organization Award. The Award is named in memory of career legal activist Denison (Denny) Ray, who led legal services' programs in New York and other states. The Nonprofit Organization Award recognizes extraordinary commitment to

- Strengthening access to justice initiatives;
- Delivering or facilitating the provision of civil legal services to low income and/or disadvantaged clients;
- Increasing the provision of pro bono services; and/or
- Marshaling resources to maximize services to the community

In accepting the award, I shared with the audience, most of whom were civil legal services attorneys, what I have shared in testimony presented in these hearings in the past: that PLS' clients, just like other civil legal services clients, face significant legal problems associated with what is now referred to as the "essentials of life", such as issues surrounding living conditions, family stability, personal safety and access to health care and education.

To highlight this fact, I also shared with the audience quotes from an interview Denny Ray gave to *The Defender Magazine* in October 1985. During that interview, he was asked about the benefits of full-service agencies working on behalf of the needs of the poor. Denny's comments captured my thoughts on the connectivity of the work of all civil legal services agencies and were eloquent and concise. As such, I shared with the attendees three quotes from Denny's interview that have not only withstood the test of time, but also demonstrate the keen insight, commitment and forethought Denny had regarding what needed and still needs to be done to strengthen access to justice for the poor. I share them here to reiterate the point that we are all in this fight together and that, failing to address the needs of all those who are poor and in need, including those who are in prison, is a failure of our justice system.

Denny: "It would seem that if at a minimum we merged criminal and civil legal services, there would be a louder and more effective voice for the poor community. Now, when a person gets

arrested on an alleged crime, the public defender winds up providing the representation. Then the person goes to jail and Prisoners' Legal Services deals with conditions of confinement. Meanwhile, their families start suffering from problems with public assistance, housing, consumer needs and a host of other things. The Legal Aid Society then deals with that part of it. But it seems that 'never shall the twain meet.' If these organizations got together to take a look at familial problems and the legal system which is impacting in several ways on that family, they would find that together they could accomplish a lot."

Denny went on to say: "Today, my civil clients are victims of the society they live in, just as were my clients 20 years ago in the Deep South. But unlike the 1960's Civil Rights Movement, there is no movement today to change society in order to eliminate the inherent discrimination and unfairness that holds down people who are poor. And so long as there is the grinding toll taken by poverty on the lives of its victims, some of those people will commit crimes."

There are currently approximately 54,000 incarcerated persons of whom 96% are male.<sup>1</sup> Approximately half of the prison population is African-American; just under a quarter is Hispanic; and another quarter is White. About half (46%) come from the New York City area; 11% come from suburban New York and 42% come from Upstate New York. Ninety percent (90%) of those under custody were born in the United States. Their ages range from 16 to 89. Fifty-nine percent (59%) have children; 4.5% are veterans; and forty-two percent (42%) do not have high school diplomas. Twenty eight percent (28%) of incarcerated individuals read below the 9<sup>th</sup> grade level and 16% of those cannot read at a 5<sup>th</sup> grade level. Twenty-five percent (25%) of the prison population is Spanish language dominant. The Department of Corrections and Community Supervision (DOCCS) and the Office of Mental Health (OMH) have identified over 15% of the prison population as suffering from some form of mental illness, although many other reliable sources put the number as high as 30%.

These statistics are relevant because they demonstrate that people behind prison bars in New York State are a mirror image of the poor and the working poor in our communities, all of whom rely on the assistance of civil legal services to deal with the 'essentials of life' obstacles they face. They are members of our minority communities who were born into and suffer from the effects of growing up in poverty. Many did not have supportive families and did poorly in school. They range in age

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<sup>1</sup> State of New York Department of Corrections and Community Supervision, *Under Custody Report: Profile of Inmate Population Under Custody on January 1, 2013* available at: [http://www.doccs.ny.gov/Research/Reports/2013/UnderCustody\\_Report\\_2013.pdf](http://www.doccs.ny.gov/Research/Reports/2013/UnderCustody_Report_2013.pdf)

from the very young to the very old and many of them are parents and grandparents. Some suffer from mental illness, others from traumatic brain injuries and others from other serious medical issues. Many have drug or alcohol addictions and many were subjected to long-term abuse and neglect as children.

For those who couldn't overcome growing up in poverty or who were handicapped by their mental or medical illnesses or addictions, prison was a likely outcome. Such conditions do not, in any way, excuse prisoners from accountability for their poor judgments and actions, but prisoners pay the debt owed society for those judgments and actions by losing their liberty for the length of their sentences. Further punishment, through the denial of equal access to justice, inevitably threatens both public safety within and outside of prison walls and successful reintegration. The vast majority of prisoners will someday return to their communities of origin. Whether they are successful in re-entering society often depends on the measure of justice and fairness they receive while behind bars.

As Denny so prophetically stated: "As a nation, we are very stupid to allow poverty to exist, for the ultimate consequences infect us all – we are deprived of the contributions poor people could make but for their constant need to struggle for survival, and we lose our own lives and property to acts of crime committed by persons for whom we offer no other hope. To come full circle in this conversation, if the rest of society won't look at the nexus between the victimization of poor people and criminal conduct, at least we who practice poverty law, civil and criminal, should do so."

## **I. THE CURRENT STATE AND SCOPE OF THE UNMET NEED FOR CIVIL LEGAL SERVICES FOR LOW INCOME INCARCERATED NEW YORKERS CONFRONTING LEGAL PROBLEMS INVOLVING "ESSENTIALS OF LIFE" ISSUES**

On October 24, 2014, Prisoners' Legal Services of New York (PLS) will be celebrating its 40<sup>th</sup> anniversary of providing critical civil legal services to incarcerated New Yorkers. As most of you know, it all started with Attica. The 1971 Attica uprising happened because incarcerated New Yorkers had no way to air their grievances and no access to legal counsel. In response, then-Appellate Division, Third Department, Presiding Justice J. Clarence Herlihy called for the implementation of a prison grievance process and access to legal representation for prisoners to allow them to present their claims in court. In turn, in 1974, Albany Law School created the first clinic in its history: Prisoners' Legal Services.

Although not incorporated as a statewide non-profit until 1976, the concept of a statewide PLS began to take root even before the 1974 opening of the PLS clinic at Albany Law School. In late 1973, the New York State Bar Criminal Justice Section created, and asked now retired Judge Phylis Skloot Bamberger to chair, a new committee to consider, among other things, civil representation of indigent prisoners. In 1974, after months of research and investigation, Judge Bamberger's committee issued an in-depth Draft Proposal for the Provision of Legal Services to Indigent Inmates in New York State Correctional Facilities.

The proposal first discussed the constitutional mandate of providing prisoners with access to the courts and then analyzed the difficulty in providing such access. It engaged in an exhaustive review of the existing legal services, including an in-depth description of the various law clinics, legal aid and public defender programs, local bar associations, law libraries and prison law clerks available to prisoners at the time. Judge Bamberger's committee found that, even with all of the existing legal services available to prisoners, "inmates in New York [were] not being given the legal assistance necessary to make their right of access to the courts a reality." In light of this, the committee proposed "a comprehensive systematic program . . . . initiated at the state level" to provide prisoners access to the courts.

The proposal noted that there were approximately 13,100 New Yorkers incarcerated in 12 facilities across the state. The committee concluded that, in light of the inmate population, location of the institutions, and the work-load, there should be three Regional Offices staffed, at a minimum, by a total of 67 staff. The committee proposed that the staff should include a Project Director, Assistant Director, Research Attorney, 3 Regional Directors, 20 staff attorneys, 18 paralegals, 18 support staff, three investigators and one bookkeeper.

In response, in 1976, Governor Hugh Carey included \$1,000,000 in his Executive Budget for the funding of Prisoners' Legal Services of New York and PLS began operating as a statewide organization providing critical civil legal services to incarcerated New Yorkers.

Today, New York's prison population is approximately 54,000 and PLS has a total staff of 23 – 15 of whom are lawyers. Comparing PLS' current staffing (one case handler for every 3,600 prisoners) to the staffing proposed by Judge Bamberger's committee 40 years ago (one case handler for every 344 prisoners), it goes without saying that PLS is drastically understaffed. Today, PLS receives total state funding of \$2,260,000. The funding Governor Carey provided to PLS in 1976

would be equivalent to \$4,187,000 today.<sup>2</sup> In other words, PLS is funded at about 53% of what it was in 1976. Accounting for the quadruple increase in both prisons and the prison population, an operating budget for PLS in today's dollars that would be comparable to the funding provided by Governor Carey would be over \$16 million. Thus, everything being equal, PLS is currently funded at approximately 13% of its 1976 funding. As such, the current state and scope of the unmet need for low-and-no income incarcerated New Yorkers confronting legal problems that are at the very heart of "essentials of life" is dire.

In 2013, we received 8,658 requests for assistance. Approximately 1,245 of those requests were from prisoners who were being held in solitary confinement as a result of disciplinary hearings. Of those, we were forced to turn away 82% due to insufficient resources. The same is true regarding the 739 people who wrote to us with serious complaints about their medical and mental health care; we were forced to turn away 85% of those cases. We rejected 80% of the jail time and sentencing cases that came in due to lack of staff, and tragically, we were only able to accept 18% of the 657 cases where individuals claimed they were beaten by corrections officers.<sup>3</sup>

The November 2013 Report to the Chief Judge of the State of New York by the Task Force to Expand Access to Civil Legal Services in New York noted that "the assistance of a lawyer can profoundly change the lives of low-income New Yorkers. Indeed, the examples below are proof of this:

A.D. received two misbehavior reports charging him with threats of violence, harassment and contraband. At his hearing, he denied the charges and claimed that he was being retaliated against due to his recent release from administrative segregation. At the conclusion of his hearing A.D. was found guilty and received **36 months solitary confinement**, loss of privileges and recommended loss of Good Time. After an unsuccessful administrative appeal, PLS filed an Article 78. After presenting oral argument, the Judge reversed and expunged the hearing and ordered A.D. immediately released from solitary confinement.

A.K. had a 5" by 3" open wound on his right calf that was draining. A.K. was not getting medical treatment and was making his own dressings for the wound. PLS contacted the Counsel's office within the Department of Corrections and Community Supervision (DOCCS) and advocated on A.K.'s behalf. Soon after, we received a call from DOCCS Counsel's Office that DOCCS' medical staff were examining A.K. PLS later learned that A.K. was taken to the wound care clinic where his leg was

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<sup>2</sup>[http://www.bls.gov/data/inflation\\_calculator.htm](http://www.bls.gov/data/inflation_calculator.htm)

<sup>3</sup>While we respond to all requests for assistance and send self help materials and instructional memos where appropriate, these statistics document the number of requests for assistance which we were unable to accept for investigation and representation.



treated and he had recovered.

D.B. has refractory epilepsy and suffers from numerous, uncontrolled, grand mal and complex partial seizures and requested reasonable accommodations for his epilepsy, but DOCCS denied his requests. D.B. received four tickets and was placed in solitary confinement for approximately three months when his seizures were uncontrolled by medication. D.B. was also advised that he was medically/psychiatrically prohibited from participating in all programs while in prison, but was subsequently told by correction staff that his good time would be taken away from him because he had not completed Tier III recommended programming. PLS sent an advocacy letter arguing that D.B.'s Tier III tickets were the result of DOCCS' mishandling of his epileptic seizures and that although he was recently told that he needed to take programs, he was previously told he was medically prohibited from doing so. He received a positive decision from the Time Allowance Committee which granted all of his good time and he was released on January 4, 2014.

J.M. was charged with drug use based on a positive urinalysis. At his hearing he pled guilty, but argued that he is a drug addict and is working on recovery through his participation in ASAT. J.M. was found guilty and given 18 months keeplock and 18 months loss of all visitations. J.M. wrote to PLS arguing that contact with his family, including his 8 year old daughter, is the one thing that helps to keep him sane and grounded. In response to PLS' administrative appeal arguing that the penalty was excessive, 12 months of visitation time and out of cell time was restored.

The examples are endless. The assistance of PLS lawyers in the above cases not only ensured that justice was done, but it forever changed the lives of each client. The work of PLS lawyers gives the clients we are able to serve a sense that our justice system is actually just.

This insight is no more evident than for clients who, but for PLS' representation, would have been held in prison for longer than they were sentenced. In 2013, PLS' representation on good time, jail time, sentencing time and parole jail time cases resulted in over 65 years being credited to prisoners' sentences.

The November 2013 Report to the Chief Judge of the State of New York by the Task Force to Expand Access to Civil Legal Services in New York also quoted Chief Judge Lippman's remarks at the 2013 civil legal services hearings at the Appellate Division, Fourth Department on October 23, 2013:

All of this is to promote access to justice. Access to justice is so critical to what we do. Everyone deserves their day in court. That is what this is all about, and every society is judged by how it treats its most vulnerable citizens, and we should be judged by that, and that is why it is so important that we all work with all of our energy to close this justice gap.

Indeed, “everyone” deserves their day in court, including incarcerated New Yorkers. As such, either incarcerated New Yorkers should be included in the group of people who are the beneficiaries of civil legal services funding, or monies proportionally equivalent to what is being set aside for civil legal services funding should be set aside for the provision of civil legal services to incarcerated New Yorkers. At the very least, the civil legal services needs of prisoners should be given the same weight and consideration as the civil legal services needs of all other New Yorkers.

## **II. THE IMPACT OF JUDICIARY CIVIL LEGAL SERVICES FUNDING OF \$12.5 MILLION IN 2011-2012, \$25 MILLION IN 2012-2013, \$40 MILLION IN 2013-2014 and \$55 MILLION IN 2014-2015**

For PLS, the impact of the Judiciary Civil Legal Services Funding of \$12.5 million in 2011 resulted in PLS receiving \$48,000. With these funds, PLS hired a full-time staff attorney in our Albany office who responded to over 328 requests for assistance and successfully advocated on many other cases. She also filed two Article 78 petitions challenging the placement of two of her clients in long-term solitary confinement, prevailing on both.

In 2012, with Judiciary Civil Legal Services Funding of \$25 million, PLS was awarded \$60,000, with a restriction that PLS use the money on issues associated with child custody and visitation. As a result, we expanded our case acceptance guidelines to include prison disciplinary cases that involved suspension or termination of visitation and child custody and visitation and support cases. We also updated and revised three family law-related memoranda: *Suspension of Visitation*; *Child Visitation*; and *Child Support Modifications* and created a packet of materials for PLS staff to use in handling child support modification cases.

For most offenders, huge child support arrears raise significant barriers to successful reintegration. Ex-offenders who are lucky enough to get a job often find that most of their small paychecks go to pay child support; as a result, they are unable to survive on what little is left, and often return to a life of crime.<sup>4</sup> Thus, having the ability to seek a modification of a child support

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<sup>4</sup>New York State Bar Association, Report and Recommendations of the Special Committee on Collateral Consequences of Criminal Convictions, *Reentry and Reintegration; The Road to Public Safety*, May 2006. See also: Susan C. Antos & McGregor Smyth, *Public Benefits and Child Support Arrears*, New York University Review of Law and Social Change, New York State Judicial Institute 2006, available at: <http://www.bronxdefenders.org/wp-content/uploads/2013/05/PUBLIC-BENEFITS-AND-CHILD-SUPPORT-ARREARS.pdf>; Miriam J. Auckerman, *Barriers to Reentry: Legal Strategies to Reduce Recidivism and Promote the Success of Ex-Offenders*, Michigan Criminal Law Annual Journal, 2003 available at: [http://www.capwayne.org/2006/handouts/2006-09-15\\_05\\_barriers.pdf](http://www.capwayne.org/2006/handouts/2006-09-15_05_barriers.pdf); Administration for Children and Families, U.S. Dept. of Health and Human Services, *Project to*

order is essential to successful reentry. The PLS Child Support Modification Packet consists of everything necessary to prepare draft petitions and related papers to provide to our clients who want to seek suspension of their child support obligations due to their incarceration.

We also began publishing a newsletter specifically targeted to female prisoners entitled “Essentials of Life.” The newsletter addresses a myriad of issues including those associated with child visitation, child custody, maintaining contact with children and avoiding or, at the very least responding to, termination of parental rights actions. We also included articles on termination of parental rights, modification of visitation orders and modification of child support orders in our bi-monthly *Pro Se* Newsletter that we send, free of charge, to over 8500 prisoners.

Finally, we continued to expand our *pro bono* efforts to seek counsel to handle support and visitation related cases.

The \$60,000 awarded in 2012 - 2013 was renewed for fiscal year 2013-2104 with the same requirement that the money be used for child custody and visitation work. As such, PLS continued prioritizing prison disciplinary cases involving suspension or termination of visitation, child custody, and support cases.

PLS also continued to host a prison hotline at Albion Correctional Facility. Using the hotline, women at Albion C.F. speak with attorneys in the PLS Ithaca Office. The women seek assistance with a variety of legal problems including: visitation and custody; disciplinary; jail time credit; sentencing issues; parole; medical and mental health care; protective custody; and problems with using the grievance system.

PLS published two additional volumes of “Essentials of Life.” Each volume covered a number of family related issues, including domestic violence causes and consequences and rights under the Adoption and Safe Families Act (ASFA). In our bi-monthly *Pro Se* Newsletter that is sent to over 8000 prisoners, we also reported on the case of *Matter of Brown v. Terwilliger*, 968 N.Y.S.2d 779 (4<sup>th</sup> Dep’t 2013) in which the court upheld the lower court’s determination that denied the petitioner’s visitation petition but ordered that petitioner be allowed to communicate in writing with two of his three children.

PLS also held our annual Pro Bono Event on October 20-26, 2013. The event, entitled *Bookends: The Effects of Incarceration on Children and the Elderly*, had actors who performed a

selection of the over 170 stories, poems or artwork submissions we received from incarcerated individuals. This community educational and awareness event, open to the public, was held at the Capital Repertory Theater in Albany, NY on October 21, 2013. In addition, PLS held its annual Statewide Training meeting in Saratoga Springs, New York from Nov. 6 – 8, 2013, during which we hosted a panel discussion entitled: WHERE HAVE ALL THE PARENTS GONE? *The Effects of Incarceration on Parents and Children*. Finally, we continue expanding our *pro bono* efforts to seek counsel to handle support and visitation related cases.

### **III. ECONOMIC AND SOCIAL CONSEQUENCES OF INSUFFICIENT CIVIL LEGAL SERVICES IN OUR PRISONS AND FOR THE COURTS**

PLS was created with the stated goal of providing civil legal services to prisoners to help them peacefully air and resolve their grievances and to provide them with access to the courts to vindicate their civil rights. The grievances that brought about the 1971 Attica uprising (and the creation of PLS) continue to plague our prisons: denial of visitation with family members; placement in solitary confinement on little or no evidence; denial of medical and mental health care; refusal to allow prisoners to practice their religion; excessive use of force; and errors in calculating one's jail/sentence time.

Failing to provide adequate funding for civil legal services for incarcerated New Yorkers will, and has had, disastrous economic and social consequences. First, the State has a legal responsibility to provide meaningful access to the courts for inmates confined in state prisons [*Bounds v. Smith*, 430 U.S. 817 (1977)] and PLS is the only statewide legal services organization with the expertise and capacity to fulfill the legal mandate of providing prisoners access to the courts. Setting aside the moral and ethical obligations we have as attorneys to ensure access to justice for all clients, failure to fulfill the Supreme Court mandate of providing meaningful access to the courts for incarcerated individuals could result in massive financial liability on the part of the State.

In addition, the economic facts are that PLS saves the State millions of dollars every year by correcting jail time and sentencing errors, successfully seeking restoration of good time and reducing solitary confinement time. The average annual cost of housing a prison is \$60,076<sup>5</sup>. In 2013, with an operating budget of \$2.2 million, PLS saved NYS over \$6 million by correcting over 64 years of jail time, sentencing and good time errors, and reducing solitary confinement time by 89 years!

More importantly, however, is the fact that PLS, by its very existence, has helped to prevent another Attica. The cost of another Attica would be astronomical, not just in dollars, but in lives and in the threat to the future stability of our criminal justice system.

Thus, the economic and social consequences of insufficient civil legal services funding for incarcerated New Yorkers cannot be overstated.

#### **IV. COST AND BENEFIT TO THE COURTS AND COMMUNITIES FOR THE PROVISION OF CIVIL LEGAL SERVICES IN MATTERS INVOLVING ‘ESSENTIALS OF LIFE’ FOR PRISONERS**

By engaging in extensive education efforts, PLS prevents hundreds of unnecessary lawsuits annually. PLS authors over 75 form memos on various areas of the law and we provide those memos to thousands of prisoners every year. Our bi-monthly newsletter, *Pro Se*, is sent to over 8000 prisoners every quarter advising prisoners of changes in the law, providing practice pieces to assist them in complying with statutory and regulatory requirements, and explaining technical aspects of various laws that affect them. When issues arise that prisoners do not understand or have questions about, we explain the law to them and answer their questions. Through our *Pro Se* newsletter, Facebook page and website, PLS educates, not only prisoners, but their families and society at large on the constitutional and regulatory rights of prisoners, our criminal justice system in general, prison conditions and reentry resources.

PLS, by answering over 8000 requests for assistance from prisoners annually, has discouraged, and often prevented, the filing of thousands of lawsuits that would have otherwise been a costly burden to DOCCS, OMH, the Judiciary and the State Attorney General’s Office. In addition, when PLS accepts a case, the courts benefit significantly from having experienced legal counsel steering the litigation and negotiating settlements.

PLS’ work in the area of solitary confinement results in tremendous benefits to the community in terms of public safety. Although there is no national recidivism data on people who are released directly from solitary confinement to the community, a recent Washington State study found that people who were released *directly* from segregation had a much higher rate of recidivism than individuals who spent some time in the normal prison setting before returning to the

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<sup>5</sup> <http://www.vera.org/files/price-of-prisons-new-york-fact-sheet.pdf>

community: 64 percent compared with 41 percent.<sup>6</sup> When over 2000 New York prisoners are released directly into our communities from solitary confinement annually,<sup>7</sup> the projected 23% increase in recidivism for this population raises significant public safety issues.

Because of PLS' work, many prisoners receive the mental health care, medical care, programming and education they need to succeed in life once they are released. Through our work, prisoners learn that society will not tolerate unjust treatment of its people. Our work instills in prisoners the sense that the criminal justice system is fair and just. Thus, when they are released from prison, our clients are much more likely to successfully adjust to life outside the prison walls and become law-abiding productive members of society, thus benefiting our communities at large.

**V. POTENTIAL FOR REDUCTION IN UNMET NEED THROUGH PREVENTION AND EARLY INTERVENTION, EXPANSION OF AVAILABLE PRO BONO LEGAL SERVICES BY PRIVATE ATTORNEYS, LAW SCHOOL AND LAW STUDENT INVOLVEMENT, AND PROGRAMS THAT ASSIST LAW STUDENTS IN FULFILLING THE 50 HOUR PRO BONO REQUIREMENT.**

**A. Prevention and Early Intervention**

By working with and for prisoners prior to their release, PLS helps prepare incarcerated New Yorkers for successful release into society, thus reducing the “essentials of life” issues that they would typically face upon release. By representing clients on issues associated with their medical and mental health needs, advocating for vocational and educational programming and promoting the continuity of healthy family relationships, PLS greatly reduces our clients' need for civil legal services upon release. By engaging in client education via educational form memos, our bi-monthly newsletter, *Pro Se*, and our “*Essentials of Life*” newsletter, prisoners learn how to resolve issues peacefully while in prison and access mental health care, housing, jobs, etc. upon release – again reducing their need for civil legal services.

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<sup>6</sup> David Lovell & Clark Johnson, *Felony and Violent Recidivism Among Supermax Prison Inmates in Washington State: A Pilot Study*, available at: <http://www.son.washington.edu/faculty/fac-page-files/Lovell-SupermaxRecidivism-4-19-04.pdf>

<sup>7</sup> New York Civil Liberties Union, “*Boxed In – The True Cost of Extreme Isolation in New York’s Prisons*” p. 8. (Oct. 3, 2012) available at: <http://www.nyclu.org/publications/report-boxed-true-cost-of-extreme-isolation-new-yorks-prisons-2012>

**B. Expansion of Pro Bono Legal Services Through Private Attorneys, Law School and Law Student Involvement and Programs That Assist Law Students in Fulfilling the 50 Hour Pro Bono Requirement**

Created in 2011, PLS' Pro Bono Partnership Program (PBPP) is a unique program that provides *pro bono* referrals for individual civil cases involving New York State prisoners. The PBPP works to educate the private bar and community-at-large about the need for civil legal services, as well as the conditions found in our state's correctional facilities. . The PBPP has also received *pro bono* CLE accreditation, which allows PLS to grant CLE credit to attorneys for the *pro bono* work that they do.

Volunteer attorneys have the opportunity to work on cases involving challenges to prison disciplinary hearings that result in the imposition of solitary confinement; excessive use of force claims where prisoners received serious injuries; jail time, parole jail time, merit time and sentencing cases; cases involving access to medical and/or mental health care; First Amendment cases; and cases involving prisoner reentry issues. Prior to any referral, PLS staff review and assess each case, request necessary documents and conduct relevant research. At the conclusion of each case, attorneys and clients are provided with evaluation forms so the program's efficacy can be reviewed and improved.

Attorneys can also volunteer to supervise students translating letters, form memos and other legal documents for Spanish speaking incarcerated New Yorkers. To encourage participation in the translation project, PLS has sought and received accreditation to provide CLE *pro bono* credits for attorneys supervising students doing the translation work.

The PBPP coordinates training, recruitment and support for volunteer attorneys who are eligible to receive CLE credit for trainings provided by PLS, as well as for the time spent working on their *pro bono* case.

Since its inception, the PBPP has recruited over 70 individuals and firms and over two dozen prisoners have had legal representation they otherwise would not have had. Since October 1, 2013, PLS' PBPP has provided over 3300 hours of volunteer services, worth over \$300,000. These hours were provided by volunteer attorneys, community members and law students (the latter through *pro bono*, field placements and work study). In the last year, the PBPP reviewed more than 100 cases; 20 attorneys worked on *pro bono* referrals and several others have conducted legal research in response

to inquiries from incarcerated persons; and PLS itself had the support of more than 20 student volunteers.

PLS also partners with various law schools to leverage resources, thereby increasing the number of incarcerated New Yorkers we can assist. Currently, we are partnering with the City University of New York Law School (CUNY), the Syracuse Disability Law Clinic, Albany Law School's Pro Bono Program, Cornell Law School and Columbia University's Prison Clinic.

The PBPP also recruits and trains law students to volunteer with PLS. Students have researched legal issues, drafted proposals and memoranda, and assisted in the preparation of materials for the PBPP and translated client correspondence from English to Spanish. We also have students who transcribe prison disciplinary hearing tapes for PLS attorneys who are considering challenging a disciplinary sanction. Finally, additional students are involved with our partnership with the Albany County Supreme Court, whereby they review Article 78 petitions filed *pro se* by prisoners and, if determined by PLS to be appropriate, are sent to the Pro Bono Partnership Program for referral to outside counsel. In the first year of the PBPP (2011-2012), students contributed over 400 hours of *pro bono* service; in 2012-2013, students contributed over 1700 *pro bono* hours; in 2013-2014, students contributed over 2200 *pro bono* hours.

One of our most exciting projects is an immigration project that, thanks to a generous grant from the New York Bar Foundation, began in July 2013 and involves collaboration with Albany Law School, an attorney with immigration expertise, (Joanne Macri), Hon. Robert Weisel, Assistant Chief Immigration Judge and Hon. Roger Sagerman, (Immigration Judge at Ulster Correctional Facility). This project provides much needed representation to immigrants in the custody of the DOCCS who are facing removal proceedings and also affords law students hands-on trial experience in immigration court.

Many of the thousands of noncitizens facing removal and expulsion from the United States and permanent separation from their U.S. families because of current immigration laws are incarcerated in New York's prisons. For those incarcerated immigrants who face removal proceedings, many may be eligible for, but are unable to access, avenues that will allow them to seek relief from removal or, if ordered deported, early parole for deportation only.

In an effort to minimize what can be harsh and disproportionate immigration consequences for the unrepresented, PLS, together with Albany Law School, has created an opportunity for a



second or third year law student to apply for a field placement position that allows the law student to engage in direct, supervised legal representation of immigrants facing removal proceedings while incarcerated within DOCCS. Second Circuit Chief Judge Robert Katzman has indicated his full support of the program together with all of those listed above.

As of September 1, 2014, our Immigration Partnership Project had reviewed 20 cases involving challenges to deportation. Of those, PLS' Immigration Attorney represented three individuals in immigration proceedings and provided direct assistance to another 10. An example of one of the cases is set forth below:

Our client had been living in the United States for over seven years and was an upstanding member of his community, working hard, paying his taxes, and caring for his family. However, he made one mistake and was subsequently arrested for possession of a controlled substance. Because of this, our client was facing deportation.

Our client has four children, two of whom are minors, and three of whom are United States citizens. It became clear from talking to our client's family, that he was an excellent father, with 'family' being his number one priority.

Our client's 5-year old son began suffering panic attacks and anxiety after his father's arrest, and asked his mother every day when his father would be coming home. Our client's 17 year old son is severely disabled, with autism and cerebral palsy. This child greatly depended on his father and would have been irreparably harmed by his removal. Our client's adult daughter, who had recently given birth to our client's first grandchild, called her father "the glue that holds his family together", and as we got to know him and his family, we found this to be very true.

Although they live in Florida, the majority of our client's family was in attendance at the removal hearing, some appearing as witnesses. During the trial, the Albany Law School student assigned to the case handled the direct and re-direct examination of our client's adult daughter, one of our key witnesses. At the end of the trial, the Judge granted cancellation of removal, agreeing that our client needed to be reunited with his family. After the trial was over, the Judge allowed our law student to approach the bench, and gave her meaningful feedback on her performance during the trial, complementing her on her professionalism and preparedness.

The experience was invaluable for PLS, our law student, and our client. We were thrilled to have such a positive outcome for our first case and hope to continue to be able to have such a profound impact on the lives of the clients with whom we work.

In the fall of 2014, three law students began volunteering with PLS' Immigration Initiative, and steps are in place to begin recruiting immigration attorneys to the Pro Bono Partnership Program,

ensuring that non-citizens in state correctional facilities receive representation.

## **CONCLUSION**

Noting the urgency of the need to address this justice gap, Manhattan District Attorney Cyrus R. Vance, Jr. eloquently stated: “Our greatest asset in our efforts to build safe and stable communities is respect for law. Where the law does not engender respect, no level of police staffing can provide security, no prosecutor or Judge can bring civility to our streets. When people feel disenfranchised from the justice system – when their rights are being trampled, when they are being taken advantage of and victimized, and they have no recourse to the courts to right – their wrongs – then the law itself is diminished.”<sup>8</sup>

The justice gap does not end at the prison wall. No matter how high or thick we build those walls, the justice gap follows people inside and eats away at them – making them feel even more disenfranchised from the justice system than they did before they entered prison. To stop the cycle, to begin to seriously address the causes rather than the symptoms, to, literally, stop the bleeding, we must admit that no amount of money will fix this problem if we continue to ignore the growing justice gap behind prison walls.

Dated: September 16, 2014

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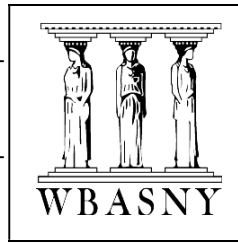
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<sup>8</sup> *The Chief Judge’s Hearing on Civil Legal Services*, First Dep’t, Sept. 19, 2013 (statement of Cyrus R. Vance, Jr. District Attorney, New York County: at 10-11).

# **Irene V. Villacci**

President, Women's Bar Association of the State of New York

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**Women's Bar****Association**

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**Written testimony on behalf of the****Women's Bar Association of the State of New York (WBASNY)****to the****Chief Judge of the State of New York****Hearings on Civil Legal Services****by****Irene V. Villacci, WBASNY President**

The Women's Bar Association of the State of New York ("WBASNY"), thanks you on behalf of its approximately 4,100 members for the opportunity to submit this testimony regarding access to civil legal services. WBASNY's membership is diverse and is distributed throughout the State of New York. Our members are private practitioners, law professors, public interest attorneys, and State and Federal judges and legal staff. Since our formation in 1980, the mission of our association continues to be the advancement of women in the legal profession and of women in society, and support for the equal administration of justice.

For the thousands of clients served annually by members of WBASNY, civil legal services is often the only option available for those who would otherwise never get to court, even as an unrepresented or pro se litigant. Civil legal services (CLS) provides not only avenues to representation and to alternative dispute resolution, but also provides access to services that unlock gateways to a safety net that the least able among us, many of them women and children, would never otherwise find.

A significant number of WBASNY members work for organizations that provide civil legal services, and the majority of the clients served by CLS practitioners are women. In fact, an informal telephone survey conducted in 2009 by The Legal Project, Inc. revealed that more than 70% of attorneys working at the major civil legal services programs across the state are women. The Legal Project is a private, not-for-profit organization that was founded by the Capital District Women's Bar Association in 1995. It provides a variety of free and low cost legal services to the working poor, victims of domestic violence and other underserved individuals in the Capital District of New York State. The Legal Project reports that support from the Judiciary Budget has made a tremendous difference in their ability to serve their target clients in the Capital Region. The number of clients assisted since the Judiciary funding began in 2011 has increased by approximately 26% and the civil legal services provided have broadened to include bankruptcy, foreclosure, affording housing, wills and end of life planning, immigration and veterans' services clinics. The Project assisted 71 victims of domestic abuse in 1999, but assisted 1,013 such individuals in 2013.

In addition, The Legal Services Funding Alliance<sup>1</sup> estimates that more than two-thirds of its legal services clients are women, many of them mothers with young children.

The increase in funding for civil legal services is not felt equally in all sectors. While WBASNY supports and commends the Chief Judge's leadership and the work of the Task Force to Expand Access to Civil Legal Services, and while we recognize the extreme effort that succeeded in obtaining \$55 million for the provision of Civil Legal Services for the current Fiscal Year, members of the civil legal services provider community still reach out to us regarding the need for funding. For example, a practitioner in Suffolk County states:

Although Nassau Suffolk Legal Services does the best they can with tenants, often there are people in the lower income brackets who do not qualify. This can be a problem when they ask for an adjournment to go find an attorney, and invariably come back saying they couldn't find one (or couldn't afford one), but it delays the cases significantly. If a mediator or two (or more in Hempstead) could be utilized, maybe the cases which are delayed can be sped up and wouldn't languish in the system to the detriment of both parties.

This view is seconded by a provider:

Many people in and out of the court system remain unaware of mediation as an option to resolve their disputes, hence more cases proceed through an already burdened court system. Slashing the number of hours the courts are open for business has limited the number of cases we are able to mediate which in turn affects our case numbers required from our funders. We are also severely limited in our abilities to offer our services to non-English speaking clients as we do not have funding for interpreters.

A provider of civil legal services for children reports, surprisingly, that no funding is received from the Judiciary Budget.

Additionally, while the achievement of funding is of paramount importance, funding is, in itself, not the only issue. Policy and planning regarding the directing of funds are also important. WBASNY commends Chief Judge Lippman and the Governor for their commitment to funding for civil legal services, but we believe that the legal profession shares an equal responsibility to participate in seeing that the funding is directed so that it does the most good in the most efficient manner. Issues that need attention now include the preparation for disaster, or disaster planning; the use, non-use and misuse of technology in providing access to civil legal services; and the need to further explore the good that can be done through the institution of public/private partnerships.

Superstorm Sandy and Hurricane Irene made it clear that natural disasters do not respect persons, regardless of their mandate. Business institutions and State and local government entities are much more cognizant now of the need for preparedness for disasters of all types. For the myriad of non-profit organizations that provide access to civil legal services for the citizens of New York State, however, disaster planning may not be a line item on the funding application, and thus, not a fully funded concern, as it should be. It is important that disaster preparedness be a mandatory component of any state-wide plan for funding of both criminal and civil legal services in the future.

The State of New York has experience in administering programs that offer broad support for disaster planning and preparedness: The NYS Department of Education supports such a program for local governments as a component of its NYS Archives and Records Administration Program. Funding has been successfully provided throughout the State from a set-aside funding source using a competitive grant application process.

For more information see:

[http://www.archives.nysed.gov/a/records/mr\\_disaster.shtml](http://www.archives.nysed.gov/a/records/mr_disaster.shtml)(disaster assistance: planning for disaster avoidance and responding to a disaster)

[http://www.archives.nysed.gov/a/grants/grants\\_lgrmif\\_disasterguide.shtml](http://www.archives.nysed.gov/a/grants/grants_lgrmif_disasterguide.shtml) (disaster recovery grant program)

[http://www.archives.nysed.gov/a/workshops/workshops\\_handouts\\_disaster.pdf](http://www.archives.nysed.gov/a/workshops/workshops_handouts_disaster.pdf) (disaster planning and response workbook)

With proper funding, a comparable program could be created to assist legal services programs. It is certain that the NYS Archives, the Local Government Records Advisory Council and the Records Management Office of the OCA Division of Court Administration could develop such a program.

CAMBA Legal Services in Staten Island was lucky -- their landlord responded promptly and efficiently to their Sandy-related issues, expeditiously pumping out the water that flooded their basement and making other repairs. Legal Services-NY did not suffer effects beyond the fairly standard week without electricity and telephone service. However, that week of absence did delay establishment of the Disaster Assistance program that Legal Services-NY created to help Staten Island residents who suffered storm damage. Since Sandy struck in 2012, Legal Services-NY has been counseling Staten Islanders six days per week, operating legal clinics, and helping clients make hard choices, such as whether to accept a buy-out or elevate their home; how to protest the amount being offered in response to an insurance claim, or what offers to accept or reject from the "Build It Back" program.

Neither CAMBA nor Legal Services-NY has a disaster preparedness plan in place to prevent interruption of their services should another natural or man-made disaster occur. They both have an awareness that such a plan is needed, but both are totally focused on assisting their clients at this time. Both would welcome the availability of coordinated disaster preparedness planning program for civil legal service providers as described above. The provider of legal services to children has a business continuity plan that includes some disaster preparedness planning. This may be another opportunity for public/private partnership. Businesses and law firms who have disaster preparedness plans in place could share their experience in developing a plan with legal services providers and offer support for planning.

Using technology to enhance access to justice is another very important initiative. It should be noted, however, that smaller programs with less administrative and support staff, such as the afore-mentioned Legal Project created by the Capital District Women's Bar Association, may have some unique needs to address in order to make the most effective use of alternative ways to provide service. The Legal Project suggests that smaller programs with less infrastructure be provided technical assistance and funding to develop more internal support, which will enable them to use innovations in technology more effectively. These programs generally do not have technology personnel on staff, for example, thus managing social media or developing web-based outreach, training or services can, unfortunately, be very challenging. We believe that it is important to use the funds for technology to increase the capacity smaller programs to develop their technology infrastructure in order to encourage innovative responses and programs across the state.

Some programs take the position that the choice is often between installing technology or adding staff members. This was the conundrum voiced by Legal Services-NY. The Executive Director felt that the need of Staten Islanders for legal consultation is so great now that it would be a crime to devote time and attention to the purchase and installation of technological components. Of course, however, if a grant was provided that paid for an expert to examine the work of the organization and recommend technology that would improve the client outcomes and make the work of the legal service providers more effective, they would, of course, be all for it, especially if the expert were to then select the technology and supervise its installation and the training of all parties to efficiently make use of the new resource. This type of needs analysis is often carried out by consultants for various government functions, so there is no reason why it could not be done here with the correct funding and oversight. See, for example, the discussion regarding separate funding for planning grants and implementation grants as discussed by the New York State Archives at:

[http://www.archives.nysed.gov/a/grants/grants\\_lgrmif\\_faq.shtml](http://www.archives.nysed.gov/a/grants/grants_lgrmif_faq.shtml)

As the Task Force's 2010 Report recognized, civil legal assistance can reduce litigation costs and relieve court congestion. Although not appropriate for every circumstance, where appropriate, Alternative Dispute Resolution programs can be effective in this regard, as they can offer parties the opportunity to frame their dispute in a constructive manner and to work together, with a mediator, to resolve the dispute, clarify rights and responsibilities or restructure relationships. Increased emphasis on alternative dispute resolution in appropriate matters can resolve more disputes at lower cost and with higher participant satisfaction. Even when matters are not fully resolved in the alternative dispute resolution process issues are often identified and narrowed so as to facilitate swift resolution by the courts. Increased funding might be used to provide earlier training for judges regarding the value of alternative dispute resolution.<sup>2</sup> In Western New York, for example, the Community Dispute Resolution Centers, run by Child and Family Services' Center for Resolution and Justice, offers a cost-efficient, consumer friendly program that mediates disputes involving divorce, special education, landlord tenant relationships, and contracts. Farther downstate, the Richmond County Community Dispute Resolution Center notes that since budget cuts made an already tight budget even leaner it has significantly impacted in their ability to provide additional hours of service. Decreased funding has drastically affected the Center's ability to recruit and train new volunteer mediators, which is highly significant, given their volunteer-based model of operation. Lack of funding has also severely curtailed the service's outreach to the community and the courts. This issue, reported in 2013, remains a priority.

A representative of the mediation community continued on to say:

In addition to funding for our current programs, we are interested in funding for new and different programs. We have provided Peer Mediation Trainings to several schools on Staten Island, which we would like to continue to do so. Additionally, we would like funding to bring Restorative Practices to several different environments, such as the schools and police programs. Lastly, we recently went to an Urban Agricultural Conference and we are excited about the prospect of bringing our mediation skills to the widespread urban-agricultural community in NYC.

Perhaps alternative dispute resolution models could be developed here that would assist in providing civil legal services to rural and agricultural communities throughout the State. For example, the use of technology combined with alternative dispute resolution would offer access to parties on rural areas that may not have established alternative dispute resolution programs.

Governments have long used public/private partnerships to crowd private sector resources - both financial resources and know-how, into building large-scale infrastructure projects. Think toll roads, airports, or power plants. Yet public/private partnerships do not need to be limited to building large, physical infrastructure projects. Public/private partnerships can also be used to tackle development issues like limiting the spread of disease, improving educational opportunities for the world's poor, and preventing the devastating effects wrought by a warming global climate. Creating successful public/private partnerships that develop large-scale solutions to the world's most pressing social problems is a growing preoccupation of many today. Development assistance organizations are all interested in creating such public/private partnerships.<sup>3</sup>

Author and thought-leader Deborah Burand<sup>4</sup> explains that much of the growing interest in public/private partnerships is concentrated on a social finance innovation that is beginning to be used in New York State called the social impact bond ("SIB"). SIB is designed to transform how government does business while serving vulnerable New Yorkers and providing additional resources for social service programs. The projects are public-private partnerships where the State sets performance goals and private and philanthropic investors provide the funds for the program. The State repays investors based upon the program's performance, and only makes payments if the goals are achieved. The Intensive Community Assist Program at Hillside Children's Center is one such program approved earlier this year and provides diversion alternatives to probation officers and family court judges for placement and detention of high risk youths. The program plans to serve about 800 youth in Onondaga, Monroe and several other counties. Other programs approved this year include delivery of health care services to high risk populations for diseases such as diabetes.<sup>5</sup>

Legal Services NY - Staten Island has formed a partnership with the Richmond County Savings Foundation. The Foundation grants SILS \$25,000 to support its important work helping survivors of domestic violence navigate the legal process. A sincere thank you to the foundation for its support.

WBASNY commends this Task Force for its continuing efforts to address the need for expanded access to civil legal services, and offers its continued support for adequate and stable funding to achieve the fundamental ideal of justice for all.



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<sup>1</sup> The Legal Services Funding Alliance was formed to enhance advocacy for increased civil legal services funding. Its members are the primary providers of civil legal services in rural, urban and suburban communities of New York State. They provide a full range of civil legal services to low-income and disadvantaged people and communities throughout Upstate New York and Long Island.

<sup>2</sup> "The Role of Law Schools in Educating Judges to Increase Access to Justice". Pacific McGeorge Global Business & Development Law Journal, 2011, Volume 24, Number 1, pp 161 - 199.

<sup>3</sup> NYU Journal of Law & Business, ARTICLE AND COMMENT ARISING FROM THE 2012 FALL CONFERENCE: THE LAW & FINANCE OF SOCIAL ENTERPRISE: GLOBALIZING SOCIAL FINANCE: HOW SOCIAL IMPACT BONDS AND SOCIAL IMPACT PERFORMANCE GUARANTEES CAN SCALE DEVELOPMENT, Deborah Burand, 16500 words. 9 N.Y.U. J. L. & Bus. 447

<sup>4</sup> Deborah Burand is a clinical assistant professor of law. She directs the International Transactions Clinic that she cofounded at the Law School in 2008. She also teaches in the area of impact investment lawyering. Prof. Burand writes and lectures on issues related to international finance, microfinance and microfranchise, impact investing, social finance innovations such as social impact bonds and crowdfunding for social enterprise, and developing sustainable businesses at the base of the economic pyramid.

<sup>5</sup> 9 N.Y.U. J. L. & Bus. 447

**APPENDIX 15:**

**Report of the Task Force's Working Group on  
Law School Involvement**

**TASK FORCE TO EXPAND ACCESS TO CIVIL LEGAL SERVICES IN NEW YORK  
REPORT OF THE LAW SCHOOL INVOLVEMENT WORKING GROUP**

**THIRD ANNUAL CONFERENCE  
ACCESS TO JUSTICE:**

**THE CONVERSATION CONTINUES—  
THE ROLE OF LAW SCHOOLS IN HELPING MEET  
THE ESSENTIAL CIVIL LEGAL NEEDS OF LOW INCOME NEW YORKERS**

BASED ON A CONFERENCE CONVENED BY THE  
**TASK FORCE TO EXPAND ACCESS TO CIVIL LEGAL SERVICES IN NEW YORK**  
AT CUNY SCHOOL OF LAW ON MAY 12, 2014



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**NOVEMBER 28, 2014**

**TASK FORCE TO EXPAND ACCESS TO CIVIL LEGAL SERVICES IN NEW YORK  
REPORT OF THE LAW SCHOOL INVOLVEMENT WORKING GROUP**

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**THIRD ANNUAL CONFERENCE  
ACCESS TO JUSTICE:  
THE CONVERSATION CONTINUES—  
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**BASED ON A CONFERENCE CONVENED BY THE  
TASK FORCE TO EXPAND ACCESS TO CIVIL LEGAL SERVICES IN NEW YORK  
AT CUNY SCHOOL OF LAW ON MAY 12, 2014**

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# KEY RECOMMENDATIONS ADOPTED BY THE TASK FORCE

## 1. Annual Law School Conference

The Task Force will convene the Fourth Annual Law School Conference in the Spring of 2015 to encourage dialogue and promote communication and collaboration among New York's 15 law schools and legal services providers, law firm *pro bono* coordinators, bar associations and the courts, on collective efforts to help meet the essential civil legal needs of low income New Yorkers, and to discuss how to instill in new lawyers an awareness of the value and impact that their *pro bono* work will have in bridging the justice gap.

## 2. Statewide Law School Access to Justice Council

The Statewide Law School Access to Justice Council, composed of deans, administrative deans and representatives from all 15 schools, several legal services providers and members of the Task Force and court system, is continuing its collaborative work on issues relating to student *pro bono* and matters of mutual interest that promote law school *pro bono* efforts to narrow the justice gap.

## 3. Best Practices for Supervising Students Performing *Pro Bono* Work

A Manual on Best Practices for Supervising Students Performing *Pro Bono* Work is being developed under the auspices of the Statewide Law School Access to Justice Council. The Manual is intended to present guidelines designed to foster well-structured programs and ensure productive *pro bono* experiences for students and clients alike. Guidelines for student-led projects will be included.

## 4. Access to Justice in the Law School Curriculum and Skills Training

Law schools should continue to expand the integration of access to justice across the curriculum, and in clinical and experiential programs, with a directed focus on creating a continuum of learning that will equip graduating students with the skills and values to practice law, pursue public interest careers, and perform *pro bono* work. Particular attention should be given to enhancing the first-year curriculum's focus on access to justice and skills training. Law schools should also explore adding simulation courses to the core curriculum, which, among other things, are effective tools for increasing cultural and language competencies and socio-economic awareness.

## 5. Access to Justice on the Bar Examination

Questions on all topics tested on the bar examination should be infused with access-to-justice fact patterns, principles and terminology. Access to justice should be tested pervasively on the bar examination, not simply in isolated questions. Law schools should assess the impact of these changes to the bar examination on the curriculum and identify additional refinements, modifications and proposals related to the bar examination to promote access to justice.

## 6. Role of Law Schools in Working with “Non-Lawyer Advocates” to Help Narrow the Justice Gap

Law schools should consider their roles in developing training programs for “non-lawyer” advocates that will effectively train such persons to act as “non-lawyer” advocates. Law schools should

assist in resolving issues relating to supervision and unauthorized practice of law in relation to non-lawyer advocates.

**7. *Pro Bono* Scholars Program**

Law Schools should develop curricular pathways geared to preparing students to participate in the *Pro Bono* Scholars Program. Such pathways should enable students to plan their legal studies so they can complete all coursework required for graduation and take the February bar examination, prior to beginning work as a *Pro Bono* Scholar. The impact of the *Pro Bono* Scholars Program should be assessed both in terms of outcomes for students and the Program's impact on the justice gap.

## OVERVIEW OF THE THIRD ANNUAL LAW SCHOOL CONFERENCE

**S**INCE 2012, THE TASK FORCE TO EXPAND ACCESS TO JUSTICE IN NEW YORK has convened an annual conference to encourage and promote communication and collaboration among New York's 15 law schools and legal services providers, law firm *pro bono* coordinators, bar associations and the courts, on collective efforts to help meet the essential civil legal needs of low income New Yorkers, and to discuss how to instill in new lawyers awareness of the value and impact that their *pro bono* work will have in bridging the justice gap.<sup>1</sup> This year, the Third Annual Law School Conference, titled "The Conversation Continues: The Role of Law Schools in Helping Meet the Essential Civil Legal Needs of Low income New Yorkers," was held on May 12, 2014 at CUNY School of Law. The Law School Conference is convened annually, in accordance with a recommendation from the 2012 Conference, which was adopted by the Task Force in its 2012 Annual Report to the Chief Judge.

New York's 15 law schools play a pivotal role in Chief Judge Jonathan Lippman's efforts to narrow the justice gap. The Annual Law School Conferences have generated recommendations that have been instrumental in advancing how access to justice is integrated into law school education, both across the curriculum and in practice-based and experiential settings. In 2013, the Chief Judge announced New York Court of Appeals Rule 520.16 mandating that every person seeking admission to the New York Bar on or after January 1, 2015 perform 50 hours of *pro bono* service in addition to passing the bar examination, after an appropriate course of legal education. Nearly all of New York's law schools have designated a faculty or administrative member responsible for student *pro bono*, particularly to ensure that students understand their responsibility to complete 50 hours of *pro bono* service prior to admission to the bar and to identify qualifying service. Significantly, at this year's Conference, the Statewide Law School Access to Justice Council (Council), composed of deans, administrative deans and representatives from all 15 schools, several legal services providers, and members of the Task Force and court system, previewed a proposed Statewide Consortium Website for Student *Pro Bono* Opportunities intended to facilitate *pro bono* placements.

This year, the Chief Judge announced that law students entering their third year in September 2014 are eligible to participate in the *Pro Bono* Scholars Program (PBSP). Students accepted into the Scholars Program will take the bar examination in February and then spend their final semester in supervised placements where they will assist in the provision of legal services to economically disadvantaged individuals. Upon graduation and passage of the bar examination, Scholars' bar applications will receive expedited review. The law schools have embraced the Chief Judge's initiatives, meeting the challenges to ensure every law student has access to *pro bono* opportunities by developing innovative curricular and experiential offerings.

The reach of the recommendations from the 2012 and 2013 Law School Conferences is also evident in the current study underway by the Board of Law Examiners on how to organically incorporate access to justice into bar exam questions. It is notable that the recommendation, first announced in 2012 and repeated in 2013, that law schools endeavor to add skills-based courses that seamlessly integrate access to justice, has been implemented or is in development at each school and will complement the PBSP.

Task Force Chair Helaine M. Barnett welcomed 167 participants to the May 12 Conference. The par-

ticipants included ten law school deans, 79 professors and administrative representatives from all 15 New York law schools and one state university, and six law students. In addition, there were 13 representatives of the judiciary and Office of Court Administration, a member of the Board of Law Examiners, 33 representatives of legal services providers and 25 bar leaders, including seven law firm *pro bono* counsel. Ms. Barnett noted that, as in prior years, Conference attendees would participate in work groups, and that following a presentation by Chief Administrative Judge A. Gail Prudenti and Court of Appeals Senior Associate Judge Victoria A. Graffeo, the afternoon sessions of the Work Groups would focus on the *Pro Bono* Scholars Program.<sup>2</sup> Ms. Barnett acknowledged the significance of the ideas and suggestions generated from the prior two Conferences and thanked the attendees for their continuing involvement and contributions.

Ms. Barnett introduced Chief Judge Lippman, describing him as a visionary whose inspired leadership is bringing us closer to achieving the ideal of access to justice for all. Chief Judge Lippman emphasized law schools' responsibility as the educators of the next generation of lawyers to ensure students understand what it means to be a lawyer and the obligation to ensure everyone has access to justice to achieve the goal of equal justice. The Chief Judge pointed to the work of the Task Force in helping to create a template for responding to the crisis in civil legal services with innovative non-monetary initiatives, like the Annual Law School Conference, the creation of the Statewide Law School Access to Justice Council and pilot programs for non-lawyer advocates to assist unrepresented individuals, to name a few. The Chief Judge acknowledged the judiciary's partnership with the legislature and the executive in supporting the allocation of funds in the judiciary budget for civil legal services programs, totaling \$70 million in the current fiscal cycle, and how the continuing need for a consistent revenue stream to fund such services is amply demonstrated in the annual Civil Legal Services Hearings, which the Task Force helps organize. The Chief Judge declared that it is our constitutional duty and obligation as lawyers, sworn to serve the public good, to help our most vulnerable citizens. Chief Judge Lippman remarked that by infusing legal education with the importance of a lifetime of *pro bono* service, together with all of our collaborative work, equal justice can become a reality.

## **Opening Plenary Session**

**The Opening Plenary Session provided an overview** of access to justice in legal education. Judge Fern A. Fisher, Director of the NYS Courts Access to Justice Program and Deputy Chief Administrative Judge for New York City Courts, moderated the panel, which featured Dean Michelle Anderson of CUNY School of Law, Court of Appeals Associate Judge Jenny Rivera and James R. Silkenat, President of the American Bar Association. Judge Fisher noted that the panel would set the stage for the four Conference Work Groups, and, in keeping with the structure of the prior two Conferences, the recommendations put forth by each Work Group will be considered by the Task Force for inclusion in the Annual Report to the Chief Judge, to be issued in late November.

ABA President Silkenat stated that a founding principle of our country, "liberty and justice for all," remains illusory to so many — statistics show that only one in five people qualifies for legal assistance, and yet only 57% of 2013 law school graduates are employed in jobs that require a J.D. This disconnect has motivated Mr. Silkenat's work as ABA President, where he has endeavored to harness the talent and resources of the ABA's 400,000 national members to improve the ratio of only one legal aid lawyer available to serve every 6,400 low income persons. Mr. Silkenat stressed that law schools are critical to addressing this crisis, which defies the rules of supply and demand, and the programs launched by



the ABA are catalysts for new employment models that can make the legal marketplace more accessible to recent graduates.

Judge Rivera recognized the challenges law schools face in training lawyers to serve society's interests. While acknowledging that it is incumbent upon law schools to ensure that students are properly trained and work toward narrowing the justice gap, it is equally true that law professors must inspire students to engage in work for the public good.

Dean Anderson focused her remarks on the 2013 Report of the New York City Bar Association Task Force on New Lawyers in a Changing Profession,<sup>3</sup> from her perspectives as a task force member, law school dean and law professor. Among the many salient findings made by the Task Force, the one with particular relevance to the work of the Conference is that law schools must do more to refocus student expectations. Dean Anderson echoed Mr. Silkenat's reference to the oversupply of lawyers and the continuing unmet need for civil legal services, characterizing it as a mandate for re-evaluation of the expectations of the profession and redefinition of what success means in today's legal market.

## **Conference Work Groups**

**The Law School Involvement Working Group** has coordinated the Annual Law School Conferences convened by the Task Force over the last three years. Each year, the Working Group forms a Law School Conference Planning Committee to develop the themes for the Conference Work Groups. Following the framework of the 2012 and 2013 Conferences, the 2014 Conference attendees joined one of four Work Groups, each charged with examining a distinct set of issues. The four Conference Work Groups each convened a panel to identify the key issues that the participants would discuss. In three of the Work Groups, participants divided into small discussion groups to tackle specific issues. Subsequent to those small group discussions, these Work Groups re-assembled to hear consensus reports from the small group facilitators. Each Work Group moderator then developed a report containing recommendations for consideration by the Task Force.

*This year's Work Groups were as follows:*

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### **Preparing Students for Access-to-Justice Activities in Clinical Courses**

Moderated by CUNY School of Law Professor Susan Bryant, this Work Group began with a panel discussion among CUNY School of Law Professor Ann Cammett; Carey Dunne, President of the New York City Bar Association and a partner at Davis Polk & Wardwell LLP; and David Udell, Executive Director of the National Center for Access to Justice and a Visiting Professor From Practice at Benjamin N. Cardozo School of Law. The panel and ensuing Work Group discussions addressed the following questions:

- What professional values, knowledge and/or skills do law students need to learn to be competent in access-to-justice activities while in law school and in practice?
- How can we educate law students to adopt a professional identity that embraces the professional responsibility for achieving justice and providing access to justice?
- How do different clinics, externships, and practicums educate and equip students with the knowledge, skills and values to deliver a range of legal services and address the legal needs of low income people?

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## **Best Practices for Supervising Student *Pro Bono* Work**

The Work Group was charged with examining the supervision of law student *pro bono* and to jump-start the creation of a new guidebook for the supervision of students engaged in *pro bono* work in connection with the 50 hour rule, the *Pro Bono* Scholars Program and other *pro bono* structures and initiatives in New York State, including those under student leadership.

Moderated by Columbia Law School Dean for Social Justice Initiatives Ellen P. Chapnick, the session opened with a roundtable discussion among Chief Counsel of the Empire Justice Center, Bryan Hetherington; Executive Director of the City Bar Justice Center, Lynn M. Kelly; and, Steven Lee, a law student at the Maurice A. Deane School of Law and the Director of the Veterans Legal Assistance Project at the law school, to identify best practices for supervising all types of student *pro bono* activities in a variety of practice contexts. Topical issues addressed included how best to inform law students about professional ethics/responsibility applicable to the assigned *pro bono* project; best ways of providing orientation and training on the assigned *pro bono* project; mechanisms for responding to questions and giving feedback and evaluation to students; and how to capture student evaluation of the *pro bono* experience.

Following the discussion, the Work Group divided itself into small groups to consider discrete best practice “supervisory” issues. Jennifer Gundlach, Senior Associate Dean for Experiential Education and Clinical Professor of Law, Maurice A. Deane School of Law, Hofstra University, facilitated the small group discussion centered on best practices for developing an access-to-justice *pro bono* project for law students which has significant impact. Harlene Katzman, *Pro Bono* Counsel and Director at Simpson, Thacher & Bartlett LLP, led the discussion focused on best practices for providing orientation and training to a student at the project’s outset. Carolyn Silver, Chief Program Officer at Lenox Hill Neighborhood House, facilitated the discussion on best practices most suited for assuring competent performance, responding to questions, giving feedback, and evaluating the student during the project. And, J. McGregor Smyth, Executive Director of New York Lawyers for the Public Interest, directed the small group discussion on best practices for informing law students about professional responsibility and ethics relevant to their *pro bono* project.

The Law School Conference presented a very rare opportunity to develop a framework for a guidebook for *pro bono* supervisors that reflects the insights and needs of the multiple stakeholders in the law student *pro bono* service matrix (law schools, not-for profit organizations, courts, law firms, bar associations, etc.). The Work Group expects to further develop and disseminate the guidebook under the auspices of the Council.

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## **Developing a Blueprint for an Access-to-Justice Curriculum and Testing Access to Justice on the Bar Examination**

Associate Dean for Clinical Programs at CUNY School of Law Joseph Rosenberg moderated the panel, which featured New York State Board of Law Examiners member Michael Colodner; Lillian Moy, Executive Director of the Legal Aid Society of Northeastern New York; Yogi Patel, a partner at Lloyd Patel, LLP; CUNY School of Law Assistant Dean for Academic Affairs and Professor Allie Robbins; and CUNY School of Law Distinguished Professor of Law Ruthann Robson.

The Work Group examined a host of issues, including how to utilize the “traditional” law school curriculum to prepare students for access-to-justice careers by, e.g., highlighting actual and potential

courses that would provide students with the skills and knowledge necessary for access-to-justice careers, and identifying methods and/or models to create opportunities for providing legal services in conjunction with such courses.

Significantly, the Work Group discussed possible suggestions to present to the New York Board of Law Examiners (BOLE) in conjunction with the statewide study underway on modifications to the “Content Outline and Bar Examination Questions” to test student knowledge and skills important for working with underserved populations in matters involving landlord/tenant issues, foreclosures, family law, installment contracts, consumer credit proceedings and access to public benefits, and considered other topical areas that warrant consideration for testing on future bar examinations in the access-to-justice context.

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### **Role of Law Schools in Working with Non-Lawyer Advocates to Help Narrow the Justice Gap**

This Work Group was moderated by Judge Fern Fisher and Thomas Maligno, Executive Director of the Public Advocacy Center and Director of Public Interest at Touro College, Jacob D. Fuchsberg Law Center, and explored the pilots underway in New York and Washington with panelists Kim Diana Connolly, SUNY Buffalo Law School Professor of Law and Vice Dean for Legal Skills; Hector Manuel Fernandez, Associate Professor and Director of Paralegal Studies, Business & Technology Department at LaGuardia Community College; Paula Littlewood, Executive Director of the Washington State Bar Association, who participated via Skype; Roger J. Maldonado, Co-Chair of the Committee on Non-Lawyers and the Justice Gap and a partner at Balber Pickard Maldonado & Van DerTuin, PC; Dean Patricia E. Salkin of the Jacob D. Fuchsberg Law Center; and Jane M. Spinak, Edward Ross Aranow Clinical Professor of Law at Columbia Law School.

Following the panel presentation, the Work Group considered the following questions:

- What role do non-lawyers have in helping to close the justice gap?
- What role do law schools have in training non-lawyer advocates?
- Is there a direct role for non-lawyer advocates to play in access-to-justice efforts at the law schools by, e.g., partnering with students, working with clinics?
- What factors — financial, philosophical, ethical and cultural — will the law school encounter in developing programs for non-lawyers, and what is the sentiment among faculty?
- What type of supervision is appropriate for non-lawyers?
- What type of training and support is incumbent upon the law school to provide for such supervision?
- Could the development of non-lawyer advocate programs be perceived as devaluing the mission of law school and/or the J.D. degree?

### **Mid-Day Plenary Session**

**After the morning work group sessions**, Jennifer A. Gundlach, Senior Associate Dean for Experiential Education & Clinical Professor of Law at the Maurice A. Deane School of Law, Hofstra University, and Laren Spierer, Director of *Pro Bono* Programs at Columbia Law School, previewed the proposed

Statewide Consortium Website for Student *Pro Bono* Opportunities, spearheaded by the Council, as recommended in the 2012 Law School Conference Report and adopted by the Task Force. The 15 New York law schools are considering whether the site will be a useful “marketplace” for posting of *pro bono* placements for New York law students.

The Conference participants were then addressed by Chief Administrative Judge Prudenti and Judge Graffeo on the guidelines for the *Pro Bono* Scholars Program.<sup>4</sup> Following this presentation, the Work Groups re-convened with discussions primarily focused on the PBSB.

## **Closing Plenary Session**

**At the conclusion of the day, the participants reconvened** in a Plenary Session, led by Matthew Diller, Dean of the Benjamin N. Cardozo School of Law. The moderators from each Work Group shared highlights from both the morning and afternoon work group sessions, including comments and concerns for the implementation of the *Pro Bono* Scholars Program in the upcoming academic year.

Dean Diller remarked that the educational mission of law schools includes integrating access to justice into the curriculum, and now is the time to determine what it takes to educate and prepare our students to practice law with a social conscience, and become leaders in the access-to-justice movement. This means that the law school curriculum include not only legal principles and rules, but must also impart a set of values and skills. In New York, and nationally, there is a renewed emphasis in nurturing values, skills and professionalism in law schools. There is also a recognition that law schools can inspire students to embrace the culture of service long associated with the legal profession.

Dean Diller acknowledged that we all agree that students must graduate ready to practice law, equipped with knowledge of the law, cultural competencies, including sensitivity to socio-economic challenges, and problem-solving abilities. Access-to-justice work offers a unique opportunity for students to develop skills, values and a sense of professionalism in real-world settings, serving clients who otherwise would not have legal representation. There is an urgent need, and our law students can make a difference.

The Board of Law Examiners is currently studying how access to justice can be incorporated into the bar examination. The *Pro Bono* Scholars Program is an important initiative designed for an immersive public service experience for second semester third-year students. Law schools working to integrate this Program are developing protocols for the substantive, skills and leadership training students need to appropriately and effectively represent clients, and for supervision models. Further, methods to evaluate students and student experiences are being refined.

The legal community — law schools and law school clinics, bar associations, practitioners, legal services providers and the courts — are thinking creatively about how to best prepare students for a profession dedicated to narrowing the justice gap. We must continue to pursue innovative solutions, for example, using properly trained non-lawyers to assist unrepresented litigants with ministerial matters. This, Dean Diller concluded, will help us achieve the constitutional dictate of a legal system that is fair and just for everyone.

## SUMMARIES OF THE CONFERENCE WORK GROUP REPORTS

**T**HIS SECTION PRESENTS THE RECOMMENDATIONS OF THE WORK GROUPS and offers a summary of the narratives produced after the Conference to provide context for the Work Groups' recommendations. A summary of the afternoon sessions of those Work Group discussions that focused on the information provided by Judge Prudenti and Judge Graffeo in the Mid-Day Plenary Session on the PBSP follows.

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### Preparing Students for Access-to-Justice Activities in Clinical Courses

#### Recommendations of the Work Group

Law schools should recognize their responsibility for preparing students for access-to-justice work, both in law school and after graduation. The Work Group considered how a law school might think expansively about who can and should be teachers of the various competencies needed for access to justice practice. (For example, career services faculty can teach professional lessons about business letters that can be applicable to job application cover letters, as well as demand letters in landlord-tenant cases). Each school may develop its own strategies, but, at a minimum, the strategies should include:

1. Developing “student outcomes” or benchmarks for students that identify the knowledge, skills and values needed to perform competent access-to-justice work in school and after graduation.<sup>5</sup>
2. Requiring all students to take a law school course<sup>6</sup> that teaches what access to justice work means, including the impact of the law on poor clients, the roles of access-to-justice lawyers and other topics identified in the course recommended in the 2012 Law School Conference Report.<sup>7</sup>
3. Consulting with access-to-justice providers to ensure that overall competencies include “practice-ready” competencies targeting access-to-justice work, such as the ones suggested by the current working group — professionalism, judgment, empathy, cross-cultural competency and language skills, problem solving, familiarity with poverty contexts, communication skills and a variety of other skills like those associated with trial or transactional work.
4. Explicitly teaching the responsibility of lawyers to provide access to justice through clinical work that creates empathy for clients and motivates students to continue such work.

#### Synopsis of Discussion

Given the near universal recognition that law schools must enhance skills training, discussion focused on how law schools can prepare students to be “practice ready” upon graduation. Echoing the recommendations that the Task Force adopted from the 2012 and 2013 Annual Law School Conferences, the Work Group agreed that skills training, with a directed focus on public interest and *pro bono*, is critical. Restating the 2012 recommendation of the Task Force, the Work Group recommends a required course in the first year and/or directing that access-to-justice issues be holistically integrated into the first-year curriculum and successively reinforced in doctrinal, clinical and experientially second- and third-year offerings. Of course, schools might need multiple strategies since one strategy may not be successful in reaching all students, and various approaches may yield the same result.

Equally important, law schools must endeavor to instruct students about the ethical and professional values and skills attendant to the practice of law, and spark the commitment to engage in work to close

the justice gap, a responsibility that has long been recognized as incumbent upon members of the bar. Reference was made to the 50 hour bar admission rule, mandatory *pro bono* reporting by lawyers on the biennial attorney registration, the newly minted *Pro Bono* Scholars Program for third-year students, and the review currently underway by the New York Board of Law Examiners to integrate access to justice in topical matters tested on the bar examinations<sup>8</sup> as recent examples of how the legal profession is working to narrow the justice gap statewide.

The Work Group considered the skills, knowledge and professional identity that students need to develop in order to be “practice ready,” and to help them embrace responsibility for achieving and providing access to justice. The group noted, that in addition to imparting traditional skills for transactional and litigation work, law schools must endeavor to assist students in developing cultural and professional competencies. Helping students develop their own sense of what being a competent, ethical, and client-centered practitioner is important in clinical teaching. Even though clinics and practicums provide students with different experiences, a core group of skills and values should be integrated into any program that seeks to make students ready for real-world practice. This core group of skills should include: (1) the art of practice, beginning at the outset of law school, (2) skills, (3) values and professional training, and (4) development and integration of professional identity.

There was strong sentiment that the “practice-ready” graduate understands that the law can be used as an instrument to effectuate change, possesses problem solving skills; trial-ready skills; understands professionalism, including the ability to write a letter to a client and/or communicate appropriately to clients; law office skills (how to deal with colleagues and co-workers and the division of office responsibilities); project management skills; cultural competence, including understanding poverty and the ability to collaborate with colleagues and community members. Practicing in a poverty law setting in law school is essential to the development of these competencies and client skills.

To prepare students for access-to-justice work, they must be provided with an understanding of clients and their problems in the context of their environments. There was discussion of a mandatory first-year course, possibly an intensive class over five days that must be taken before students perform their 50 hours of *pro bono* work. In-house skills development, such as interviewing, counseling, and other ethics-based goals, and critical cross-cultural lawyering skills, are important and provide depth and insight into the way students initially imagine interactions with clients, opposing counsel and the courts, before they actually enter the practice setting. For example, if students are to be problem solvers that understand how mass criminalization, the child welfare system and other systems reinforce subordination in the lives of poor clients, teachers should create simulations (and/or take real cases) that probe the effects of the other systems on the “legal” cases on which students work.

Concern was expressed about the opposition to viewing *pro bono* work as an obligation by law students and law graduates, and it was suggested that more needs to be done to change negative perceptions if the current efforts to address the justice gap are to be meaningful.<sup>9</sup> To ensure maximum participation by students, law schools will have to overcome obstacles created by student resistance to the type of work being done in clinical courses and to *pro bono* work generally, perhaps by including transactional or other commercial/corporate work that contains transferable lessons.<sup>10</sup> Success in reaching students who are not interested in clinical work or litigation can only enhance the fortunate convergence of skills training and access-to-justice initiatives currently underway. Without due consideration of these concerns, there is a real risk of disenfranchising students and missing a large segment of the profession that could perform *pro bono* legal work.

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## Best Practices for Supervising Student *Pro Bono* Work

### Recommendations of the Work Group

1. New York's 50 hour bar admission rule and *Pro Bono* Scholars Programs should foster the principle that well-structured law student *pro bono* projects are important investments in future public interest and *pro bono* attorneys.
2. A Guidebook on Best Practices for *Pro Bono* supervisors should be developed and disseminated under the auspices of the Statewide Law School Access to Justice Council. The Guidebook should cover, among other topics, specific issues raised by *pro bono* service performed in satisfaction of the requirements of the 50 hour rule and the *Pro Bono* Scholars Program.
3. Students should be educated about access to justice issues, cultural competence concerns, and professional ethics before beginning *pro bono* service. Ideally, these issues would be integrated into the first year curriculum at all law schools in New York State.
4. Although the specifics will vary among *pro bono* projects, all should include well-designed training, supervision, and evaluation components, as well as intrinsic and instrumental incentives for students to do excellent work.
5. Technology and collaboration among and between all stakeholders (including law schools, not-for-profit organizations, courts, law firms and bar associations) should be explored to leverage limited resources and sustain high standards of service for clients and for the education of students.

### Synopsis of Discussion

An effective guidebook for *pro bono* supervisors should help institutions and organizations analyze their situations and select best practices for their projects. Best practices will differ across various dimensions. For example, by:

- a. Organization capacity: what are the resources for training and supervision of law student volunteers?
- b. Duration and student schedule: are the students volunteering full-time (summer, spring break and *Pro Bono* Scholars Program), on a regular weekly schedule over the course of a semester, or on a time-limited specific project?
- c. Structure: is the project based at a not-for-profit organization, law school clinic or school public interest office, a student-directed project, bar association or law firm (or is it a partnership among several of these)?
- d. Nature of work: is the project mostly research and writing; does it require interaction with clients or others; does it seek a specific outcome?

Importantly, the group identified that it is a best practice to manage expectations and to resolve conflicts throughout the project by securing the agreement of all parties early in the process. Some participants recommended (a) appointing a liaison at the law school and at the host organization, (b) clarifying who is in the "evaluation loop," or (c) entering into an Memorandum of Understanding (MOU) among the student, the law school and the host organization about expectations of each stakeholder (what each will contribute to and receive from the program), the standards and process of supervision and evalu-

ation, and dispute resolution mechanisms.

The design of *pro bono* projects for law students requires consideration of multiple factors which are part of effective supervision. There often will be tension in choosing whether to create a new project or to improve or expand an existing project. Among other things, the design should include intrinsic incentives for students to participate, such as learning about the importance of their work to the overall project, on behalf of a group or issue of particular concern to them; gaining an in-depth understanding of an issue; developing skills and knowledge of substantive law; having contact with the client or affected community; as well as more instrumentalist motives like recommendations, writing samples and networking. Students should have some ownership of their work, and there should be leadership roles for especially committed students. Students should have meaningful opportunities for evaluation of the project and their thoughts should be incorporated into project improvements and into the design of new projects. The design should take into account the resources needed to do the project well, and should also identify, at the outset, the particular institutions that will contribute the essential resources (not-for-profit organizations, law firms, law schools, courts, etc.).

Formal training should be carried out before the project to introduce students to the skills, law and procedures that they will use, and to provide students with an understanding of the larger context in which the project will take place. Students should be instructed on the host organization's underlying mission, issues arising from poverty and the client base of the organization. Training techniques may include poverty simulations, in-person trainings on diversity and cultural competence, meetings with representative clients, and training videos.

Organizations that do similar work can leverage their resources by collaborating on common training, manuals and models. A survey could be done in New York to identify existing resources before new ones are created. Technology provides a means to collaborate on and share training materials. Well-designed on-line training, such as webinars that include assessment tests, might better suit students' varied schedules.

Direct supervision, including feedback and evaluation, is key not only to successful project results but also to whether the students have an experience that will lead them to perform *pro bono* service in the future, including after graduation. Work Group participants have concerns about student-directed projects, and most believe that supervision by faculty members or by experienced practitioners, perhaps alumni of the school or project, should be required. Not-for-profit organizations do not always have staff to devote for close supervision of student work, and many host organization lawyers think it better to just do the work themselves. In some situations, the remedy is education about the need for and benefits of student *pro bono* service. In others, it will be necessary to rely on law school faculty and administration members, law firm lawyers or other practitioners to supervise.

Feedback on students' work product will vary with such factors as complexity, duration and size of the project (large group or individualized). The organization should advise students who on the staff will answer questions and provide feedback. It is important to encourage students to be active participants in these discussions and to be proactive about seeking help. Where face-to-face discussions are unfeasible, surveys or weekly email reports and updates may be helpful.

Law schools should bear primary responsibility for teaching professionalism and ethics to their students before they begin *pro bono* service. But, at present, most students take professional responsibility in their third year, which is too late for students who volunteer in their first and second years of law school.



Few, if any, law school public interest offices provide, much less require, ethics preparation as a condition for participating in *pro bono* service. As a practical matter, host organizations introduce many students to the rules (unauthorized practice of law, confidentiality), cultural competency and professionalism (punctuality, meeting deadlines, always doing their best work, “managing up,” etc.). Some projects will require specialized education about topics, like representing children or adults with mental disabilities, or limited scope representation. Economies of scale can be achieved by teaching students at several similar organizations about professional responsibility in joint sessions, perhaps taught by law school professors.

The Work Group deferred in-depth discussion of additional best practices for supervision to the authors of the anticipated guidebook. Further discussion may include such subjects as:

- a. the appropriate ratio of supervisors to students, and the appropriate size of projects,
- b. the circumstances under which supervisors should be “in the room,” “on call,” or otherwise available at the time *pro bono* service is performed;
- c. under what circumstances, if any, experienced students have an appropriate role in helping to train and/or supervise inexperienced students; and
- d. implications of the distinction between supervising students’ professional interactions with clients, colleagues, and other institutions, and supervising students’ performance of skilled tasks requiring substantive knowledge of the law and of lawyering techniques.

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## **Developing a Blueprint for an Access-to-Justice Curriculum and Testing Access to Justice on the Bar Examination**

### **Recommendations of the Work Group**

#### **Law School Curriculum<sup>11</sup>**

1. Infuse access to justice throughout all aspects of the law school curriculum to reflect its central value to the legal profession. Law Schools should promote integration of access to justice across the curriculum by professors and nurture and encourage justice idealism in students.
  - a. Add first-year opportunities in doctrinal courses (with the caution of some participants that not all first-year law students are ready):
    - i. Design (first-year) “lawyering labs” linked to doctrinal courses.
    - ii. Create (first-year) simulations that connect students with access to justice issues, activities, case, and clients.
    - iii. Incorporate experiential learning in the first year, for example, involvement with the work of a clinic to gain exposure (e.g., hearing about real cases, including ethical issues, from clinic students) and perhaps some clinical experience with clients (e.g., by participating in client intake or interviews), and lawyering activities (e.g., helping to draft a document or participating in a “know your rights” training in collaboration with clinic students and faculty).
  - iii. Provide *pro bono* experience (in the first year) that connects students with outside attorneys, courts or organizations engaged in public interest work relevant to the course.

2. Encourage collaborations between doctrinal and clinical/experiential courses. For example, the class could form a “law firm clinic” to provide a broader experience for students.
3. Create access to justice related experiential opportunities for students throughout law school, and encourage collaboration with the practicing bar.
4. Develop certification programs for law students in a particular practice area based on successfully completing a designed series of courses, clinics, and externships that integrate access to justice issues.
5. Build on and encourage clinics, supervised externship practicums, and hybrids, and make them mandatory, with at least a minimum of six credits (this is the ABA requirement; California now has a 15-credit requirement).<sup>12</sup> Consider an extended externship or semester in practice, perhaps similar to PBSP. Connect clinics with legal writing to introduce experiential learning into first-year legal writing and lawyering courses.
6. Law schools should have a research agenda that focuses on skills and professional competencies as part of the “curriculum inventory.”
7. Teach ethics pervasively throughout the law school curriculum and in context as part of doctrinal subjects and lawyering skills.
8. Promote cultural competence skills in law students.
9. When courses are evaluated, include an access to justice mission component.
10. Require law school faculty to participate in *pro bono*/access-to-justice activities.
11. When professors are evaluated, include access to justice coverage, scholarship, and service activities as criteria for reappointment and tenure.
12. Law schools should conceptualize their mission as including an access to justice dimension under the new ABA guidelines.
13. Research and assess the efficacy and impact of new access-to-justice programs and initiatives.

## **Bar Examination**

The Work Group recommends the following other access to justice related bar exam reform proposals to build upon the BOLE and PBSP initiatives:

1. Modify the bar exam as follows:
  - a. Test access to justice pervasively, not as a separate topical question (including, e.g., substantive topics, due process rights, access to counsel, limited representation, and related ethical issues).
  - b. Use language and fact pattern narratives that are more inclusive.
  - c. Limit the role that “speediness” plays in answering questions.
  - d. Reduce the number of topics tested.
  - e. Increase the use of the Multistate Performance Test (MPT) format, adjusted to allow more time, as it tests practical lawyering skills and knowledge (not rote memorization).

2. Pilot an access to justice/public service alternative path to bar admission. Explore the possibility of creating an access to justice curricular program, the successful completion of which will culminate in admission to the New York bar, perhaps similar to the model of the University of New Hampshire Daniel Webster Scholars program.<sup>13</sup>
3. Award advance credit for the bar examination for access to justice activities in clinics and supervised externships.<sup>14</sup>

## **Synopsis of Discussion**

### **A. Law School Curriculum**

The Work Group examined how to utilize the “traditional” law school curriculum to prepare students for access to justice careers. There is a heightened need for cultural competence awareness and skills across the curriculum.<sup>15</sup> The Work Group Report acknowledges the excellent efforts and Reports of the 2012 Work Group on Incorporation of Access to Justice Issues in the Basic Law School Curriculum and the 2013 Curriculum Work Group.<sup>16</sup> As those Reports demonstrate, there is no shortage of innovative initiatives and thoughtful approaches intended to bridge the access to justice gap that involve law schools, practitioners, the judiciary, and community based organizations

The recently adopted PBSP program, in which third-year students take the bar exam in February and then devote their final semester to a full-time access to justice practice experience, creates new opportunities for law students and law schools. This initiative will influence the curriculum of many, if not all, law schools in New York State. The role of law schools in producing “profession ready” law graduates, who understand the central values of public service, requires more initiatives, similar to the PBSP, that shake up the law school curriculum, provide students more flexibility in their law school experience, and create more options for admission to the bar.

Relatedly, the ABA’s Standards Review Committee of the Section of Legal Education and Admission to the Bar is reviewing “student outcomes” expected for graduating students, and the overall course of legal education, that will provide law schools with potential opportunities to select its particular mission(s) and reform the curriculum.<sup>17</sup> This will likely involve widespread participation by faculty in each law school. Access to justice should become a key component of a law school’s mission as a response to the ABA mandate.

Law schools need concrete strategies on how to change the “legal education culture” and the curriculum to create professional support for access to justice. Awareness of access to justice issues must start at law school orientation and extend beyond the 50 hour *pro bono* bar admission requirement. It is critical for first year faculty to embrace access to justice issues to enable students to understand these issues as an essential part of the law school curriculum from the outset, which would help build a foundation for the entire law school curriculum. Professional responsibility and ethics should be explicitly acknowledged as central issues in access to justice.

Access to justice should be embedded in courses in many ways, including through hypotheticals and problem sets; simulations in roles as attorneys; writing assignments; guest speakers; reading briefs of both sides in assigned cases; projects and opportunities for external field placements as part of a class. Law school courses should increase awareness by law students of the consequences resulting when a person does not have access to a lawyer. In law school, so much time is spent on legal doctrine, with relatively little emphasis on how useless the law is when a person does not have competent represen-

tation. All law schools should require experiential courses, clinics, and supervised externships. As part of preparing students for bar admission, law schools should include courses, resources and other opportunities to learn about the practicalities of independent, self-sufficient autonomous law practice, including law collectives, solo practice, incubators, and affiliations with community-based organizations.

Law schools should analyze a law professor's access to justice coverage in courses, scholarship, and services activities in relation to tenure decisions. Access to justice coverage in courses is generally not valued for purposes of earning tenure. Traditional academia values publishing articles on obscure topics much more than scholarship, teaching, and service activities that address access to justice issues.<sup>18</sup> Efforts should be made to build connections around access to justice in all parts of the curriculum, which could also help eliminate the dichotomy between "podium" and "experiential" professors.

Law schools should be encouraged to find ways to encourage students who come in with a commitment to social justice, including access to justice. Many students enter law school with aspirations to do access to justice work, but something happens along the way that dampens their idealism. Law schools need to encourage and incentivize public interest work. However, law schools cannot force all students to do public interest work, and ultimately cannot control students' commitment to public interest work following the course of study at law school and opportunities after graduation.

In this regard, faculty influence should not be overvalued. The values shared by public interest professors and attorneys are not universally shared. Therefore, research to evaluate whether programs and initiatives are working should be supported, to assess, for example, the impact of the 50 hour rule on law students, and how to assess the PBSP and structure it to maximize efficiencies and outcomes that discernibly work to narrow the justice gap.<sup>19</sup> Participants agreed that law schools do not, but should, assess traditional doctrinal courses as rigorously. Concern was expressed that clinics, supervised externships, and access to justice courses and activities will be subject to a different and heightened level of scrutiny and assessment.

From a practice point of view, law schools must give law students skills to make them employable, including classes that focus on specific practice areas and that highlight and integrate practical lawyering skills and activities in doctrinal areas that are relevant to community-based practice.<sup>20</sup> Law school assignments should help develop knowledge and expertise in the practicalities of a lawyer's work from client interactions (e.g., interviewing, advising and counseling), to drafting documents (e.g., letters, memoranda, and motions), to problem solving (e.g., informal, alternative dispute resolution, and litigation). Also, law students and graduates should have fundamental knowledge of what employers will expect from them, and upon graduation be "profession ready."

## **B. Bar Examination**

The Work Group was also charged with considering how to test access to justice on future bar examinations and other potential changes to the bar exam. Under the jurisdiction of the Court of Appeals, the BOLE effort to revise the content outline and specifically integrate access to justice issues and topics on the New York bar exam is a watershed event.<sup>21</sup> Access to justice issues and topics on the bar exam could include: torts and environmental impact; corporations and shareholder proxy voting rights; assessing and dealing with legal consequences of a family member with diminished capacity to make decisions involving housing, health care, government benefits, and other personal and property management needs; criminal and civil issues relating to arrest, incarceration, and re-entry. Access to justice issues probably are most effectively integrated within questions about specific topic areas, rather

than being added as a separate access to justice essay. There is a heightened need for cultural competence awareness and skills across the curriculum.<sup>22</sup>

The Work Group recognized the strengths and utility of the New York bar exam, and the need for a test that will accommodate the large number of bar exam takers.<sup>23</sup> There is a synergy “back and forth” between the law school curriculum and the bar exam. If the bar exam includes access to justice that, in turn, will influence law schools to increase their access to justice/public interest mission and curriculum, which will then also influence the prevalence and testing methodology of those topics on the bar exam.<sup>24</sup> There was also general agreement that the access to justice crisis, the well-chronicled need for law schools to better prepare students for the profession, and the contraction of the legal job market<sup>25</sup> all create an opportunity to build on the PBSP, and to explore the possibility of an access to justice alternative path to bar admission.<sup>26</sup>

Designed to test basic knowledge and skills, the content of the bar exam impacts the law school curriculum; it is essential that students be prepared to pass the bar exam (in addition to being “profession ready” among other valid goals law schools may have for their students).<sup>27</sup> Most law schools in New York (and nationally) balance a sequence of doctrinal courses, electives, lawyering seminars, practicums, clinics, supervised externships, and other course designs, some or all of which may incorporate access to justice. Law schools that have found it necessary to adopt more flexible admissions criteria to attract a full student body also need to provide appropriate levels of academic support and careful curricular design to prepare students for both practice and the bar exam, each of which require substantially different “skill sets.”

To graduate students who are “profession ready,” assessment of skills must be more than the ability to memorize and quickly regurgitate legal principles. Concerns about the bar exam include the large number of subjects tested, the relatively short time available for each question, and the effectiveness and relevance of the bar exam as it currently exists. The Multistate Performance Test (MPT) appears to be more connected to the actual work and strategic thinking required of lawyers, and the use of MPT “type” problems should be increased. However, members of the group expressed the view that the benefits of the MPT are undercut to some extent by anecdotal reports that its “speediness” requirement makes it extremely difficult to finish the MPT component.

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## **Role of Law Schools in Working with Non-Lawyer Advocates to Help Narrow the Justice Gap**

### **Conclusions of the Work Group**

1. It is appropriate to explore the expansion of the use of non-lawyer advocates because the needs of low-to-moderate income litigants who lack access to legal assistance are too great to live with the status quo, and outcomes for such clients will improve with effective assistance.
2. The outcomes from the “navigator pilots” and the future projects to be undertaken by the Committee on Non-Lawyers and the Justice Gap are highly anticipated.
3. Any non-lawyer advocate project must consider the concerns of the organized bar, law schools, the public interest community and the public.
4. Any proposal must also successfully respond to concerns about the quality of services delivered, the costs and source of the resources.

## **Synopsis of Discussion**

The work of the Task Force demonstrates that efforts to help narrow the justice gap must embrace a wide array of resources and non-traditional approaches. The use of non-lawyer advocates, referred to as “navigators” in the New York State court system, is an example. Following study by the Advisory Committee on Non-Lawyers and the Justice Gap, pilot programs were launched to use appropriately trained and qualified non-lawyer advocates to help low income clients confronting consumer credit matters in Bronx Civil Court and housing matters in Brooklyn Civil Court. Under court rules, navigators are allowed to accompany unrepresented people into the courtroom but may not directly address the court, unless the judge specifically directs a factual question to the navigator. Although these initial pilots are underway, debate surrounding issues of this type of representation, even use of the term “non-lawyer advocate,” remains robust, particularly with regard to ensuring protection of the public against unscrupulous practices.

Critics of limited-practice licensing worry that allowing non-lawyers to perform certain legal tasks may increase opportunities for fraud. Another complaint and concern is that the effort would take work away from lawyers. The ABA studied the idea of licensing legal technicians in the mid-1990s. Nothing came to fruition, even though all of the studies supported the concept. Washington State has the distinction of becoming the first state in the country to create a licensing structure and education protocol for non-lawyer advocates. To draw from the experience of Washington State, the Executive Director of the Washington State Bar Association was invited to participate by Skype and lead off the discussion.

A confluence of factors, including the decline in law school applications, the increasing national income disparity between the rich and poor, and the appetite of consumers to save money by employing a do-it-yourself approach and/or technological legal assistance or court-based tools, created a more receptive climate for an alternative approach to lawyering. Although it went into effect only recently, Washington’s Limited License Legal Technician (LLLT) Program dates back to 2001, when legislation was passed establishing the State’s Practice of Law Board’s (Board) right to investigate allegations of the unauthorized practice of law. The Board was also empowered to issue advisory opinions regarding the authority of non-lawyers to perform legal services and to make recommendations to the Supreme Court about services that non-lawyers could perform to fill the need for legal services. On September 1, 2012, the Washington Supreme Court adopted the LLLT rule authorizing non-attorneys who meet certain educational requirements to advise and assist clients in approved practice areas of law.<sup>28</sup> LLLTs will work independently and help clients with discrete tasks, including selecting and completing court forms, informing clients of procedures and timelines, and reviewing and explaining pleadings. LLLTs are not, however, allowed to represent the clients in court and cannot negotiate with opposing counsel on the client’s behalf.

Discussion of the use of non-lawyer advocates must consider: (1) the impact on and role of law schools in training and/or supervising these “legal assistants;” (2) how the work of the non-lawyer advocates is viewed in relation to unauthorized practice of law rules; (3) the type of training and education required to serve as a non-lawyer advocate; (4) the implications for professionalism; (5) whether non-lawyer advocates must carry malpractice insurance; and (6) the implications to attorney/client privilege for work performed by non-lawyer advocates. In New York, the Non-Lawyer Advisory Committee is presently reviewing New York’s practice of law regulations in the context of the work of non-lawyer advocates, including how to define “legal services.”

There is some tension in the law school community regarding whether the education and training of non-lawyer advocates will ultimately “de-value” a J.D. degree. Similarly, if law schools unwittingly become stewards of the education and training of this para-profession, how will law schools preserve their distinction as “gatekeepers” to the legal profession? How will this impact ABA accreditation for law schools? Will law students willingly register for courses that are also designed to educate non-lawyers? This highlights the conundrum presented by the fact that law students are actually “non-lawyers” while in law school. Interestingly, law students at the University of Buffalo Law School, which has spearheaded several new programs to educate students about the justice gap and *pro bono* based on the Task Force’s work, are interning in Erie County Family Court and Buffalo Federal District Court to help self-represented civil litigants navigate the unfamiliar court system, not offer legal advice.<sup>29</sup>

It is notable that many law schools already work with non-lawyer advocates, typically paralegals and social workers who are involved in clinical and experiential programs. Interdisciplinary collaboration among law school clinics and legal services providers and para-professional programs is gaining additional momentum as a means to alleviate the access to justice crisis. Fellowships and post graduate seminars with these types of collaborative educational experiences are successfully underway at public interest law schools, like CUNY School of Law. Viewed in the context of lawyers expanding the scope of their ability to serve their clients (and the number of clients) by adding social workers, paralegals and/or lay advocates to their practices certainly merits serious consideration. Of course, the training, supervision and support of such non-lawyers is critical, particularly if they may be performing unbundled legal work on behalf of litigants. There are legitimate concerns about “who” would assume responsibility for and the cost of training and supervising these non-lawyer advocates. Whether the already overburdened courts and legal services community can afford to take on these extra costs is not a question with an easily discernible answer.

Likewise, there are no clear answers to questions such as if law schools train this new type of professional,<sup>30</sup> will it lead to an economically viable career? Will law firms incorporate these new professionals into the law firm business model? How competitive will non-lawyer advocate jobs will be with jobs for social workers or paralegals? What does that mean in terms of professionalism? Will non-lawyer advocates be required to perform *pro bono*? Will New York adopt a “bar-type exam” similar to that adopted by Washington? Or a licensing scheme for non-lawyer advocates?

The Work Group agreed that the following suggestions merit further study:

- a. Non-lawyers do have a role in helping to close the justice gap.
- b. Law schools probably should have a role in training non-lawyer advocates; with so many law schools in New York, there is probably room for experimentation and divergent educational options.
- c. Non-lawyer advocates already play an important role in access-to-justice efforts at law schools, by, e.g., partnering with students, working with clinics and in *pro bono* projects.
- d. The profession should encourage discussion of the factors — financial, philosophical, ethical and cultural — that law schools might encounter in developing programs for non-lawyers, and assess faculty sentiment.
- e. The legislature must join with the courts and organized bar to decide what type of supervision is appropriate for non-lawyers.

- f. There should be a blueprint for what type of training and support is incumbent upon the law school to provide and who is responsible for supervision of non-lawyers.
- g. Consideration must be given to the issue raised by the development of non-lawyer advocate programs as devaluing the mission of law school and/or the J.D. degree, which is distinct from the idea that law students are non-lawyers.



## PRO BONO SCHOLARS PROGRAM

**T**HE WORK GROUPS RECOGNIZED THAT THE PBSP IS STILL UNDER DEVELOPMENT and schools may potentially adopt differing models. The recent appointment of the Executive Director of the PBSP is expected to lead to the resolution of many open issues. The law schools have endeavored to introduce flexible and practical courses and practicums to properly prepare students to take the bar examination in February and then enter practice for their sixth semester.

### Suggestions

1. Law Schools should consider including fifth-semester preparation for the PBSP to better prepare students for their full-time PBSP semester in practice. Consideration should also be given to offering a uniform classroom seminar that would enable all law schools to share materials and resources.
  - a. The law schools and the host organizations should share responsibility for providing training. The law schools could teach the subjects relevant to all of its Scholars, as currently done in many externship seminars (e.g., ethics and professionalism, access to justice, poverty law overview). The providers could take primary responsibility for training Scholars on the substantive law and skills relevant to the Scholars' specific projects.
  - b. Given that a Scholar's graduation from law school and eligibility for early admission to the bar depends on successful completion of both the academic and field components of the PBSP, the standards by which they are evaluated must be very clear and appropriate. The host organizations should design their evaluation criteria and process in close consultation with the law schools, which have expertise in evaluating students.
2. Explore the possibility of expanding the PBSP to include a greater number of students who may excel as attorneys, but who may be reluctant to "compress" their law school curriculum into five semesters and take the bar exam in February.

### Discussion

Based on the lunchtime presentation on PBSP, it appeared that a priority was on selecting "high achievers" and an emphasis on bar exam passage in February, with an expectation that PBSP will provide participants with an advantage in securing public interest jobs. In response, some participants expressed the concern that PBSP will advantage those who need it the least, and the program may not be structured to maximize the diversity of participants due to its compression of the law school curriculum and early taking of the bar exam. Conversely, there is a sense that some students may want to participate but not want to take the bar examination early. There is some question about how to accommodate students who do not feel either "bar exam ready" or "practice ready," but would relish the opportunity presented by a semester of practice. Some expressed the view that PBSP should develop into an alternative path to bar admission. It was agreed that Chief Judge Lippman's intent has to be embraced. Although it is not clear that PBSP will increase access to justice (or decrease the gap), hopefully it will do so and also possibly infuse law students' "DNA" with the importance of *pro bono* as the Chief Judge intends.

To derive the most benefit for the student Scholars, the design of the program should include substantial preparation and experiential opportunities. Concern was expressed that the PBSP sixth semester not merely make students available to serve as interns; if that were the case, and law schools continue to charge tuition for that sixth semester, that would be problematic.

## **Matching Process**

**Importantly, information was not available** about the matching process for *Pro Bono* Scholars and host organizations. Nevertheless, there was a strong consensus that the success of the PBSP depends, in large part, on the “fit” between the individual *Pro Bono* Scholar and the host organization, including the specific work to be done. It is essential, therefore, that the matching process allow organizations to select their Scholars and allow students to have input into their placements and projects.

The PBSP website could facilitate a participatory process by including the organization’s responses to a standardized questionnaire about the organization and the specific project, including the issues, skills and knowledge that will be developed, clients who will be assisted, etc. Similarly, Scholars selected by their law schools could post statements of interest, standardized bios, transcripts and a list of their top placement choices. The matching process would have to be completed early enough for students who are not satisfied with their placement to withdraw from the PBSP before they have to commit to it in mid-September and in time to register for Spring semester classes at their law schools. Matching may also be facilitated through initiatives identified by the Task Force, and under development by the Council, for using new technology to match students to *pro bono* opportunities in contexts other than the PBSP.

## **Managing the PBSB: Student and Host Organizations Expectations**

**Close collaboration between and among the Scholars**, the host organizations, and law schools will be necessary, and written agreements may be useful. For example, it will be necessary to determine how the students’ time will be divided between academic and practice components; the division of responsibility for educating students about substantive law, skills, ethics and being reflective lawyers; and what the evaluation process will be and whether it will include the law school.

Similarly, law schools should provide general oversight of the Scholars’ professional development, while the host organizations supervise the Scholars’ individual projects. This allocation of responsibility recognizes that the rules of confidentiality may prevent Scholars from sharing certain details about their cases outside of the organization that serves as attorney of record. Additionally, because supervision of students who volunteer full-time will require enormous lawyer resources, some host organizations may want to rely on mentors from the Scholar’s law school or on PBSP alumni to help supervise the activities of their Scholars.



## EXHIBIT TO CURRICULUM WORK GROUP REPORT

Specific Suggestions and Examples of Access to Justice Topics for Selected Doctrinal Courses and the Bar Exam:

### Administrative Law

- Due process rights at hearings (e.g., denial, reduction, termination of government benefits).

### Contracts

- Analyze an actual contract; negotiate and draft a contract (e.g., a lease for a rental apartment).
- Consumer contracts, unfair and deceptive practices, and unconscionability issues.
- The attorney-client relationship: for example, client rights generally; retainer agreements; and the right to a copy of the client's file (and how to obtain it without having to engage a lawyer).
- Landlord/tenant issues.
- Foreclosure and mortgage issues.

### Corporations

- Shareholder proxy rights to address corporate policies and actions.
- Corporate responsibility issues.
- Not-for-profit, tax-deductible, charitable organizations.

### Criminal Law<sup>31</sup>

- Criminal law highlights the differences between access to justice and social justice. In criminal law/procedure there are many more "social justice" issues than "access" issues.
- Many criminal law related issues involve civil law:
- Criminal arrest, incarceration, and re-entry.
- Prisoners' rights issues, including questions about solitary confinement.
- Standards for clemency, pardons, and commutation of sentences raised by Attorney General Holder.
- Rights of defendants at arraignment.
- Stop-and-frisk issues.
- Bail decisions.
- Criminal and civil issues relating to arrest, incarceration, and re-entry.
- False and/or coerced confessions (e.g., the Central Park Five) and the greater attention being paid to due process with respect to voluntariness of confessions.
- DNA exonerations and identification procedures.
- Brady issues related to the prosecution's duty to disclose exculpatory evidence.

## **Domestic Relations Law (DRL)<sup>32</sup>**

**In addition to learning** New York statutory law on traditional family law subjects (*i.e.*, marriage divorce, custody, visitation, child support, etc.) for the bar exam, here are some of the social justice and “experiential” approaches for a DRL class:

- **Retainer Agreements:** Students research and draft family law retainer agreements to have them comport with professional standards based on New York State regulations for ethical behavior in family representation.
- **Uncontested Divorce documents:** Students draft a complete set of actual uncontested divorce documents based on an in-class hypothetical.
- **Analyze New York Courts:** To determine what courts poor people were typically tracked to depending upon their marital status or the type of case they were litigating. (For example married people, who tend to have more resources, can have most of their family needs met in Supreme Court, which is a “lawyer’s court,” runs in a more timely fashion, and is generally more respectful toward litigants. Conversely, family court adjudicates the custody, visitation, and child support needs of unmarried litigants, and is typically a pro se court, with more delays, continuances, and more of a coercive and unprofessional atmosphere. Moreover, it is the court of exclusive jurisdiction for child welfare cases, PINS petitions, and juvenile court matters — all issues disproportionately affecting poor people and people of color.)
- **Child Welfare:** Cover issues of child welfare (abuse and neglect) in more depth than typical domestic relations court classes. Over 98% of children removed from their families to foster care are children of color. While there are good reasons to remove some children, 89% of these cases are for neglect that stems from poverty.
- **Incarceration:** Address issues of mass incarceration and the effect that it has on parents and children in litigation in many family law areas. Since many low income New Yorkers are affected by mass criminalization, it is an important and appropriate lens through which we should analyze family law issues.
- **Federal statutes (jurisdiction):** Family law is generally a creature of state statutes. The Constitution is generally interpreted to require that most family issues are left to the states. Federal law regulates many of the issues affecting poor people and marginal populations: child welfare; child support enforcement; gay marriage; and others.

## **New York Practice<sup>33</sup>**

- Infuse CPRL rules with examples—for example, when discussing time limits and service requirements for a notice of claim, create relevant hypotheticals that involve police brutality, lead paint in rental apartments, and medical malpractice in public hospitals.
- Teach CPLR Article 78 in context with, for example, government benefits; prisoner appeals; police brutality; and environmental issues.

## **Professional Responsibility**

- Issues that arise when an attorney interacts with unrepresented parties.

- Decision making between attorney and client, including how to advise and counsel a client so that the explanation is clear and the client is able to make an informed decision.
- Duty to disclose relevant facts and law to a court.
- Limits on interacting *ex parte* with a court.
- Representing a client with diminished decision making capacity.
- Ethical issues and obligations when an attorney or law office provides unbundled legal services, including limited advice and counseling, drafting of documents, and other discrete lawyering tasks that are not “full representation.”

## **Property**

- Housing issues that affect low-and middle-income people, including predatory lending, mortgages, and landlord-tenant issues (eviction, warranty of habitability, affirmative defenses, counterclaims, role of guardian ad litem).
- Community benefits agreements.
- Land trusts.
- Environmental issues.

## **Property/Land Use<sup>34</sup>**

- Focus on public processes and alternatives for community groups seeking to weigh in on development proposals, either using existing state and/or local government mechanisms.
- Students participate in a simulated negotiation role play based on an actual community benefits agreement; *e.g.*, Columbia University’s expansion into West Harlem.
- Student group projects often focus on housing issues and recourse for tenants (*e.g.*, legal challenges to NYCHA infill proposals; abusive landlord practices).

## **Wills, Trusts, and Estates**

- Incorporate ethical issues that arise within an access to justice context that often includes “non-traditional families” and includes the following issues:
  - Who is the client, confidentiality, and attorney-client privilege.
  - Multiple representation and conflicts of interest.
  - Representing a client with diminished capacity.
  - Malpractice liability of drafting attorney to beneficiaries of a will, trust, and intestate estate.
- Examine how probate and intestacy laws and patterns vary among demographic groups (in the U.S. with comparison to other countries) and impact ownership of residential property.
- Analyze the various types of supplemental needs trusts for people with disabilities.
- Examine the role of Surrogate’s Court and access-to-justice issues affecting low-and middle-income litigants.

- Assign simulated lawyering activities and assignments that include interviewing, counseling, and drafting a will with commentary on relevant legal doctrine.<sup>35</sup>
- Use actual New York bar essay questions and similar problems and hypotheticals that incorporate access to justice issues and fact patterns (e.g., involving unmarried and married couples; LGBT, straight, and multi-generational families that include elders; inheritance rights of children and descendants of “nontraditional” families; elective share issues; supplemental needs trusts for people with disabilities, and small estates).
- Identify standards for decision-making capacity.
- Examine economic implications of state and federal estate tax and how inheritance impacts individuals, families, and the distribution of wealth.

## **ACKNOWLEDGMENTS**

**THE MEMBERS OF THE LAW SCHOOL CONFERENCE PLANNING COMMITTEE**, as recognized in the Program, attached as Exhibit 1, are:

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## ENDNOTES

- <sup>1</sup> Reports from the 2012 and 2013 Law School Conferences are included as Appendix 15 to the 2012 and 2013 Task Force Reports, respectively, each available on the Task Force website at <http://www.nycourts.gov/ip/access-civil-legal-services/index.shtml>. The history of the Law School Conference is recounted in Appendix 15 to the 2013 Task Force Report, available at <http://www.nycourts.gov/IP/access-civil-legal-services/PDF/2013CLS-Appendices.pdf>. As noted there, the Task Force to Expand Access to Civil Legal Services in New York was appointed by Chief Judge Jonathan Lippman in 2010 to develop a comprehensive approach to the provision of civil legal services to low income New Yorkers. Beginning in 2010, the Chief Judge, assisted by the Task Force, has held annual statewide hearings to assess the level of unmet need for civil legal services in New York. Subsequent to the annual hearings, the Task Force prepares a Report to the Chief Judge for his consideration in advance of his recommendations, as requested by the 2010 joint legislative resolution, to address the documented unmet need for civil legal services in New York. Over the past five years, the Task Force's Reports have detailed the crisis in our legal system resulting from the lack of access to civil legal services for millions of low income New Yorkers. Due to the contraction of resources in both the public and private sectors, the Task Force has encouraged all the constituent organizations in New York's legal system to work collaboratively to find solutions to this crisis. See *2013 Report of the Task Force to Expand Access to Civil Legal Services in New York: Appendix 15*, cited above, at 8.
- <sup>2</sup> The program from the Third Annual Law School Conference is attached as Exhibit 1.
- <sup>3</sup> The fall 2013 report of the City Bar's Task Force, *Developing Legal Careers and Delivering Justice in the 21<sup>st</sup> Century*, is available at <http://www2.nycbar.org/pdf/developing-legal-careers-and-delivering-justice-in-the-21st-century.pdf>.
- <sup>4</sup> The *Pro Bono* Scholars Program Guide is available at <http://www.nycourts.gov/attorneys/probonoscholars/ProBono-Scholars-Program-Guide-2014.pdf>.
- <sup>5</sup> Subsequent to the Conference, on August 11, 2014, the ABA House of Delegates adopted new standards proposed by the Council of the ABA Section of Legal Education and Admissions to the Bar, requiring law schools to publish specific student learning outcomes that achieve the objectives for admission to the bar and effective, ethical and responsible participation in the profession. See Standard 301(b), ABA Revised Standards for Approval of Law Schools, available at [http://www.americanbar.org/content/dam/aba/administrative/legal\\_education\\_and\\_admissions\\_to\\_the\\_bar/council\\_reports\\_and\\_resolutions/201406\\_revised\\_standards\\_redline.pdf](http://www.americanbar.org/content/dam/aba/administrative/legal_education_and_admissions_to_the_bar/council_reports_and_resolutions/201406_revised_standards_redline.pdf); see also "Revised Standards and Rules Concurred in by ABA House of Delegates," Announcement of the ABA Section of Legal Education and Admissions to the Bar, available at [http://www.americanbar.org/content/dam/aba/administrative/legal\\_education\\_and\\_admissions\\_to\\_the\\_bar/council\\_reports\\_and\\_resolutions/2014\\_hod\\_standards\\_concurrence\\_announcement.pdf](http://www.americanbar.org/content/dam/aba/administrative/legal_education_and_admissions_to_the_bar/council_reports_and_resolutions/2014_hod_standards_concurrence_announcement.pdf).
- <sup>6</sup> This offering could be a stand-alone one-credit course required in the second year or integrated into a broader skills and values course.
- <sup>7</sup> The 2012 Law School Conference Report is included as Appendix 15 to the Task Force's 2012 Annual Report, and is available at <http://www.nycourts.gov/ip/access-civil-legal-services/PDF/CLS2012-APPENDICES.pdf>.
- <sup>8</sup> In April 2014, the Supreme Judicial Court of Massachusetts approved and promulgated an amendment to the rules of the Massachusetts Board of Bar Examiners, effective July 1, 2016, adding "Access to Justice" as a legal field to be tested on the Massachusetts bar examination. (Supreme Judicial Court of Massachusetts, Notice of Approval, April 25, 2014, available at <http://www.mass.gov/courts/docs/sjc/rule-changes/bbe-rule-301-amendment.pdf>.) In October 2013, the Board of Trustees of the California State Bar, acting on the recommendation of its Task Force on Admissions Regulation Reform, adopted competency training standards requiring candidates for bar admission to take 15 credits of experiential course work. Rule 303(a)(3) of the ABA's recently adopted Standards and Rules of Procedure for Approval of Law Schools also requires law school curricula to include six credit hours of experiential coursework. See sources cited above in note 5.
- <sup>9</sup> The former President of the New York City Bar Association proposed a few ideas that might make *pro bono* work more universally appealing to both students and graduates at all stages of their legal careers, such as (1) greater availability of client-based *pro bono* opportunities (not just "simulations") outside of the litigation setting (e.g., transactional work, small business programs, estate planning, benefits work, etc.) to attract the interest of more students; (2) additional *pro bono* or clinical requirements by law schools and state licensing authorities; and (3) a better articulation by law school administrators and faculty, bar associations, accrediting organizations, etc., of the importance of such "non-litigation" *pro bono* experiences.



- <sup>10</sup> Suggestions to overcome student resistance to public interest work include: (1) including significantly more transactional clinical work to match students' future career goals, and (2) improved messaging about the connection to future transactional work which litigation and adversarial based clinics bring by explicitly addressing the transferable lessons that work with all types of clients creates; e.g., interacting with real clients, resolving clients' needs, and developing a "bedside manner" are important and valuable skills to learn.
- <sup>11</sup> Recommendations for specific courses can be found in the Curriculum Exhibit at the end of the Conference Report.
- <sup>12</sup> According to one participant: "Experience = employment. This could be a marketing opportunity for law schools: As a student here, you will have these opportunities."
- <sup>13</sup> See William M. Sullivan, *Align Preparation and Assessment With Practice: A New Direction for the Bar Examination*, 85 NYSBA Journal 41 (September 2013); John Burwell Garvey, "Making Law Students Client-Ready"—*The Daniel Webster Scholar Honors Program: A Performance-Based Variant of the Bar Exam*, 85 NYSBA Journal 44 (September 2013); a similar "Public Service Alternative to the Bar Exam" was recommended in the NYSBA *Report of the Task Force on the Future of the Legal Profession* (April 2011), available at <http://www.nysba.org/futurereport/>.
- <sup>14</sup> This proposal is similar to the "Practice Readiness Evaluation Program" recommended in the NYSBA *Report of the Task Force on the Future of the Legal Profession* (April 2011), available at <http://www.nysba.org/futurereport/>.
- <sup>15</sup> Language access issues are also an important part of access to justice. One participant urged law schools to explore ways to provide incentives in the curriculum for students to learn another language.
- <sup>16</sup> The 2012 Report of the Work Group on Incorporation of Access to Justice Issues in the Basic Law School Curriculum recognized the importance of the findings and recommendations of the Carnegie Report (William M. Sullivan, Anne Colby, Judith Welch Wegner, Lloyd Bond and Lee S. Shulman, *Educating Lawyers: Preparation for the Profession of Law*. San Francisco: Jossey-Bass, 2007) and noted the following: law professors continue to use casebooks and rely on a common law approach instead of a distinct focus on skills, experiential education, and access to justice; there is a need for more courses on poverty law; there is also a need to integrate access to justice issues throughout the curriculum, including professional responsibility courses, in order to emphasize the public interest obligations of the profession and the "core value" of providing service to low income and "underserved," people beginning with law school orientation and including spring break service projects; including access to justice issues on the bar exam would create a "strong incentive for change" in the law school curriculum; law schools need to create greater opportunities for information sharing and collaboration between "podium"/doctrinal professors and clinical/experiential professors (e.g., linking a doctrinal course with a clinic or including an externship component in a doctrinal course); law school must adopt more approaches that facilitate "curricular and philosophical reform," including: more credits for skills training, stipends and other incentives for faculty to adopt new teaching methodologies, and hiring professors with practical experience, particularly in access to justice issues. See *2012 Report of the Task Force to Expand Access to Civil Legal Services in New York: Appendix 15*, cited above at note 7, at 34—37.

The 2013 Curriculum Work Group Report further noted that its diverse proposals had to be adapted to the needs, possibilities, and strengths of each law school. All of the proposals envisioned a collaboration between the practicing bar and law schools, which requires attention to potential problems in supervision and quality control. Law schools should measure results systematically, even if the focus is on short-term results (how many matters) rather than long-term impact (success in getting students to do public interest work). The Report also noted the impact of the bar exam on the law school curriculum and stated that in order to truly develop a focus on access-to-justice issues and lawyers devoted to the public interest, the bar exam—"if one is to exist at all"—must focus on those issues. The Report cited the following examples of curricular reform: a first-year lawyering seminar with a service component; an upper-level course studying public interest practice models and ethical issues, including drafting documents needed in practice, from pleadings to grant proposals; a "concentration" in small firm practice, with 26 credits in practice skills, practice management, guided experience in handling cases, and training in substantive legal areas; an immigration *pro bono* clearinghouse project (e.g., the New York Law School Safe Passage project) in which law students and *pro bono* attorneys cooperate to represent juvenile clients in immigration court; a "clinical year" program, such as New York Law School's 24-credit pilot program for third-year students, which includes three nine-week rotations and in-house courses taught by adjuncts who practice in externship sites; and compressing law school into two years, for example, Brooklyn Law School's 2-3-4 program. The Report incorporated a rubric to evaluate curricular programs using the following criteria: effectiveness in skills training; effectiveness in infusing access to justice issues into law school curriculum; quality of legal services and supervision provided; impact on community legal needs; meeting the 50-hour *pro bono* bar admission requirement; use

of technology to help provide services; cost in terms of money, time, and resources; impact on other curriculum and acceptance within a school; potential for broader applicability and collaboration among schools; assessment, best practices utilized, and areas for improvement. See *2013 Report of the Task Force to Expand Access to Civil Legal Services in New York: Appendix 15*, cited above at note 1, at 8.

- <sup>17</sup> See ABA Section of Legal Education and Admissions to the Bar Standards Review Committee, Revised Standards for Approval of Law Schools, CHAPTER 3: PROGRAM OF LEGAL EDUCATION (Draft for meeting of July 9-10, 2011), available at [http://www.americanbar.org/content/dam/aba/migrated/2011\\_build/legal\\_education/committees/standards\\_review\\_documents/july2011meeting/20110621\\_ch\\_3\\_program\\_of\\_legal\\_education\\_clean\\_copy.pdf](http://www.americanbar.org/content/dam/aba/migrated/2011_build/legal_education/committees/standards_review_documents/july2011meeting/20110621_ch_3_program_of_legal_education_clean_copy.pdf); cf. Footnote 5 and accompanying text.
- <sup>18</sup> For example, at Albany Law School, faculty engages in and is energized by *pro bono* activities. The curriculum now includes one-credit modules with labor law and family law, and students can spend time with a *pro bono* attorney or at a local family help center as part of the course.
- <sup>19</sup> NYU School of Law Professor Oscar Chase strongly emphasized the need to assess programs and pointed out that “mandatory military service did not make him want to serve in the armed forces.”
- <sup>20</sup> For example, commercial lease agreements; debtor and creditor (including demand letters, bankruptcy); elder law; immigration; landlord/tenant; wills, trusts, estate administration; and workers’ rights, employment and labor).
- <sup>21</sup> Massachusetts is also adding access to justice topics on its bar exam effective July 1, 2016, albeit as a discrete topic, and not integrated within other content areas. See note 8 above.
- <sup>22</sup> Language access issues are also an important part of access to justice. One participant urged law schools to explore ways to provide incentives in the curriculum for students to learn another language.
- <sup>23</sup> Approximately 16,000 candidates sit for the New York State bar examination each year (<http://www.nybarexam.org/press/press.htm>).
- <sup>24</sup> However, one participant cautioned that it is not necessarily the purpose of access to justice on the bar to create more lawyers who will engage in public service. The overwhelming number of lawyers do not perform *pro bono* work, yet are told repeatedly that they should do *pro bono* work.
- <sup>25</sup> See, e.g., *Developing Legal Careers and Delivering Justice in the 21<sup>st</sup> Century: A Report by the New York City Bar Association Task Force on New Lawyers in a Changing Profession* (Fall 2013), available at <http://www2.nycbar.org/pdf/developing-legal-careers-and-delivering-justice-in-the-21st-century.pdf>; Eileen D. Millett and Eileen R. Kaufman, eds., *The Future of Legal Education and Admission to the Bar*, 85 NYSBA Journal (September 2013); *NYSBA Report of the Task Force on the Future of the Legal Profession* (April 2, 2011), available at <http://www.nysba.org/futurereport/>.
- <sup>26</sup> See Mary A. Lynch and Kim Diana Connolly, *Is It Time for Real Reform? NYSBA’s 20 Years of Examining the Bar Exam*, 85 NYSBA Journal 31 (September 2013).
- <sup>27</sup> The multi-state portions of the bar exam used in New York are purchased by the BOLE from the National Conference of Bar Examiners (NCBE). For a description of the Multistate Performance Test (MPT) see *The New York State Bar Examination: Multistate Performance Test*, <http://www.nybarexam.org/TheBar/TheBar.htm#mpt>. For a description of the MBE, see *The New York State Bar Examination: MBE Information*, <http://www.ncbex.org/about-ncbe-exams/mbe/>. The NCBE has also developed the multistate Uniform Bar Examination, which consists of the Multistate Essay Examination, two MPTs, and the MBE. See *National Conference of Bar Examiners: The Uniform Bar Examination*, <http://www.ncbex.org/about-ncbe-exams/ube/>.
- <sup>28</sup> In conjunction with the rule, the Washington Supreme Court established the LLLT Board to administer the program. In late December 2012, the Supreme Court appointed the first LLLT Board, which includes several non-attorneys and a legal educator. The Board’s charter for the first year is to begin creating and drafting the operational details for the LLLT program. This includes regulations for professional conduct, exam procedures, continuing education requirements, and disciplinary procedures. The LLLT Board recommended family law as the first practice area in which to license LLLTs, which the Supreme Court unanimously approved in March 2013. Technicians must be trained and approved by the LLLT Board. In January 2014, the first courses were offered at the Washington law schools to prepare the enrollees for licensing. The LLLT Board is expected to begin accepting applications for the licensing examination in March 2015 and begin licensing of LLLTs in 2015 (<http://www.WSBA.org/Legal-Community/Committees-Boards-and-Other-Groups/Limited-License-Legal-Technician-Board>).

- <sup>29</sup> Professor of Law, Vice Dean for Legal Skills and Director of Clinical Legal Education at Buffalo Law School, Kim Diana Connolly, described the innovative “*Pro Se* Civil Litigation Practicum” that is open to second-and third-year law students and is based on the access to justice needs identified by the Task Force. Students work across practice areas in both state and federal courts, under the supervision of a volunteer attorney, and conduct intake interviews with new clients, record information on their cases and prepare clients to meet with their attorney. The students then accompany the client to meet with their volunteer attorney, who provides limited-scope representation by advising the client about the *pro se* process. The arrangement is designed to expose students to a variety of court settings and clients, while also meeting a critical need in helping *pro se* clients effectively navigate the court system. In addition to their court duties, students in the practicum work on community education projects, such as preparing pamphlets that can answer basic questions for *pro se* litigants. Students also gather weekly for a substantive class that requires a final academic paper on an access-to-justice issue.
- <sup>30</sup> In Washington State, the law schools initially opposed the non-legal program and refused to participate, but after the community college stated that they would be happy to offer the program, the law schools had a change of heart. Now, all the Washington law schools are participating by offering classes and training for the limited license program.
- <sup>31</sup> Adapted from email correspondence with Work Group participant CUNY School of Law Professor Steve Zeidman on file with the Work Group Moderator.
- <sup>32</sup> Adapted from email correspondence with Conference participant CUNY School of Law Professor Ann Cammett, on file with the Work Group Moderator.
- <sup>33</sup> Based on conversation with Work Group participant CUNY School of Law Professor Sarah Valentine.
- <sup>34</sup> Adapted from email correspondence with Work Group participant CUNY School of Law Professor Andrea McArdle, on file with the Work Group Moderator.
- <sup>35</sup> See e.g., Leslie A. Gordon, *No Will But a Way: Law Prof and Students Launch African Probate & Policy Initiative*, ABA Journal, November 1, 2012, available at [http://www.abajournal.com/magazine/article/no\\_will\\_but\\_a\\_way\\_law\\_prof\\_and\\_students\\_launch\\_african\\_probate\\_policy/](http://www.abajournal.com/magazine/article/no_will_but_a_way_law_prof_and_students_launch_african_probate_policy/).

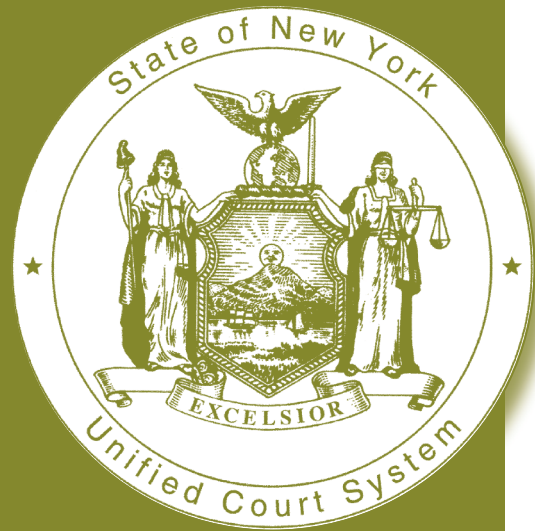
## **EXHIBIT 1**

### **Third Annual Law School Conference**

#### **May 12, 2014 Program**

# ACCESS TO JUSTICE THE ROLE OF NEW YORK'S LAW SCHOOLS

THE CONVERSATION CONTINUES  
THE ROLE OF LAW SCHOOLS  
IN HELPING MEET THE ESSENTIAL  
CIVIL LEGAL NEEDS OF  
LOW INCOME NEW YORKERS



CONVENED BY THE  
TASK FORCE TO EXPAND  
ACCESS TO CIVIL LEGAL SERVICES IN NEW YORK

CUNY SCHOOL OF LAW, LONG ISLAND CITY

May 12, 2014

# ACCESS TO JUSTICE

## THE ROLE OF NEW YORK'S LAW SCHOOLS

THE CONVERSATION CONTINUES • THE ROLE OF LAW SCHOOLS IN HELPING TO MEET THE ESSENTIAL CIVIL LEGAL NEEDS OF LOW-INCOME NEW YORKERS

MAY 12, 2014 • CUNY SCHOOL OF LAW, LONG ISLAND CITY, NEW YORK



**9:00–9:30 A.M.** REGISTRATION AND CHECK IN LOBBY  
LIGHT REFRESHMENTS SECOND FLOOR

**9:30–10:00 A.M.** WELCOME AND INTRODUCTION AUDITORIUM  
HELAINÉ M. BARNETT CHAIR, TASK FORCE TO EXPAND ACCESS TO CIVIL LEGAL SERVICES IN NEW YORK

### OPENING REMARKS

HON. JONATHAN LIPPMAN CHIEF JUDGE OF THE STATE OF NEW YORK

**10:00–10:45 A.M.** OPENING PLENARY SESSION AUDITORIUM

### OVERVIEW: ACCESS TO JUSTICE IN LEGAL EDUCATION

**MODERATOR:** HON. FERN A. FISHER DIRECTOR, NYS COURTS ACCESS TO JUSTICE PROGRAM  
DEPUTY CHIEF ADMINISTRATIVE JUDGE FOR NEW YORK CITY COURTS

**PANELISTS:** DEAN MICHELLE ANDERSON DEAN AND PROFESSOR OF LAW, CUNY SCHOOL OF LAW

HON. JENNY RIVERA ASSOCIATE JUDGE, NEW YORK STATE COURT OF APPEALS

JAMES R. SILKENAT PRESIDENT, AMERICAN BAR ASSOCIATION; SULLIVAN & WORCESTER LLP

**10:45–12:30 P.M.** MORNING WORK GROUP SESSIONS

### A. PREPARING STUDENTS FOR ACCESS-TO-JUSTICE ACTIVITIES IN CLINICAL COURSES

ROOM 3/114

**MODERATOR:** SUSAN BRYANT PROFESSOR OF LAW, CUNY SCHOOL OF LAW

**PANELISTS:** ANN CAMMETT PROFESSOR OF LAW, CUNY SCHOOL OF LAW

CAREY DUNNE PRESIDENT, NEW YORK CITY BAR ASSOCIATION; DAVIS POLK & WARDWELL LLP

DAVID UDELL EXECUTIVE DIRECTOR, NATIONAL CENTER FOR ACCESS TO JUSTICE; VISITING PROFESSOR FROM PRACTICE, BENJAMIN N. CARDOZO SCHOOL OF LAW

#### The Work Group will consider the following questions:

- What professional values, knowledge and/or skills do law students need to learn to be competent in access-to-justice activities while in law school and in practice?
- How can we educate law students to adopt a professional identity that embraces the professional responsibility for achieving justice and providing access to justice?
- How do different clinics, externships and practicums educate and equip students with the knowledge, skills and values to deliver a range of legal services and address the legal needs of low-income people?

### B. BEST PRACTICES FOR SUPERVISING STUDENT PRO BONO WORK ROUNDTABLE DISCUSSION:

ROOM 3/115

**MODERATOR:** ELLEN P. CHAPNICK DEAN FOR SOCIAL JUSTICE INITIATIVES, COLUMBIA LAW SCHOOL

**PARTICIPANTS:** BRYAN HETHERINGTON CHIEF COUNSEL, EMPIRE JUSTICE CENTER

LYNN M. KELLY EXECUTIVE DIRECTOR, CITY BAR JUSTICE CENTER

STEVEN LEE J.D. EXPECTED 2015, MAURICE A. DEANE SCHOOL OF LAW AT HOFSTRA UNIVERSITY;  
DIRECTOR, VETERANS LEGAL ASSISTANCE PROJECT (VLAP)

The Work Group will develop guidelines for a manual that references best practices for supervising all types of student *pro bono* activities in a variety of practice contexts. The Roundtable discussion will

identify best practices and provide an outline of the framework for creating the manual. Following the discussion, the Work Group will divide into small groups to consider discrete best practice “supervisory” issues, such as informing law students about professional ethics/responsibility applicable to the assigned *pro bono* project; providing orientation and training on the assigned *pro bono* project; developing mechanisms for responding to questions and giving feedback and evaluation to students; and, for student evaluation of the *pro bono* experience.

The project to create the manual will continue after the close of the Conference.

### C. DEVELOPING A BLUEPRINT FOR AN ACCESS-TO-JUSTICE CURRICULUM AND TESTING ACCESS TO JUSTICE ON THE BAR EXAMINATION

ROOM 3/302

**MODERATOR:** JOSEPH ROSENBERG *ASSOCIATE DEAN FOR CLINICAL PROGRAMS, CUNY SCHOOL OF LAW*

**PANELISTS:** MICHAEL COLODNER *MEMBER, NEW YORK STATE BOARD OF LAW EXAMINERS*

LILLIAN MOY *EXECUTIVE DIRECTOR, LEGAL AID SOCIETY OF NORTHEASTERN NEW YORK*

YOGI PATEL *LLOYD PATEL, LLP*

ALLIE ROBBINS *ASSISTANT DEAN FOR ACADEMIC AFFAIRS, CUNY SCHOOL OF LAW*

RUTHANN ROBSON *DISTINGUISHED PROFESSOR OF LAW, CUNY SCHOOL OF LAW*

#### The Work Group will:

- Examine how to utilize the “traditional” law school curriculum to prepare students for access-to-justice careers by, e.g., highlighting actual and potential courses that would provide students with the skills and knowledge necessary for access-to-justice careers, and identifying methods and/or models to create opportunities for providing legal services in conjunction with such courses.
- Develop Proposed Questions for Bar Examination:  
Offer suggestions to supplement the statewide study underway on modifications to the “Content Outline and Bar Examination Questions” to test student knowledge and skills important for working with underserved populations in matters involving landlord/tenant issues, foreclosures, family law, installment contracts, consumer credit proceedings and access to public benefits, and propose other topical areas that warrant consideration for testing on future bar examinations.

### D. ROLE OF LAW SCHOOLS IN WORKING WITH NON-LAWYER ADVOCATES TO HELP NARROW THE JUSTICE GAP

ROOM 3/301

**MODERATOR:** HON. FERN FISHER *DIRECTOR, NYS COURTS ACCESS TO JUSTICE PROGRAM;  
DEPUTY CHIEF ADMINISTRATIVE JUDGE FOR NEW YORK CITY COURTS*

THOMAS MALIGNO *EXECUTIVE DIRECTOR, PUBLIC ADVOCACY CENTER; DIRECTOR OF PUBLIC INTEREST,  
TOURO COLLEGE, JACOB D. FUCHSBERG LAW CENTER*

**PANELISTS:** KIM DIANA CONNOLLY *PROFESSOR OF LAW; VICE DEAN FOR LEGAL SKILLS; DIRECTOR, CLINICAL LEGAL  
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TECHNOLOGY DEPARTMENT, LA GUARDIA COMMUNITY COLLEGE, CUNY*

PAULA LITTLEWOOD *EXECUTIVE DIRECTOR, WASHINGTON STATE BAR ASSOCIATION (VIA SKYPE)*

ROGER J. MALDONADO *CO-CHAIR, COMMITTEE ON NON-LAWYERS AND THE JUSTICE GAP;  
BALBER PICKARD MALDONADO & VAN DER TUIN, PC*

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JANE M. SPINAK *EDWARD ROSS ARANOW CLINICAL PROFESSOR OF LAW, COLUMBIA LAW SCHOOL*

#### Based on the panel presentation, the Work Group will consider the following questions:

- What role do non-lawyers have in helping to close the justice gap?
- What role do law schools have in training non-lawyer advocates?
- Is there a direct role for non-lawyer advocates to play in access-to-justice efforts at the law schools by, e.g., partnering with students, working with clinics?

- What factors — financial, philosophical, ethical and cultural — will the law school encounter in developing programs for non-lawyers, and what is the sentiment among faculty?
- What type of supervision is appropriate for non-lawyers?
- What type of training and support is incumbent upon the law school to provide for such supervision?
- Could the development of non-lawyer advocate programs be perceived as devaluing the mission of law school and/or the J.D. degree?

**12:30–12:50 P.M. BOX LUNCH PICK UP** **SECOND FLOOR BEACON/AUDITORIUM**

**12:50–1:10 P.M. DEMONSTRATION OF STATEWIDE CONSORTIUM WEBSITE FOR STUDENT PRO BONO OPPORTUNITIES** **AUDITORIUM**

**JENNIFER A. GUNDLACH** *SENIOR ASSOCIATE DEAN FOR EXPERIENTIAL EDUCATION & CLINICAL PROFESSOR OF LAW, MAURICE A. DEANE SCHOOL OF LAW AT HOFSTRA UNIVERSITY*

**LAREN E. SPIRER** *DIRECTOR OF PRO BONO PROGRAMS, COLUMBIA LAW SCHOOL*

**1:15–1:45 P.M. PRESENTATION: PRO BONO SCHOLARS PROGRAM** **AUDITORIUM**

**HON. A. GAIL PRUDENTI** *CHIEF ADMINISTRATIVE JUDGE, NEW YORK STATE UNIFIED COURT SYSTEM*

**HON. VICTORIA A. GRAFFEO** *SENIOR ASSOCIATE JUDGE, NEW YORK STATE COURT OF APPEALS*

**1:45–2:00 P.M. QUESTION AND ANSWER PERIOD: PRO BONO SCHOLARS PROGRAM**

**2:15–3:45 P.M. AFTERNOON WORK GROUP SESSIONS** **RETURN TO ROOMS**

**Morning Work Groups will reconvene in concurrent sessions to consider the following questions related to the Pro Bono Scholars Program and to finalize topical recommendations based on morning work group sessions for presentation at the closing plenary session.**

- How will the Pro Bono Scholars Program generally affect legal education, and what will the overall academic course of study for pro bono scholars specifically include in terms of courses, both pre-requisites and required courses, lawyering seminars with clinical or simulation components, doctrinal courses, bar electives, practicums, supervised externships, law school clinics, etc.?
- How will the academic component for pro bono scholars be defined for externships and clinical placements?
- What are the best practices for supervising students in the Pro Bono Scholars Program including, but not limited to, the division of responsibility among law school professors and the host organizations (providers, courts, law firms, etc.) and for the evaluation of both students and programs?
- What are the potential implications of the Pro Bono Scholars Program on employment opportunities for all law graduates?

**3:45–4:30 P.M. CLOSING PLENARY SESSION** **AUDITORIUM**

**DEAN MATTHEW DILLER** *DEAN AND PROFESSOR OF LAW, BENJAMIN N. CARDOZO SCHOOL OF LAW*

**Reports from Work Group Sessions and Conference Recap**

**CONCLUDING REMARKS**

**HELAINÉ M. BARNETT** *CHAIR, TASK FORCE TO EXPAND ACCESS TO CIVIL LEGAL SERVICES IN NEW YORK*



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

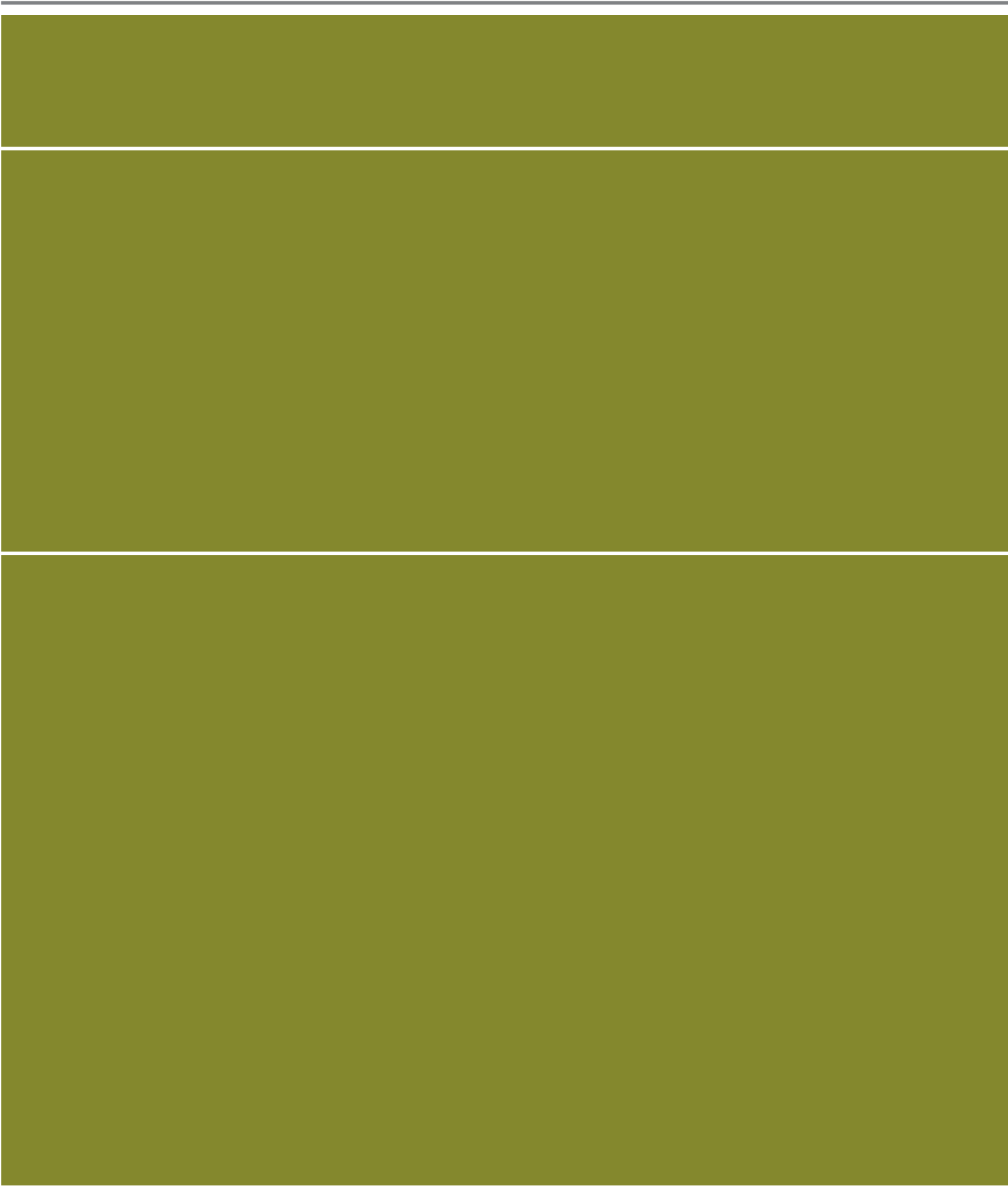
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*The Law School Conference Planning Committee extends its appreciation to Glenn Kauffhold, Gail Bonaparte and the CUNY Institutional Development Team; Lynne Corsori and Jenny Vergara for their assistance with lunch and refreshments; Victor Demenescu and Seth Goldstein for logistical preparations; Joe Firriolo, Sanjay Mirchandani, Rich Rodriguez and the IT crew; Dorothy Matthew and the staff of Main Street Legal Services for assistance with Conference preparation and registration; Steve Katz for building affairs; and, the wonderful law school staff who have contributed to this effort.*



**APPENDIX 16:**

**Report of the Task Force's Working Group  
on Technology**

**THE TASK FORCE TO EXPAND ACCESS TO CIVIL LEGAL SERVICES  
IN NEW YORK**

**REPORT OF THE TASK FORCE WORKING GROUP ON TECHNOLOGY**

**NOVEMBER 2014**

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# REPORT OF THE TASK FORCE'S WORKING GROUP ON TECHNOLOGY

## Executive Summary

Technology can transform the delivery of civil legal services to low-income New Yorkers. Yet, the lack of technology staff, coordination across programs and dedicated funding continue as barriers to the adoption of technology that could dramatically enhance direct client services.

Last year, the Working Group on Technology (“Working Group”), undertook the following tasks: (1) assessment of the technology needs of civil legal services providers and identification of steps that providers could take to address the technology gaps that exist; (2) development of a guide for civil legal services providers that identifies free and low-cost technologies relating to training, collaboration, cloud computing, information-sharing, mobility and security; and (3) an initial exploration of whether law firms could provide *pro bono* technology assistance.

This year, the Working Group delved more deeply into how technology can assist with the coordination of civil legal services. First, we gathered information from national and New York State leaders at the forefront of integrating technology into client service delivery. Next, we identified leaders from law firms to partner on the development of a *pro bono* technology project. Based on these efforts, the Working Group offers the following recommendations to the Task Force:

- 1. Online Screening and Intake Pilot:** Create a coordinated online screening and intake pilot project within the discrete area of consumer credit law, targeted at low-income New Yorkers in designated geographic regions.
- 2. Pro Bono Law Firm IT Initiative:** Create an initiative whereby law firm IT staff offer *pro bono* assistance to the New York State civil legal services community. This initiative should include the creation and piloting of a comprehensive, standardized IT assessment tool.
- 3. Statewide Technology Conference:** Convene the first New York State technology conference with the goals of (a) educating civil legal services leaders across the state on how technology can improve the delivery of legal services and the efficiency of their operations; and (b) promoting more collaborative use of technology among providers.
- 4. Technology Baselines:** Recommend that, in connection with their technology planning and day-to-day operations, New York civil legal services providers review and consider the LSC Technology Baselines Report, including the Working Group’s annotations regarding New York-specific information and resources.

## **Background and Research**

In 2013, the Working Group focused its efforts on examining the state of the technology infrastructure in New York State’s civil legal services community and reported extensively on certain “pressing needs of concern.”<sup>1</sup> This year, the Working Group delved more deeply into how technology could assist with, and improve, the delivery and coordination of civil legal services.

First, we gathered information from national and New York State leaders at the forefront of integrating technology into service delivery. The Working Group devoted significant resources to exploring and reviewing national reports and consulting with technology innovators in the access-to-justice community within New York State and across the United States.

### ***The LSC Summit Report***

The Working Group closely reviewed the December 2013 Legal Services Corporation Report of the Summit on the Use of Technology to Expand Access to Justice (the “Summit Report”), which offers a vision of how technology can advance an integrated service-delivery system. The Summit Report is the culmination of a two-year effort and “reflects the results of a process involving 75 leaders in legal services, the private bar, courts, libraries, IT development, legal academia.” The Summit Report sets forth an ambitious proposal with five components:

- create documents assembly applications to support the self-represented and those with limited scope legal representation;
- take advantage of mobile technologies to reach more persons more effectively;
- apply a business-process analysis to all access-to-justice activities to make them as efficient as practicable;
- develop “expert systems” to assist lawyers and other services providers better deal with essential civil legal needs; and
- “create in each state a unified ‘legal portal’ which, through an automated triage process, directs persons needing legal assistance to the most appropriate form of assistance and guides self-represented litigants through the entire legal process.”

The vision articulated in the Summit Report helped inform the Working Group’s efforts this year.

### ***Legal Technology Initiatives Across the U.S.***

The Working Group also conducted detailed interviews with access-to-justice leaders in Massachusetts, Michigan, Texas, Illinois, Washington, and New Mexico. These discussions revealed a number of strategies for harnessing technology to strengthen existing service providers and to improve service delivery to clients and potential clients. For example, the

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<sup>1</sup> The “areas of pressing need” related to (1) technology staffing, (2) technology policies, (3) core technology supports for advocates, (4) community resources, (5) training, and (6) social media.

Working Group learned of the following efforts to improve provider infrastructure, some of which facilitate, or would facilitate, centralized client screening or intake:<sup>2</sup>

- Centralized Servers, VoIP (MA): Massachusetts provides a centralized data server bank for providers to store client data, emails, and common software. This state also offers low priced voice-over-internet phone service.
- Centralized IT Support (MA, MI, TX): Through central staff, third-party contractors or *pro bono* IT volunteers, Massachusetts, Michigan, and Texas provide centralized help desk support for all users working with civil legal services providers. Supported technologies include case management systems, Microsoft Office applications, common software applications, and others.
- Uniform Case Management Systems (MA, IL, TX, WA): Owing to a grant requirement or historic circumstance, most or all of the providers within Massachusetts, Illinois, Texas, and Washington use the same case management system.

In addition, the Working Group learned about these initiatives to improve legal service delivery:

- Coordinated websites (MI, IL): Working with providers and the court system, statewide entities in Michigan and Illinois develop and maintain content for websites offering legal information, document assembly, and other tools for the public and advocates.
- Online Screening/Intake (WA, NM, IL): With strong centralized coordination and buy-in from providers, Washington, New Mexico and Illinois have or are developing online screening or intake systems. The goals include creating a seamless and cohesive portal for the public, efficiently matching eligible clients with providers, and diverting ineligible people to high quality legal information, forms, and other resources.

### ***Legal Technology Initiatives in New York State***

The Working Group met with several, but by no means all, technology innovators in the New York State civil legal services community. We learned more about current and planned projects by Pro Bono Net and LawHelpNY, including:

- websites providing the public with legal information, such as [www.lawhelpny.org](http://www.lawhelpny.org) and [www.nycourthelp.gov](http://www.nycourthelp.gov);
- document assembly tools, such as those that assist with orders of protection, consumer law matters, and citizenship; and
- efforts to reach clients via their mobile devices.

Additionally, we met with a group of providers in New York City that are coordinating intake and referral services and are in the process of releasing legal education videos to aid unrepresented litigants in the consumer law field.<sup>3</sup>

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<sup>2</sup> Members of the Working Group are assisting with a national survey to learn more about trends in technology support and coordination and will report on further information gathered through that process.

<sup>3</sup> MFY Legal Services, CAMBA, the Feerick Center for Social Justice at Fordham Law School, and ProBonoNet.

## **Findings and Recommendations**

### **1. Online Screening and Intake Pilot**

#### ***Findings***

Despite the great number of civil legal services providers whose core mission is to provide skilled, direct advocacy for low-income New Yorkers and other vulnerable populations, the number of people who struggle to access legal information and services remains unacceptably high. The Working Group recognizes that New York's established civil legal services providers—due to their number, diverse service models, and locations—pose more significant coordination challenges than are present in smaller states or in those states served primarily by statewide providers. Nevertheless, the civil legal services community must begin to think about other ways in which their services can be accessed by more low income New Yorkers in need of legal services. Further examination is warranted on how the existing self-help, referral, and online information aspects of all current service delivery models could lend themselves, with increased coordination, to unduplicated, more efficient collaborative efforts.

#### ***Recommendations***

The Working Group recommends the creation of a coordinated screening and intake pilot project within a discrete subject matter in limited geographic areas. This pilot project should aim to match low income New Yorkers with an appropriate level of information and assistance from a range of sources. Since a significant number of litigants either lack access to technology or are not proficient in its use (i.e., due to lack of English proficiency, literacy limitations, or disabilities), the Working Group recommends that any online screening and intake project exist alongside more traditional forms of client intake via telephone or in person. An online screening and intake system should augment—not replace—existing direct client services.

The Task Force has identified consumer credit law as the substantive area for designing and implementing a method to provide unduplicated legal information and unified or collaborative screening, intake, and referral in a discrete geographic area. Consumer credit cases are often (but not always) simpler than other legal services cases, and can be relatively easy to segment by (1) type of consumer issue (i.e., credit card debt, medical debt, auto loan, public benefit overpayment, breach of lease, student loan, nursing home collection, etc.); (2) type of consumer (i.e., veteran, domestic violence survivor, senior, identity theft victim, etc.); and (3) assistance level (i.e., whether the consumer is income-eligible for legal services, or a member of a union with legal services, or has exempt income).

Despite the vast increase in the number of consumer credit cases over the past several years, consumer assistance is one of the most under-served practice areas in civil legal services and very few practitioners or providers provide full or even limited-scope representation. Resolution of consumer cases also can have far-reaching effects on consumers' lives, including their employment, housing, and family stability.

To broaden the impact that such a coordinated service in the area of consumer credit cases could provide in New York State, the Working Group recommends two initial pilot projects to include civil legal services providers in New York City, and a separate pilot to include civil legal

services provider in Buffalo, Rochester, and Syracuse.<sup>4</sup> This offers a cross-section of providers: those serving urban and rural communities both through traditional civil legal services offices and volunteer lawyer programs under the auspices of local bar associations.

The first phase of the pilot should engage participating providers in a business-process improvement analysis to ensure that the adoption of new technology-driven outreach, triage, and service delivery models for consumer debt defense produces the most significant returns. The Task Force expects that this pilot project will promote statewide discussion of the institutional and financial challenges that coordinated access presents. The creation of such a coordinated screening and intake project will require funding, and the Working Group encourages the participants in the pilot to look into the possibility of securing a Legal Services Corporation Technology Initiative Grant, a State Justice Institute Grant, funding from the New York State IOLA Fund, and other possible sources of funding. The Task Force expects that this consumer law pilot project will inform future efforts to create a more comprehensive and coordinated screening and intake system across all of New York State and encompassing multiple practice areas.

## **2. *Pro Bono* Law Firm IT Initiative**

### ***Findings***

In 2013, members of the Working Group preliminarily reviewed the efforts in Texas to improve the technology infrastructure of its civil legal services providers designed to increase access to justice. The Texas Access to Justice Commission formed a Technology Committee in 2008. Notably, the Texas Technology Committee includes many IT department directors from major Texas law firms who, in turn, have committed their staff to *pro bono* IT projects for Texas legal services providers. The success of the Texas Access to Justice Commission prompted further Working Group review to examine ways in which such efforts could be replicated in New York.

As further outlined in the Working Group's Survey of State Technology Efforts (annexed as Exhibit 1), the Technology Committee of the Texas Access to Justice Commission consists of attorneys and a significant number of Chief Information Officers from large Houston law firms that provide services such as 24/7 IT help desk support, training, inventory of technology needs of the legal services community, guidelines for minimum technology standards, and technology audits.

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<sup>4</sup> The following providers in Buffalo, Rochester and Syracuse have agreed to discuss participation in this proposed Online Screening and Intake pilot project: Western New York Law Center, Inc.; Legal Services for the Elderly, Disabled or Disadvantaged of Western New York, Inc.; Neighborhood Legal Services, Inc.; Legal Aid Bureau of Buffalo, Inc.; the Erie County Bar Association Volunteer Lawyers Project; Legal Assistance of Western New York, Inc.; The Legal Aid Society of Rochester; Volunteer Legal Services Project of Monroe County, Inc.; Legal Services of Central New York, Inc.; The Legal Aid Society of Mid-New York, Inc.; and The Volunteer Lawyers Project of Onondaga County, Inc. The following providers in New York City have agreed to participate in a pilot: MFY Legal Services; CAMBA; the Feerick Center for Social Justice at Fordham Law School; ProBonoNet; The Legal Aid Society; and Legal Services NYC.

### ***Recommendations***

The Working Group recommends that the Task Force create an IT Assistance Initiative in New York, similar to the one in Texas, to provide law firm *pro bono* IT assistance to the civil legal services community. The IT Assistance Initiative would be led by Michael Donnelly, Chief Information Officer of Simpson Thacher & Bartlett, who participated in the Working Group's survey of civil legal services providers last year and has assisted the Working Group in developing its recommendations for this year.

Seventy providers responded to the 2013 survey, expressing a wide range of IT needs. Some common themes emerged, such as aging server infrastructures that are unable to sustain the needs of the organizations, absence of mobile technology, weak or nonexistent IT policies, antiquated telephone systems, and so forth, all stemming from the lack of dedicated IT staff and dedicated funding for technological needs.

The IT Assistance Initiative should seek to address all of these problems by utilizing resources from private law firms, by soliciting help from outside vendors, and also by potentially developing core systems (e.g., cloud-based systems) that can be shared by multiple providers.

In addition to Michael Donnelly, the IT Assistance Initiative will include senior IT leadership from firms such as Cravath, Swaine & Moore; Nixon Peabody; Proskauer Rose; Skadden, Arps, Slate, Meagher & Flom; Sullivan & Cromwell; and Wachtell, Lipton, Rosen & Katz. Also included will be representatives of the IOLA Fund, Legal Services NYC and The Legal Aid Society. In addition, Deborah Wright, Chair of the Working Group on Technology and John Greiner, Chief Information Officer of Legal Services NYC will participate. Helaine Barnett, Chair of the Task Force will participate *ex-officio*.

The first task of the IT Assistance Initiative should be to develop a comprehensive, standardized IT assessment tool that can be used to make initial assessments of the overall technological environment of each civil legal services provider. The Initiative should use this assessment tool to develop customized recommendations to meet the needs of each provider. In addition, the IT Assistance Initiative should develop a protocol for leveraging law firm *pro bono* IT support.

The project will begin with five midsize recipients of Judiciary Civil Legal Services Funding in the greater New York City area. The ultimate goal of this project should be to provide *pro bono* IT assistance to all grantees of the Judiciary Civil Legal Services Funding to ensure that all civil legal services providers are operating at appropriate levels of efficiency to ultimately enhance their delivery of client services.

### **3. Statewide Technology Conference**

#### ***Findings***

Many New York State civil legal services providers already utilize technology to deliver legal services to clients and provide legal information to the public. Indeed, a number of New York providers have:

- created significant technology innovations that have improved client access to information, self-help tools, referrals, as well as to advice, brief service, and full representation;
- improved language access for the state’s diverse communities, reduced the impact of geographic barriers, increased *pro bono* attorney involvement, and empowered staff attorneys to work more efficiently within and outside their offices; and
- made major improvements in their business operations through the application of new technologies.

At the same time, the existence of many providers spread across our geographically large and diverse state creates challenges for technology information-sharing and coordination, which can inhibit the adoption of innovations or best practices throughout the civil legal services community.

#### ***Recommendations***

The Working Group recommends that the civil legal services community endeavor to share and adopt innovations and best practices more broadly and consistently, which will enable the community more effectively to leverage technology that improves the delivery of legal services and law office management. Importantly, the civil legal services community should work together to address the lack of dedicated funding to meet technology needs and build technology collaborations that lower the cost to implement and maintain technologies.

The Working Group recommends that the Task Force convene the first Statewide technology conference to engage the civil legal services community, to be planned in collaboration with NYSTech.<sup>5</sup> The conference should be held in the Spring of 2015 to educate leaders, technology-responsible staff, and practitioners from across the state on innovative technologies that can improve the delivery of legal services, as well as the efficiency of provider operations. Chief Information Officers of major law firms should also be invited to attend. Additionally, the conference should promote collaborative and sustainable use and support of technology across civil legal services providers.

### **4. Technology Baselines**

#### ***Findings***

In 2008, as part of its commitment to develop a strategic vision for technology, the Legal Services Corporation (“LSC”) released its first report on the technological capacities that a modern legal services program should have in place or have available to it, known as the “LSC

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<sup>5</sup> NYSTech is a voluntary collaboration of legal services providers from across New York that convenes technology leaders regularly for information sharing and training.

Technology Baselines Report.” The technology capacities described in that report are intended for any legal services office that provides a full range of legal services, and covers technologies related to data management, intake and telephone advice, support for private attorneys, communication, security, training, social media, and grant management.

In July 2014, after receiving comments from LSC grantees, the NLADA Technology Section, and leaders from non-LSC legal services programs, LSC released a revised draft of the LSC Technology Baselines Report, available at <http://bit.ly/LSCBaselines2014>.

The Working Group reviewed the July 2014 draft revision to the LSC Technology Baselines Report and annotated it with comments and resources relevant to New York providers. The annotated version is annexed as Exhibit 2. Significant comments included:

- Adoption and implementation of technology policies are critical as they can protect client information and help ensure business continuity.
- Technology staffing/consulting levels generally need to be increased to maintain critical systems, support strategic technology planning, and support innovative technologies.
- Current case management systems should be used to help automate more of providers’ day-to-day case and grant management work.
- Providers should invest in more technology training to increase their productivity.
- Document assembly, ranging from simple letters to more complex pleadings, can save time and improve quality.
- Staff mobility is essential, and providers should plan for and manage how their staff will work from court houses, community partner sites, and other remote locations.
- Management should join state and national conversations about technology, and take advantage of free and low-cost resources.
- Technology is becoming more powerful and in many cases more complex—we can collaborate more to improve successful, existing collaborations that involve shared VoIP telephone systems.

The final version of the LSC Technology Baselines is expected to be promulgated in December 2014.

### ***Recommendations***

The Working Group recommends that the Task Force strongly encourage civil legal services providers in New York State to review and consider the final LSC Technology Baselines Report in connection with their technology planning and day-to-day operations. The New York providers also should take advantage of and consider the Working Group’s annotations to the July 2014 draft LSC Technology Baselines Report and references to New York specific resources.



**EXHIBIT 1 TO WORKING GROUP REPORT:**  
**Survey of State Technology Efforts**

During 2014, members of the Task Force's Working Group on Technology interviewed access-to-justice leaders in six other states (Massachusetts, Michigan, Texas, Illinois, Washington, and New Mexico) about efforts in their states to integrate and coordinate technology with respect to the delivery of civil legal services. Below is a summary of these findings.

**MASSACHUSETTS**

**Centralized Servers, CMS, VOIP & IT Support**

In 2006, civil legal services providers approached the Massachusetts Legal Assistance Corporation (MLAC, the IOLTA funder) for help with technology, driven by failing case management systems and an overall lack of technology infrastructure. Ultimately, this resulted in the development of centralized IT services for the civil legal services community at a current cost of about \$1million/year. This program is housed at MLAC and overseen by a technology committee comprised of representatives from the 4 regions and the statewide providers.

The process started with MLAC engaging an outside consultant and issuing an RFP for a CMS, ultimately selecting Legal File. Over a 3 year period, MLAC then invested between \$2-3 million in CMS licenses, the conversion of existing data, establishing a central server bank, setting up T1 lines, and training (which continue to be offered through an outside vendor). The users at the local civil legal services offices have 24/7 access to a professional IT helpdesk that MLAC provides through an outside vendor. Aside from the CMS software and data, the central servers house email, hotdocs, and other software commonly used by providers (e.g., for bankruptcy and immigration services). MLAC also administers a statewide technology grant program (2 or 3 rounds of funding so far) to support the purchasing of additional hardware, other tech equipment and wiring directly by providers, which funding is distributed based on poverty population. More recently, MLAC set up a VOIP telephone system that providers can opt into (and then pay for their usage).

The central servers have a centralized firewall and port to the Internet with strong security and spam filters. Firewalls exist within the central servers between the providers so that attorney/client privilege is maintained. Soon, MLAC intends to move the data from its servers to the cloud and is working with counsel to comply with all ethics and privilege issues.

These central IT services do not meet all of the providers' technology needs. Hardware in local offices remains old. Providers have some IT staff who manage local virus clean up as well as installation and maintenance of local software programs. Some providers maintain local servers for HR matters or special software programs. Not all providers use the same CMS and MLAC regrets that it has not made this a grant contract condition. Nonetheless, MLAC sees the existence of central servers as laying a foundation for centralized intake or a single point of entry. Determining how and in what ways to connect the technologies of the legal services community and the court system has not yet been approached.

## **MICHIGAN**

### **Centralized tech planning, CMS support, websites for public/advocates**

Michigan began supporting technology for the civil legal services community in the mid-1990s. At that time, LSC defunded Michigan's one state support entity and the Michigan State Bar Foundation (MSBF) issued an RFP for an organization that would continue the work of a traditional state support entity (e.g., training, impact litigation support, policy advocacy) and also provide tech support.

The Michigan Poverty Law Program (MPLP) was selected and, in partnership with the University of Michigan Law School, has served as the statewide coordinator for technology, which includes:

- providing tech support for case management system (e.g., keep CMS matched with funder data needs) note: no requirement for uniform CMS; most providers using PIKA
- creating/maintaining substantive law listservs
- creating/maintaining a website for advocates
- staffing and leading the development of statewide tech planning, coordination and evaluation

Over the years, the MPLP worked with various evolving technologies and approaches, including telephone hotlines, CMS coordination, rural initiatives, and often pursued TIG funding for their efforts. The IOLTA funder and LSC are the primary funders.

In 2010, the Michigan Chief Justice convened a “Solutions on Self-Help” (SoS) Task Force whose mission was to “promote greater centralization, coordination and quality of support for persons representing themselves in legal matters in Michigan.” Linda Rexer co-chairs this Taskforce, which includes the courts, the bar, legal services providers, librarians, and other stakeholders. The Taskforce work, in turn, led the MSBF to issue an RFP in 2011 for an organization that could address the needs of self-represented litigants. The MSBF hired NY consultant, Jim Jasper, to assist with the RFP design and application evaluation. The vision was to create a single point of entry so that people in need encounter a coordinated service system. Although not envisioned necessarily to lead to the creation of a single website, this is what is being developed.

MPLP won the grant of about \$400,000/year (despite significant competition from the private sector) and is working with the SoS Task Force local help centers (in courts, libraries, etc.) and civil legal services providers to develop and maintain content for the Michigan Legal Help website.

The website includes:

- articles about specific areas of the law
- toolkits with document assembly for court forms
- referrals to lawyers and community services

- tutorial videos

The Taskforce identified 158 websites in Michigan with legal content (sponsored by legal services, courts, libraries, bar associations, etc.), wants to reduce this and drive the public to the Michigan Legal Help site. As a condition for IOLTA funding, administered by the MSBF, providers agree to cooperate with MPLP's technology coordination, to assist with Michigan Legal Help and, as that site develops content, to take down overlapping content from their own websites.

Linda described content development as the most difficult and time consuming issue, but that overall the technology coordination efforts in Michigan have been “transformative,” owing to (a) strong participation and buy in from the civil legal services community and (b) effective leadership in the court system and MPLP.

## **TEXAS**

### **Law firm pro bono IT helpdesk, training, tech standards & tech audits**

In 2001, the Texas Supreme Court created the Texas Access to Justice Commission (“Texas Commission”), which formed a Technology Committee in 2008. Notably, the Technology Committee includes many IT department directors from major Texas law firms who, in turn, have committed their staff to pro bono IT projects for Texas legal services providers. The Texas Commission has worked in tandem with the Texas Access to Justice Foundation (“Texas Foundation”) on access to justice matters.

Originally, the technology committee consisted of attorneys, but has evolved to include a significant number of CIOs from large Houston law firms. This committee has provided or is now providing the following:

- 24/7 IT help desk provided by the IT department at a law firm that can assist with Microsoft office software issues (has not been widely used, but new efforts to publicize)
- training
- inventory of technology needs of legal services community
- guidelines for minimum technology standards
- technology audits

Specific technology statewide initiatives in Texas have included: (a) a baseline survey of providers, (b) identifying minimum technology standards, (c) awarding \$650,000 to legal services providers for technology purchases, (d) developing best practices for disaster recovery/business continuity, (e) conditioning subsequent funding on maintaining minimum technology standards and disaster recovery/business continuity plans, (f) facilitating a law firm’s provision of its IT help desk to members of the legal services provider community, (g) facilitating technology trainings to the staff of legal services providers, (h) reviewing individual legal services provider’s technology plans, (i) conducting technology audits of individual legal services providers and (j) exploring how technology can improve assistance to unrepresented litigants.

## **ILLINOIS**

### **Centralized websites for public/advocates & online intake screening; court help centers**

In 2000, a study was commissioned regarding the use of technology by civil legal services providers, finding that technology was not being used effectively. As a result, twelve organizations collaborated in 2001 to found Illinois Legal Aid Online. From 2001-2005, ILAO operated as an unincorporated association located at Chicago-Kent College of Law with funding from the Lawyers Trust Fund of Illinois (the IOLTA funder), Chicago Bar Foundation and the Chicago-Kent College of Law. The initial work focused on launching websites for training pro bono attorneys and for providing legal information to the public.

Currently, ILAO maintains 4 websites: one for pro bono attorneys, two with legal information for the public (one in English and one in Spanish) and one for legal aid advocates (discussion forum, training, job board, document assembly). Approximately 50 legal services providers develop and maintain the legal information content along 30 different areas of law, supported by 7 content managers employed by ILAO. Since 2001, ILAO has gone from 3 FTE employees and an operating budget of \$300,000 to 19 FTE employees and an operating budget of \$1.8 million. Currently, IOLTA funding accounts for about \$630,000 and private fundraising amounts to about \$250,000 of ILAO's annual budget.

To facilitate growth and fundraising, in 2005, ILAO formed itself into an independent nonprofit. In 2006, it expanded beyond websites and began working with the Illinois court system to establish technology based help centers in courthouses and libraries with 102 centers now running throughout the state. The help centers are staffed with non-attorney navigators who assist litigants in accessing legal information and using document assembly tools available from the ILAO websites. Judges have been very supportive of the help centers and clamor for them in their courthouses because they offered help to struggling pro se litigants. Illinois formed an A2J Commission in 2012, but it has had no staff or budget until only recently. The Commission has, however, been working to standardize court forms for use by ILAO. As a condition to having a help center, local judges must agree to accept the forms developed through the collaboration with ILAO and the legal services providers and available through document assembly programs on ILAO's websites.

Around the same time (early 2012) and with TIG funding, ILAO joined with the three LSC grantees in Illinois to begin work on an online access system. The purpose of this project is to drive high priority cases (e.g., public benefits & foreclosure) to the appropriate organization faster and divert low priority cases to self-help or other resources. It allows the legal services provider to set rules for geography and financial eligibility. If these rules are met, the prospective clients will be asked their demographics and questions about the legal problems with answers tentatively populating the legal services provider's case management system (virtually all providers in Illinois use the same CMS due to IOLTA funding in 2007-08) to enable a conflict check. Once past the conflict check, the data will enter the CMS fully and the legal services provider will call and follow up on case work. The system was piloted with one LSC grantee in 2013 and was expanded to the other two LSC grantees in March 2014.

ILAO is seeking LSC funding to develop its online access system further along the lines of the LSC Summit Report. To date, ILAO has not had to address how to handle the overlapping service issue (i.e., where more than one provider qualifies and is available to assist for a particular client), but this will need to be tackled. ILAO believes that the providers are invested in collaborating because they appreciate the efficiency that can be gained. Indeed, the LSC grantees in Illinois, with IOLTA funding and a law firm's consulting services (at reduced cost) are engaged in a business process analysis of their operations to identify other efficiencies. With a relatively new and unfunded A2J Commission and 120 counties, the Illinois court system has been inconsistent in its embrace of technology in furtherance of access to justice.

## **WASHINGTON**

### **Centralized telephone & online intake screening**

The 1996 cuts to LSC funding fueled a change in the legal services delivery system in Washington, leading to a single point of entry telephone-based system known as "CLEAR" ("Coordinated Legal Education, Advice and Referral") Staff attorneys and paralegals utilize a database of intake information for all legal services providers in the state to direct callers to the right providers for their civil legal problems. CLEAR staff can enter the caller's information directly into the CMS, common to all civil legal services providers. Where no civil legal services provider is available for the caller's problem or the caller is financially ineligible for legal services, CLEAR attorneys can offer brief legal advice. NJP devotes significant resources to keeping this database up to date and facilitates regular meetings with providers to address any issues regarding the volume and distribution of case referrals. Overall, there is little geographic and programmatic overlap among the providers, so there has been little squabbling about the CLEAR intake process.

From the beginning, NJP has been overwhelmed by the volume and legal needs of the callers. The sheer volume of calls can make it impossible for eligible callers with serious, time-sensitive matters to get through. At the same time, non-eligible callers who do get through to an attorney often need more than brief advice, which prompted NJP to restrict its hotline to morning hours with attorneys using the afternoons for brief services (e.g., negotiating benefits, draft pleadings, and giving detailed directions to self-represented). This move, in turn, put more pressure on attorneys responding to callers. In 2008, NJP introduced non-attorney staff who could screen out callers ineligible due to income or geography and who could input information of eligible callers into the case management system for follow up. Despite these evolutions in the program – and although screeners now handle over 18,000 calls per year – there are times when callers still get busy signals.

In 2012, NJP launched an online triage and intake system, starting with benefits and housing eviction matters. Questions identify people who should call the CLEAR hotline for brief advice or brief services and the site pushes relevant links (e.g., links to websites of organizations that can assist and LawHelp materials). Online intake has provided a new entry point for clients, but NJP has experienced delays in the transfer of information between online intake and the CMS. From the beginning, centralized intake in Washington largely eliminated intake work in local legal services offices, which was initially disconcerting and left legal services staff feeling

disconnected from their community's needs. NJP has tried to address this with regular traffic reports about the callers and their legal problems. Washington State and LSC are the primary funders of the CLEAR hotline and online intake systems; IOLTA funding in Washington has focused on immigration, legislative advocacy and impact litigation.

## **NEW MEXICO**

### **Centralized online intake & legal information portal**

New Mexico Legal Aid (NMLA) is the sole LSC grantee (39 attorneys) in New Mexico where there are 16 other civil legal aid providers (additional 71 attorneys). NMLA has partnered with Pro Bono Net and Neota Logic to develop a “unified intake portal” with common branding to offer a seamless experience to potential clients. The portal will provide triage for both advocates and the public. Advocates will be able to navigate through a complex range of options, legal issues and referrals. The public will have English and Spanish versions of the portal with simpler choices, access to legal information and timelines, the ability to make email requests for standard intake, and access to widgets for local food banks, domestic violence providers and other social services.

NMLA started monthly meeting with other providers, at the Executive Director and intake manager levels, to address any gaps in the intake portal, any provider service overlaps and deviations from the providers' intake priorities. Pro Bono Net (Liz Keith) and NMLA (Ed Marks) are leading this coalition building, which will need a full time person to manage going forward. Ed emphasized that ongoing collaboration will be critical to maintaining the culture shift the project contemplates. The five providers that use PIKA software will be part of Phase I, the goals of which are to have the portal handle at least 50% of intake and match at least 90% of the people who enter the portal with the appropriate service or provider. Initially, the selected provider will have only limited access to the client's information until conflicts are cleared, at which point all client information collected from the portal can be swept into the provider's CMS. Phase II will advance the goal of a fully integrated system by (a) adding the remaining civil legal aid providers, (b) creating standard visualization tools, and (c) providing links to court databases and a research institute. The unified intake portal recently started, but providers will continue to offer in person and telephone intake with no plan to eliminate these intake methods.

The NM Supreme Court, the Civil Justice Commission and the state bar association laid the groundwork starting in 2008. State leaders came together to support legislative funding for civil legal services and the establishment of statewide practice groups. This project is funded preliminarily by LSC and TIG funds, together with state legislative earmarks, and has a 3 year time line. Initial data should be available by April 2015. Leaders expect that foundations and other private philanthropy, along with savings on traditional intake methods, will provide ongoing support for the project.

# **New York Comments and Resources on “LSC Technology Baselines: Technologies That Should Be in Place in a Legal Aid Office Today” (July 2014 Draft)**

## **Executive Summary**

In 2008, as part of its commitment to develop a strategic vision for technology, the Legal Services Corporation (“LSC”) released its first report on the technological capacities that a modern legal aid program should have in place or have available to it, known as the “LSC Technology Baselines Report.” The technology capacities described in that report are intended for any legal aid office that provides a full range of legal services and covers technologies related to data management, intake and telephone advice, support for private attorneys, communication, security, training, social media, and grant management. In 2014, after receiving comments from LSC grantees, the NLADA Technology Section, and leaders from non-LSC legal aid programs, LSC released an updated draft revision to LSC Technology Baselines Report.

The Working Group reviewed the 2014 revision to the LSC Technology Baselines Report and annotated it with comments and resources relevant to New York providers. Significant comments included:

- Technology policies are critical to adopt and implement as they can protect client data and help ensure business continuity.
- Technology staffing/consulting levels generally need to be increased in order to maintain critical systems, support strategic technology planning, and support innovative technologies.
- Current case management systems should be used to help automate more of providers’ day-to-day case and grant management work.
- Providers should invest in more technology training to increase their productivity.
- Document assembly, ranging from simple letters to more complex pleadings, can save time and improve quality.
- Staff mobility is essential, and providers should plan for and manage how their staff will work from court houses, community partner sites, and other remote locations.
- Management should join state and national conversations around technology, and take advantage of free and low-cost resources.
- Technology is becoming more powerful and in many cases more complex - we can collaborate more to improve successful collaborations that exist around shared VoIP telephone systems.

# New York Comments and Resources on “LSC Technology Baselines: Technologies That Should Be in Place in a Legal Aid Office Today”

(July 2014 Draft)

This document is intended to give New York civil legal aid providers information and resources that will help them consider the anticipated update to the LSC Technology Baselines. The “Needed capacities or functions” column of this spreadsheet contains draft language from the July 2014 draft of the “Legal Services Corporation Baselines: Technologies That Should Be in Place in a Legal Aid Office Today.” As of the creation of this guide, the final 2014 Tech Baselines had not been promulgated by LSC.

This is a live document that can be updated online over time. Permanent Link: <http://goo.gl/Qp2cVb>

Purpose served	Needed capacities or functions	Task Force Technology Working Group Comments	New York Resources
<p><b>OVERALL PROGRAM CAPACITY</b></p> <p><b>Planning</b></p>	<p>Technology planning should be ongoing and integrated into the overall planning of the program for effective service delivery.</p> <p>Technology planning should include an assessment of the program’s current needs and capacities in an effort to effectively position the program to incorporate new technological advances as they evolve.</p>	<p>The 2013 technology survey found that “[t]here is insufficient attention to proper technology policies with only about 1/2 the providers reporting that they had a certain technology policy in place and few providers relying on frequent and active means to educate their staff (e.g., specific technology policy trainings).”</p> <p>At that time, the TF recommended: “Urgent: Providers immediately should work to develop and implement policies</p>	<p>NYS Tech participants have shared technology plans with each other and regularly share plans for technology. NYSTech is a consortium of New York legal aid programs that meets regularly to share information and resources. Contact: John Greiner (LS-NYC), Anna Hinline (LawNY), or Jeff Hogue (LegalServer).</p> <p>Cloud Services information experts include: Google Apps - Jeff Hogue (LegalServer), Anna Hinline (LawNY) OwnCloud- File sharing/syncing on your own servers - Joe Kelemen (WNLYC) Microsoft Office 365 - Jessica Stuart (Probono.net) Private Corporate Cloud - Joseph Melo (Legal Services NYC)</p>



	<p>Technology plan should be reviewed and updated as needed every year.</p> <p>Programs should have a strategy as to whether cloud services would serve as useful alternatives to self-hosted applications and servers for the organization, including for back-up of data and disaster preparedness.</p>	<p>that directly address the privacy, security and availability of client information and attorney work product.</p> <p>Such policies should address how the agency: protects electronically stored client data; actively manages network and software security; and ensures data is securely backed-up.</p> <p><u>Medium-term:</u> Drawing on existing best practices or those developed by the Statewide Project Directors or by the NYS Technology Working Group with aid from the Task Force or bar associations, providers should develop and implement other key policies regarding the use of employee and volunteer owned/controlled also reference technology and services (e.g. tablets, phones, flash drives, dropbox, etc.) and data retention. Providers should mandate staff training with respect to technology policies and business continuity protocols. Providers should develop and periodically test business continuity protocols to ensure that the provider is able to reestablish operations within a reasonable time following a business interruption.</p> <p><u>Strategic/Long-term:</u> Providers should develop their own comprehensive technology plan that supports and</p>	
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		<p>enhances their delivery of legal assistance to client communities. Ideally this planning work is in concert with a provider’s program planning. Providers should hire staff or consultants who can properly audit compliance with technology policies.”</p>	
<p><b>OVERALL PROGRAM CAPACITY</b></p> <p><b>Budgeting</b></p>	<p>Adequate funds should be budgeted by the Board of Directors for:</p> <ul style="list-style-type: none"> <li>the ongoing maintenance and upgrade of hardware and software;</li> <li>the personnel necessary to support and maintain the system; and</li> <li>training in its use.</li> </ul> <p>The organization should develop a plan as to how they will fund or fundraise for necessary technologies.</p> <p>Technology should be included as a line item in the budget of every project, program, and initiative, even if it is a zero dollar line item.</p>	<p>The 2013 technology survey found that providers lacked many core technology supports and the TF’s recommendations included:</p> <p>“Providers should take advantage of existing nonprofit and group purchasing opportunities (e.g., <a href="http://www.techsoup.org">www.techsoup.org</a> and government contracts) and government funders should assist with such efforts.”</p> <p><u>Medium-term:</u> Providers should seek to develop baseline technology benchmarks for quality, resilience, capacity, and security. Providers should develop a financial plan to maintain and support those technology benchmarks. There should be greater group purchasing of hardware, software, web design and document assembly through existing mechanisms such as NYS contracts and private purchasing collectives (e.g., <a href="http://www.essensa.org">www.essensa.org</a>, <a href="http://www.micta.org">www.micta.org</a>) and by creating new purchasing collaboratives from among the</p>	<p>Michael Hernandez (LS-NYC) and John Greiner (LS-NYC) have volunteered to be informational resources regarding budgets and planning for hardware/software/services.</p>

		<p>NYS legal service providers.”</p> <p>The Task Force Technology Working Group notes that some providers find the ‘line item’ baseline overly prescriptive. Our members suggest that understanding accounting principles of depreciation for tech purchases and budgeting for tech expenditures are the key elements in this category.</p>	
<p><b>OVERALL PROGRAM CAPACITY</b></p> <p><b>Personnel</b></p>	<p>The organization should have at least 2 per 100 FTE staff or consultants focused on technology sufficient to:</p> <ul style="list-style-type: none"> <li>• Maintain equipment and networks;</li> <li>• Maintain databases and software;</li> <li>• Support and train staff in the use of equipment and networks;</li> <li>• Maintain basic knowledge of trends in technology security, nonprofit purchasing options, and technology best practices;</li> <li>• Maintain (or contribute content) to the</li> </ul>	<p>The Task Force understands that all programs struggle to fund and staff worthy objectives. Technology staffing is a program decision, but experts in the field agree that some dedicated technology staffing is essential.</p> <p>Considerations:</p> <ul style="list-style-type: none"> <li>• Salaries for skilled FT tech managers can exceed legal aid attorneys.</li> <li>• Outsourcing all tech management risks that the consultant may not understand the special needs of legal aid.</li> <li>• Outsourcing all technology leadership may reduce internal staff’s ability to recognize opportunities to better use existing or emerging technology.</li> <li>• Whether relying on staff</li> </ul>	<p>Standardization can help reduce tech staff and consultants needed to maintain/upgrade/support technology. It also reduces some of the complexity in training staff. This can mean requiring staff to use identical software, printers, etc.</p> <p>Successful staffing models:</p> <ul style="list-style-type: none"> <li>• Identify promising technology-savvy staff and give them the time and training to grow into technology coordinators.</li> <li>• Limit outside consultants to highly complex technology needs or commodity services (e.g. VoIP telephone service).</li> <li>• Some programs have found outside consultants who are successfully managing nearly all technology leadership and maintenance matters (contact Tom Cochran at LSHV; Betsy Ellison at My Sisters’ Place).</li> </ul> <p>Collaborate:</p> <ul style="list-style-type: none"> <li>• Some programs have merged and shared expenses for certain aspects of tech needs.</li> <li>• Some programs achieve efficiency by informally collaborating on tech matters.</li> <li>• Talk with your sister agency counterparts for vendor recommendations.</li> <li>• Consider joining the NYSTech workgroup calls.</li> </ul>

	<p>statewide website and any program website.</p>	<p>or consultants, how will emergencies be handled?</p> <ul style="list-style-type: none"> <li>• When choosing software and applications programs, how many staff will be needed to maintain the technology systems?</li> <li>• Staff/consultants who manage website and social media projects do not reduce the need for management in delivering, maintaining, supporting and upgrading technology.</li> </ul>	
<p><b>MANAGEMENT OF CLIENT AND CASE DATA</b></p> <p><b>Case Management System</b></p>	<p>The following capacities, including reporting features and access to client and case data, should be available in real time in all offices:</p> <ul style="list-style-type: none"> <li>• Capture and retain client eligibility, case type, and other appropriate data at intake;</li> <li>• Securely back up data in standardized data formats and, if required, move data to alternate systems;</li> <li>• Screen applicants for eligibility and appropriate case type;</li> <li>• Perform immediate</li> </ul>	<p>As funders require more data and business process analysis gains attention, the role of case management systems in meeting agency needs becomes more critical.</p>	<p>As of August 2013, the common CMS in NYS included:</p> <ul style="list-style-type: none"> <li>• TIME</li> <li>• Legal Server</li> <li>• Kemps</li> <li>• Salesforce</li> <li>• Microsoft Access</li> </ul> <p>TIME is provided by the Western New York Law Center “free of charge to IOLA grantees. This system is available to non-IOLA grantees for a small charge, and all fees generated from the system are put back into further development and updating of the system.” (For info: <a href="http://www.wnylc.com">www.wnylc.com</a>)</p> <p>Most case management systems have national user groups and email distribution lists. Contact your CMS vendor for more information.</p> <p>LSNTAP (<a href="http://lsntap.org">lsntap.org</a>) and LSC (<a href="http://lsc.gov">lsc.gov</a>) maintain some information about case management systems. LSC’s LRI includes 2013 <a href="#">national data</a>.</p> <p>The NYSTech working group includes members who use a variety of case management systems.</p>

	<p>conflict check;</p> <ul style="list-style-type: none"><li>• Enter and edit information in the CMS in real time;</li><li>• Securely and ethically transfer client and case data electronically to and from other service providers, provided that they have the appropriate technologies;</li><li>• Generate reports and extract meaningful data for strategic planning, program evaluation and other purposes, including comparison reports and running historical data;</li><li>• Ability to assign the appropriate funding source to cases and activity records;</li><li>• Allow the end user to easily customize, without vendor assistance, various aspects of the CMS software application (e.g. changing reporting</li></ul>		
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	<p>requirements, adding/deleting data fields as needed);</p> <ul style="list-style-type: none"> <li>• Have the technological capacity to check for data integrity, ideally in an automated way (which ensures that integrity checks are performed regularly and uniformly), to reduce the human factor (both with respect to time and human error potential);</li> <li>• Capture and report case outcomes, add new case outcome lists required by funders without vendor assistance.</li> </ul>		
<p><b>PRODUCTION AND SUPERVISION OF LEGAL WORK</b></p> <p><b>Case management system</b></p>	<p>Record case notes electronically including facts, advice and services offered, with deadlines.</p> <p>Generate simple forms and letters from the case management system.</p> <p>Generate reports and</p>	<p>The Task Force Technology Working Group has no additional comments for this topic.</p>	<p>With some case management systems, it is possible to share automated documents and forms. They can be exported and imported. This is another reason to get involved with the larger CMS user community for the system you use.</p>

	<p>extract meaningful data for case planning and organizational planning.</p> <p>Provide remote access to the system, including databases as needed.</p> <p>Have a strategy as to how the case management system can help with the triage process, such as phone routing, online intake routing, securely exchanging data with partner online intake tools, and future compatibility with electronic filing systems.</p>		
<p><b>PRODUCTION AND SUPERVISION OF LEGAL WORK</b></p> <p><b>Calendaring</b></p>	<p>A calendaring/tickler function for deadlines and appointments that can be viewed by appropriate staff.</p> <p>Program-wide electronic calendaring system.</p>	<p>Calendaring can be part of an office suite, such as Microsoft Outlook, Microsoft Exchange, Office 365, or Google Apps, and/or integrated into a case management system.</p> <p>Effective use of enterprise-wide electronic calendaring may require training.</p>	
<p><b>PRODUCTION AND SUPERVISION OF LEGAL WORK</b></p> <p><b>Document production</b></p>	<p>Effective use of productivity software such as word processing, spreadsheets, and presentation software and training in their use.</p> <p>Develop a strategy to automate forms and pleadings routinely used</p>	<p>Effective use of productivity software requires training.</p>	<p><a href="http://LSNTAP.org">LSNTAP.org</a> has several online trainings available that help with the productive use of common applications.</p> <p><a href="http://LawHelp Interactive">LawHelp Interactive</a> (LHI) a national community site for legal services and pro bono lawyers for building and sharing automated forms within and across states. Working collaboratively on automated documents cuts down the cost of building and maintaining them. LHI also allows the legal services community to use the documents through the website at no cost to advocates and pro bono lawyers.</p>

	<p>for staff and pro bono advocates that includes management of forms from a central location, with a system in place to assure they are updated for legal sufficiency. Staff should receive appropriate training in the use of the automated documents.</p> <p>Staff works jointly on the production of large projects, such as major briefs and pleadings.</p> <p>Capability of creating PDF documents as well as converting them to editable files.</p> <p>Electronic filing of pleadings when required or allowed by court systems.</p>		<p>Probono.Net and the Empire Justice Center have valuable resources in many practice areas for NYS advocates to help with the production of work product.</p> <p>New York State Courts e-filing information: Cases and locations in which e-filing can be used - <a href="https://iappscontent.courts.state.ny.us/NYSCEF/live/authorizedForEfiling.htm">https://iappscontent.courts.state.ny.us/NYSCEF/live/authorizedForEfiling.htm</a></p> <p>E-filing system requirements: <a href="https://iappscontent.courts.state.ny.us/NYSCEF/live/requirements.htm">https://iappscontent.courts.state.ny.us/NYSCEF/live/requirements.htm</a></p> <p>FAQs (<a href="https://iappscontent.courts.state.ny.us/NYSCEF/live/faq.htm">https://iappscontent.courts.state.ny.us/NYSCEF/live/faq.htm</a>)</p> <p>Federal Courts e-filing information: E-filing is accepted in Southern, Eastern, Northern, and Western District Courts - <a href="http://www.uscourts.gov/FederalCourts/CMECF/Courts.aspx">http://www.uscourts.gov/FederalCourts/CMECF/Courts.aspx</a></p> <p>E-filing system requirements - <a href="http://www.uscourts.gov/FederalCourts/CMECF/AboutCMECF.aspx">http://www.uscourts.gov/FederalCourts/CMECF/AboutCMECF.aspx</a></p> <p>FAQs - <a href="http://www.uscourts.gov/FederalCourts/CMECF/FAQs.aspx">http://www.uscourts.gov/FederalCourts/CMECF/FAQs.aspx</a></p>
<p><b>PRODUCTION AND SUPERVISION OF LEGAL WORK</b></p> <p><b>Online legal research</b></p>	<p>Online tools for conducting legal research using up-to-date primary sources, including laws, regulations and cases, available from every advocate’s desktop with staff training regarding its use.</p> <p>Access to statewide materials, including</p>	<p>The 2013 technology survey found that providers lacked many core technology supports and the TF’s recommendations included: “Providers should ensure that their advocacy staff have access to all the digital resources necessary to serve clients, which may require updating hardware and software, support, training, etc.”</p>	<p>New York Resources:</p> <ul style="list-style-type: none"> <li>• <a href="#">Western New York Law Center (WNYLC) - Fair Hearings Database</a></li> <li>• <a href="#">NYSBA</a> online resources</li> <li>• <a href="#">Probono.Net</a> has news in different practice areas maintained by NYS providers</li> </ul> <p>Advocates request and share news and updates through the <a href="#">WNYLC email distribution lists</a> in many practice areas.</p>



	<p>forms and pleadings, legal education materials, brief banks, and topical email lists.</p> <p>Updates on changes in the law and new cases from legal support centers.</p>		
<p><b>PRODUCTION AND SUPERVISION OF LEGAL WORK</b></p> <p><b>Supervision</b></p>	<p>Data to support the supervision of legal work, including case lists and activity, are available to supervisors and management.</p> <p>As necessary, remote access to case files for review by supervisors.</p>	<p>The Task Force Tech Technology Working Group has no additional comments for this topic.</p>	<p>Many NYS programs are using their CMSs to generate reports for supervisors and directors. Sister agencies using the same CMS should be valuable sources of information.</p> <p>Web-based and non-web-based CMSs can all be enabled for remote access over the Internet - Contact Joseph Melo at LS-NYC on how the agency maintains security for both types of CMS.</p>
<p><b>PRODUCTION AND SUPERVISION OF LEGAL WORK</b></p> <p><b>Timekeeping</b></p>	<p>Electronic timekeeping is available and utilized.</p>	<p>The Task Force Tech Technology Working Group has no additional comments for this topic.</p>	
<p><b>RECORDS MANAGEMENT</b></p> <p><b>Electronic Records</b></p>	<p>Filing of all electronic records, retaining them, assuring their accessibility and properly disposing of them when appropriate. Potential records in question include:</p> <ul style="list-style-type: none"> <li>All data files associated with program</li> </ul>	<p>Retention of electronic records has implications for litigation involving the agency and for potential future regulations that may require disclosure to clients of, for instance, how long personally identifiable information is stored.</p> <p>No free and open source document management system has gained popularity with</p>	<p>There is a New York ethics opinion regarding client and attorney ownership/control interest in case files, and one on <a href="#">destruction</a> of files.</p> <p>See the New York State Bar Association <a href="#">guidance</a> on retention/destruction.</p> <p>Consider researching breach notification requirements that might apply to your agency, some of which may be triggered in funding contracts.</p>

	<p>software;</p> <ul style="list-style-type: none"> <li>• Email messages;</li> <li>• Instant messaging (where used);</li> <li>• Transcribed or recorded telephone messages and conversations.</li> </ul> <p>Policies that govern permissions or access rights to electronic files, including the right to view, edit, move or rename files, with defined document retention policies.</p> <p>For LSC grantees, the records management system must be compliant with LSC and all other legal requirements in the maintenance of records, including the confidentiality of client records.</p>	<p>legal aid providers as of 2014.</p> <p>Microsoft SharePoint provides product donations and heavily discounted charity pricing. SharePoint allows agencies to build into the system the document management, access, and retention policies the agency adopts. Most programs hire a consultant or have technology staff partly dedicated to implementing SharePoint.</p> <p>Google Apps for Work offers Google Vault retention controls and auditing.</p>	
<p><b>KNOWLEDGE MANAGEMENT</b></p> <p><b>Pleading and brief banks, and other electronically stored data and information</b></p>	<p>Store and retrieve sample pleadings, briefs, motions and other documents based on content.</p> <p>Program staff use an effective method for finding documents by search or logical browsing, and can purge documents. Findability</p>	<p>Knowledge management is different than document retention. It involves designing a method for storing and easily finding useful templates, research, practice tips, internal system documentation and other information.</p> <p>No free and open source knowledge management</p>	<p>The Bronx Defenders have considered a knowledge management approach (Kate Rubin).</p> <p>Outside of NY - Washington State Northwest Justice Project's -SharePoint system - IKE</p> <p>Pro Bono Net, together with host organizations, offer practice areas that contain substantive content, (2) calendars for legal trainings &amp; events, (3) volunteer opportunities, (4) listservs, (5) pro bono opportunities, and (6) legal libraries.</p>

	<p>may be based on a document management system or content-searchable email lists, wikis, or shared folders.</p> <p>Programs should create a strategy as to how technology should be used to institutionalize knowledge of key employees (what they know, what they do, especially areas outside job description or that require specialized skills).</p> <p>Electronic access to internal forms and procedures.</p> <p>Program-wide accessible and searchable contacts management system.</p> <p>Electronic access to practice guides.</p>	<p>system has gained popularity with legal aid providers as of 2014.</p>	<p>The Online Resource Center offers (1) legal materials and databases for advocates in their daily practice, (2) substantive law Listservs to connect advocates for assistance and collaboration, and (3) online training. The substantive materials are primarily designed as searchable databases so they are accessible and easy to use.</p>
<p><b>INTAKE AND TELEPHONIC ADVICE</b></p> <p><b>Telephone systems</b></p>	<p>Programs should monitor call volume and craft a strategy as to how they will address issues around excess demand to provide information over the phone to callers.</p> <p>Call routing by language, substantive and/or geographic area.</p> <p>Ability to serve persons</p>		<p>Providers experienced in high-volume call centers:</p> <ul style="list-style-type: none"> <li>• The Legal Aid Society</li> <li>• LS-NYC</li> <li>• City Bar Justice Center</li> </ul> <p>Providers co-located at the Telesca Center in Rochester share reception services and a telephone system.</p> <ul style="list-style-type: none"> <li>• Legal Aid Society of Rochester</li> <li>• Law-NY</li> <li>• Empire Justice Center</li> <li>• VLSP of Monroe County</li> </ul> <p>Providers reaching a large rural area by operating a central intake/helpline, using VoIP:</p>

	<p>with speaking or hearing disabilities through access to TTY or relay service.</p> <p>Technology to review busy signals, wait times, dropped calls, etc.</p> <p>If the program does telephone call backs, they should move toward telephone systems that include automated callback systems.</p> <p>Provide recorded information to caller while waiting or after hours.</p> <p>Telephone system should allow programs to accommodate intake by remote volunteers and/or staff (for instance, by shifting intake to individuals at remote locations).</p> <p>General intake should consider online intake as well as more traditional means of application.</p>		<ul style="list-style-type: none"> <li>• Legal Services of Central NY</li> <li>• Legal Aid Society of Mid-NY</li> <li>• LSHV</li> </ul> <p>Nationwide - CLEAR in Washington State and CARPLS in Chicago</p>
<p><b>INTAKE AND TELEPHONIC ADVICE</b></p> <p><b>Electronic desk manual</b></p>	<p>Readily available, centrally located, and easily updated electronic guide for intake workers to provide appropriate information, advice or referral.</p>	<p>Technology can help standardize processes and procedures and help propagate changes instantly. The Task Force Technology Working Group has no comment on the specific method suggested by</p>	<p>The NYSTech legal aid workgroup consortium plans to request sample electronic intake/advice guides.</p>

		the baselines.	
<b>INTAKE AND TELEPHONIC ADVICE</b>  <b>Case management system</b>	See Case Management System capacity section.		
<b>LEGAL INFORMATION FOR LOW INCOME PERSONS</b>  <b>Legal Information via Websites and Social Media</b>	<p>Programs should collaborate in providing a statewide website with the following features:</p> <ul style="list-style-type: none"> <li>• Current web-based information regarding the program and its services;</li> <li>• Accurate and current community legal education/pro se related materials and referral information written in plain language;</li> <li>• Capacity to serve persons with limited English proficiency;</li> <li>• Website designed and maintained in compliance with <a href="#">Section 508 of the Rehabilitation Act of 1973</a> as amended.</li> </ul>	<p>NY has LawHelp/NY, a coordinated statewide website.</p> <p>The TF’s recommendations from 2013 technology survey: <u>Urgent</u>: Providers should ensure that the substantive content their organizations develop for the advocacy and client communities are cross-posted with the appropriate statewide technology resources. Providers should increase their staff’s awareness of existing document assembly tools built for NYS legal services advocates and clients.</p> <p><u>Medium-term</u>: Providers should ensure that their staff are taking advantage of appropriate free statewide technology resources. With respect to serving the client communities, providers should analyze and consider minimizing substantive legal content on their own websites and drive clients to the statewide online resources. Providers should use and</p>	Contact Leah Margulies at LawHelpNY.org for more information about collaborating with LawHelp New York.

		<p>promote their clients' use of the existing document assembly tools and provide feedback, so as to increase consistency of the legal practice throughout the state and support the court system's current efforts to standardize forms and process.</p> <p><u>Strategic/Long-term:</u>  Additional and steady funding should be secured for statewide technology resources. Providers should collaborate and coordinate in the development and updating of substantive content for the statewide technology resources. Statewide technology resources should develop better and more consistent tools for measuring the use and efficacy of their services. Statewide technology resources should develop ways to better integrate and acknowledge -- and thereby increase -- substantive contributions from individual providers. Providers should engage in collaborative efforts to increase their collective use of automated document assembly in appropriate practice areas.</p>	
<b>LEGAL INFORMATION FOR LOW INCOME PERSONS</b>	Provide information to clients who use mobile devices, such as through mobile compatible websites,	The Task Force Technology Working Group sees mobile technology as a possible strategy for getting legal information to low income	In collaboration with LawHelpNY, LawNY and LSHV each have texting-related technology initiatives underway.  VLSP of Monroe County - has mobile-friendly access and access to prescreening through an A2J Author online process.

<p><b>Mobile Technology for clients</b></p>	<p>mobile apps, or SMS text messaging.</p>	<p>people.</p>	<p>As of August 2013, other NY providers using text messaging to provide substantive legal information to the public or self-represented included:</p> <ul style="list-style-type: none"> <li>• ProBonoNet</li> <li>• The Legal Project</li> <li>• Workers Justice Law Center</li> <li>• Day One</li> <li>• NYLPI</li> <li>• Make the Road</li> <li>• Empire Justice Center</li> <li>• The Family Center</li> </ul>
<p><b>LEGAL INFORMATION FOR LOW INCOME PERSONS</b></p> <p><b>Community legal education</b></p>	<p>Community legal education presentations are supported by effective use of technology, such as online conferencing, videos, and other appropriate technologies.</p>	<p>The Task Force Technology Working Group has no additional comments for this topic.</p>	<p>As of August 2013, these NY providers also reported that they were using a YouTube Channel or VIMEO account for contacting clients:</p> <ul style="list-style-type: none"> <li>• Legal Aid Society</li> <li>• Pro Bono Net</li> <li>• LIFT</li> <li>• NYLPI</li> <li>• Urban Justice Center</li> <li>• NYLAG</li> <li>• LASNNY</li> <li>• Lutheran Social Services</li> <li>• The Family Center</li> <li>• VLSP of Monroe County</li> <li>• LS-NYC - Kate Whalen</li> </ul> <p>LawNY experimented with animated divorce information videos, posted on YouTube. Contact Anna Hineline (LawNY). Also Jeff Hogue (LegalServer).</p> <p>LawHelpNY’s fair hearing rights A2J Author interviews educate users about their rights in administrative hearings. Contact Leah Margulies or LawNY.</p>

<p><b>SUPPORT FOR PRO BONO AND USE OF PRIVATE ATTORNEYS</b></p> <p><b>Support for program efforts to accept, refer and track pro bono and PAI cases</b></p>	<p>Programs should have the following technology in place to support their pro bono programs:</p> <ul style="list-style-type: none"> <li>• A website with features such as allowing pro bono lawyers to review available cases and volunteer, posting of training and resource materials, and calendars of training opportunities;</li> <li>• A case management system that will track referred cases, time spent on those cases and work accomplished, and automate oversight of pro bono cases to promote timely case closure;</li> <li>• A strategy to share client and case data securely with pro bono volunteers using electronic means.</li> </ul>	<p>Given the new law student pro bono rules in New York, programs should consider the ability to communicate with pro bono law students about opportunities and supports.</p>	<p>Contacts in New York:</p> <ul style="list-style-type: none"> <li>• Probono.Net</li> <li>• Bill Kransdorf at LS-NYC’s Bankruptcy Assistance Project</li> <li>• New York City Bar Bankruptcy Project</li> <li>• Law-NY is the lead provider on a new Pro Bono Innovation Grant that will coordinate law students, attorneys emeritus and other pro bono volunteers and will involve 6 LSC grantees and 9 law schools.</li> </ul>
<p><b>SUPPORT FOR PRO BONO AND USE OF PRIVATE ATTORNEYS</b></p>	<p>Program provides assistance and support in PAI representation, including electronic pleading and brief</p>	<p>The Task Force Technology Working Group has no additional comments for this topic.</p>	<p>Contacts in New York:</p> <ul style="list-style-type: none"> <li>• probono.net (Adam Friedl, Liz Keith)</li> <li>• Adam Heintz at LS-NYC on training, supporting and managing firm attorneys</li> </ul>



<p><b>Direct support for volunteer attorneys</b></p>	<p>banks.</p> <p>Program provides volunteer attorney training and resource materials through the use of technology, such as web conferencing, video conferencing and hosted online trainings.</p> <p>Statewide website section dedicated to support for private attorneys.</p>		
<p><b>SECURITY</b></p> <p><b>Firewalls, antivirus, anti-spam, and anti-spyware applications, back-up and appropriate policies regarding use of data and computers</b></p>	<p>Operating systems, antivirus software, and other software applications have the most current patches and definition updates.</p> <p>Maintenance of backup and recovery systems pursuant to grant assurances, including off-site backups.</p> <p>Security policies and procedures for protecting client and case data, sensitive, personal and personnel data, and all communications from loss or unauthorized intrusion.</p> <p>Server equipment should be kept in a secure environment with appropriate ventilation</p>	<p>States and state agencies are adopting data breach notification statutes. Funders and partners are including data breach protocols. Programs should be aware of NY rules regarding data breach notification.</p> <p>The 2013 technology survey found that providers lacked many core technology supports and the TF’s recommendations included: “Providers should ensure that the security of their operating systems is supported by the software vendors. ... Providers should ensure that their offices have adequate bandwidth and a backup connectivity plan in case the primary Internet connection fails.”</p>	<p>See New York rules of professional conduct and ethics opinions regarding reasonable care to protect client secrets.</p> <p>Links to additional information:</p> <p><a href="http://www.lsnatp.org">LSNATP.org</a>  <a href="http://www.jacksonlewis.com/media/pnc/9/media.1309.pdf">http://www.jacksonlewis.com/media/pnc/9/media.1309.pdf</a> - NYS Guide from 2008 on data privacy and security - couldn’t find it on the NYS site at:  <a href="http://www.dos.ny.gov/consumerprotection/securitybreach/factsheet_for_business.html">http://www.dos.ny.gov/consumerprotection/securitybreach/factsheet_for_business.html</a>  <a href="http://www.fcc.gov/cyberplanner">http://www.fcc.gov/cyberplanner</a>  <a href="http://business.ftc.gov/privacy-and-security">http://business.ftc.gov/privacy-and-security</a>  <a href="https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/73128/12-1120-10-steps-to-cyber-security-executive.pdf">https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/73128/12-1120-10-steps-to-cyber-security-executive.pdf</a> - page 8 in particular has 10 good tips</p> <p><a href="http://www.willkie.com/files/tbl_s29Publications%5CFileUpload5686%5C2802%5CNew_York_Data_Privacy_Guide.pdf">http://www.willkie.com/files/tbl_s29Publications%5CFileUpload5686%5C2802%5CNew_York_Data_Privacy_Guide.pdf</a></p>

	<p>and cooling.</p> <p>Disaster recovery plan (that includes periodic testing) for mission critical technology systems. Technology is included as part of the organization's disaster plan.</p> <p>Policies regarding the use of the Internet and social media.</p> <p>Policies to ensure the security and integrity of passwords.</p> <p>Policies regarding the retention and deletion of data.</p> <p>If an external instant messaging system is used to communicate confidential client data, encrypt it.</p> <p>Policies for security of tablets, mobile devices, flash drives, and laptops including remote wipe and/or encryption.</p> <p>Where a program allows remote working, programs should have policies in place for security, data integrity, and data storage in remote workspaces.</p>		
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<p><b>SECURITY</b></p> <p><b>Cloud Computing</b></p>	<p>Programs should have policies addressing staff use of program-controlled cloud services and staff use of personal cloud services accounts not controlled by the program.</p> <p>Programs moving applications or data to the cloud should consider terms of use, privacy policy, data ownership, security, and data portability.</p>	<p>The Task Force Tech Technology Working Group has no additional comments for this topic.</p>	<p>Contacts in New York:</p> <ul style="list-style-type: none"> <li>• Google Apps - Anna Hineline (LawNY), Jeff Hogue (LegalSever)</li> <li>• Office 365- Bronx Defenders</li> <li>• OwnCloud - Joe Kelemen (WNYLC)</li> <li>• Private Cloud - John Greiner at LS-NYC</li> </ul>
<p><b>SECURITY</b></p> <p><b>Mobile for Staff Use</b></p>	<p>Organizations should establish policies to govern the use of organization-owned mobile equipment and what employees can do with their own mobile devices. Policies should address who may access what services, level of support, remote wipe, cloud-based backups, and termination/revocation.</p>	<p>As a result of the 2013 technology survey, the TF recommended that: "Providers should increase their support for mobile devices, where appropriate for their practices."</p>	<p>Contacts in New York:</p> <p>Michael Hernandez - LS-NYC on mobile device management (iOS, Android, BlackBerry)</p>
<p><b>TRAINING</b></p> <p><b>Training and technology</b></p>	<p>Assessment of organization-wide and individual technology training needs.</p> <p>Training and support for all personnel in the use of appropriate systems and software. As organizations develop</p>	<p>The need for training was stressed in the 2013 Task Force report. Technology training can range from ad hoc and casual to highly targeted and planned.</p>	<p>Members of the New York legal aid community and NYSTech are discussing ways to share resources in training in New York.</p>

	<p>new tools for clients, staff should be adequately trained to provide support on these tools.</p> <p>Ongoing training for IT staff to leverage existing and new technology.</p> <p>Train IT on existing policies for technology use and ABA ethical standards on technology.</p> <p>Effective use of technology to deliver training, including, where appropriate, screen casting, video on-demand training, web chat and web conferencing, and hands on/in-person training.</p> <p>Set technology standards for new hires and incorporate technology training as part of on-boarding process.</p>		
<p><b>TRAINING</b></p> <p>Use of technology to deliver training on substantive law, legal skills, and administrative policies and</p>	<p>Technologically supported skills, substantive, and administrative training, such as access to on-demand training packages, including on-line trainings, DVDs and podcasts.</p>		<ul style="list-style-type: none"> <li>• WNYLC provides free CLE training</li> <li>• WNYLC hosts recorded CLE trainings on a variety of topics.</li> <li>• The Learning Center - (LS-NYC) has library of trainings for staff. Contact Tanya Wong at LS-NYC for info on this model.</li> </ul>

procedures			
<p><b>COMMUNICATION</b></p> <p>Email, email lists, and other technologically supported communication methods</p>	<p>Universal capacity to communicate through individual email accounts.</p> <p>Policy for proper use of email and other electronic communication tools.</p> <p>Email lists by substance and administrative function, as appropriate.</p> <p>Develop and use collaborative work environment tools such as blogs, wikis, real-time group editing tools, and web conferencing for internal and external communication.</p>		<p>Real-time collaborative tools used by providers in New York include:</p> <ul style="list-style-type: none"> <li>• Microsoft SharePoint (Jessica Stuart, Gerard Raymond, Joseph Melo)</li> <li>• Google Apps (Anna Himeline, Jeff Hogue)</li> </ul>
<p><b>COMMUNICATION</b></p> <p><b>Internal communication mechanisms</b></p>	<p>An internal communication mechanism for communications to staff (email, email lists, blogs, web conferencing).</p> <p>Help desk software and trackers.</p>	<p>The Task Force Technology Working Group feels that help desk software is appropriate for very large organizations, but other methods, such as special email broadcast lists, may work well for smaller organizations.</p>	<p>For help desk examples, contact Michael Hernandez at LS-NYC.</p>
<p><b>ADMINISTRATIVE</b></p> <p><b>Accounting</b></p>	<p>Accounting systems should have the capacity to <b>manage</b> these functions:</p> <ul style="list-style-type: none"> <li>• General ledger, payables, receivables and</li> </ul>	<p>As of August 2013, in addition to excel spreadsheets, the most common accounting systems used in NYS:</p> <ul style="list-style-type: none"> <li>• Sage / MIP NPS</li> <li>• Quick Books</li> <li>• FundEZ</li> </ul>	<p>There are external payroll systems such as ADP and Intuit's web-based payroll system, and payroll service companies.</p> <p>There are also some programs that have in-sourced their payroll, using programs such as MIP (LS-NYC - contact Betty Caines)</p>

	<ul style="list-style-type: none"> <li>fixed assets;</li> <li>• Payroll;</li> <li>• Maintain client trust accounts;</li> <li>• Track and report budgeting and expenditures;</li> <li>• Generate all needed internal and external reports.</li> </ul>		<p>The NYSTech workgroup is considering a survey to further identify the tools that NY providers use.</p>
<p><b>ADMINISTRATI ON</b></p> <p><b>Human resources management</b></p>	<p>Maintain all appropriate personnel records electronically, including:</p> <ul style="list-style-type: none"> <li>• Payroll;</li> <li>• Timekeeping;</li> <li>• Benefits administration.</li> <li>• Maintain confidentiality of personnel data.</li> <li>• Advertise positions and accept applications electronically.</li> <li>• Generate appropriate and necessary personnel reports.</li> </ul>		<p>The Western New York Law Center (<a href="#">WNYLC</a>) wnylc maintains a job posting list.</p> <p>Some providers also use <a href="#">Idealist</a> and <a href="#">Craigslis</a>t, and direct mailings to organizations that might assist in recruiting a diverse workforce.</p> <p>The NYSTech workgroup is considering a survey to identify what tools legal aid providers use in New York.</p>
<p><b>DEVELOPMENT /FUNDRAISING</b></p> <p><b>Grant maintenance</b></p>	<p>Grant maintenance system that can track each grant, including:</p> <ul style="list-style-type: none"> <li>• information on grant requirements, restrictions and commitments;</li> <li>• tracking of expenditures and activities;</li> <li>• management of reimbursables;</li> </ul>	<p>Most organizations meet this using a variety or combination of systems.</p>	<p>The NYSTech workgroup is considering a survey to identify what tools legal aid providers use to track grants in New York.</p>

	<ul style="list-style-type: none"> <li>• indirect cost calculations;</li> <li>• control of expenditures against budget;</li> <li>• generation of reports and tracking of deadlines.</li> </ul> <p>Maintenance of contact information.</p>		
<p><b>DEVELOPMENT/ FUNDRAISING</b></p> <p><b>Fundraising and marketing</b></p>	<p>In addition to general legal information available on a statewide website, the organization itself should have a compelling web presence that includes:</p> <ul style="list-style-type: none"> <li>• Description of what services they offer;</li> <li>• Information about volunteer and donation opportunities, as appropriate</li> <li>• Ability to donate online;</li> <li>• Use of a modern content management system to enable staff to quickly and easily update it;</li> <li>• Website should be hosted off-site.</li> </ul> <p>Organization should have a strategy as to whether and how they should use social media to reach out to potential supporters, volunteers, and donors.</p> <ul style="list-style-type: none"> <li>• Should an organization use social media for outreach, they should have a policy to govern its proper use.</li> <li>• Electronically track the contact information, donation and contact history for each individual donor, if the organization has individual donors.</li> <li>• Ability to generate reliable</li> </ul>	<p>Not all programs have donor management software, and this may be beyond a baseline for small programs. Many accounting packages offer fundraising modules. There are a number of low-cost web-based donor management tools - See TechSoup.org.</p>	<p>Organizations can post some information about themselves on LawHelpNY.org, even if they have their own website.</p> <p>Wilneida Negron (@WilneidaNegron) has worked with LawHelpNY and other agencies, and is in skilled social media and search engine optimization.</p>

	<p>reports of donors that meet specific criteria, such as interests and giving history.</p> <ul style="list-style-type: none"><li>• Generation of letters, reports, and other appropriate documents.</li></ul>		
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**APPENDIX 17:**

**Report of the Task Force's Working Group on  
Online Dispute Resolution**

**WORKING GROUP RECOMMENDATION FOR**  
**ONLINE DISPUTE RESOLUTION RULES**

The Working Group on Online Dispute Resolution recommends that the Administrative Board of the Courts publish for public comment a set of rules to implement a pilot online dispute resolution program using a platform currently under development with the Office of Court Administration. Subject to any limitations the technology may impose, the Working Group proposes that the rules to be adopted should contain the following provisions:

1. A statement of purpose that indicates that the procedure is a pilot program to determine the feasibility, cost, and effectiveness of an online dispute resolution mechanism (“ODR”) for certain categories of court cases. The pilot will include only consumer debt litigation.
2. Participation in the ODR program would be presumptive for represented parties, and the parties would commence participation in ODR upon joinder of issue, but litigants would be able to opt-out upon a showing of good cause,
3. Unrepresented parties could participate on a purely voluntary basis. No adverse action will be taken if a party elects not to participate.
4. The court system would charge no fee for use of this ODR system.
5. Once the matter is initiated in the ODR program, a mediator would be appointed from the list of OCA-approved mediators.
6. Upon commencement of the ODR process, the parties would be notified of the procedure to be followed, which would include the following step:

- a. Uploading all relevant documents such as credit card bills, statements of account and records of payment as well as any correspondence between the creditor and the debtor.
7. The parties would be notified of access to a “chat room” in which they could discuss the matter between themselves (through counsel if both are represented) and even consider proposed resolutions. The period for submission of documents and exchanges of proposals and information should be 30 days. Thereafter, the mediator would be notified that the documentary material was available online. The mediator would then review the materials, review the chat room record, and would be able to ask any clarifying questions to the parties or their counsel by email. The mediator could then proceed in his or her discretion to obtain additional information and facilitate a dialogue between the parties and ultimately seek to achieve a resolution of the dispute.
8. Rules would specify that there would be three locations used for the pilot program – New York County, the 4<sup>th</sup> Judicial District, and Monroe County. The parties could access the system at any convenient location such as a public library or from their home or place of business if they have a computer with such access available. The rules should also specify the physical location where unrepresented parties could access a computer and could obtain assistance. In the 4<sup>th</sup> Judicial District and Monroe County, it would be the Community Dispute Resolution Centers. A location will also be determined for New York County.
9. The rules should provide as well that OCA will maintain a record of the cases referred to ADR and their outcomes and report that information to the Chief Administrative Judge.

10. Rules also should provide that the same rules of confidentiality that apply to in-person alternative dispute resolution apply to ODR.

11. Additionally, the rules should provide for privacy protection for sensitive personal information transmitted in the proposed chat room or in uploaded documents, including redaction of Social Security Numbers.

**APPENDIX 18:**

**Report of the Task Force's Working Group on Limited  
Scope/Unbundled Representation**

**LIMITED SCOPE/UNBUNDLED REPRESENTATION WORKING GROUP**  
**REPORT AND RECOMMENDATIONS TO THE**  
**TASK FORCE TO EXPAND ACCESS TO CIVIL LEGAL SERVICES IN NEW YORK**

Full legal service representation in litigation involves a bundle of legal services including fact gathering, advice, discovery, research, drafting documents, negotiation, settlement, motion practice and trial. Limited scope legal representation (also referred to interchangeably as unbundled legal assistance or discrete task representation or limited assistance representation, or the like) is defined as involving a relationship between an attorney and a person seeking legal assistance in which they both agree that the scope of the legal services provided will be limited to specified tasks.<sup>1</sup>

The Task Force's Limited Scope/Unbundled Representation Working Group has studied the role limited scope representation in litigation can play in helping to close the justice gap.<sup>2</sup>

**The Argument for Encouraging the Use of Limited Scope Representation to Close the Civil Justice Gap**

The civil justice gap in New York is well documented by the Task Force's four previous reports.<sup>3</sup> Increases in funding will increase the number of individuals who can be served, but the prospect of ensuring that every low-income individual is provided civil legal services is very uncertain given the large numbers in need and the expense that would be required. Moreover, the working poor whose incomes slightly exceed income guidelines, as well as moderate income individuals, will not benefit from increased funding for civil legal services that is intended for those at or below 200 percent of the federal poverty guidelines.

Limited scope legal representation can assist in providing services to an increased number of individuals. During the annual Chief Judge's Hearings on Civil Legal Services, the severe disadvantages faced by unrepresented litigants have often

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<sup>1</sup> See Forrest S. Mosten, *Unbundling of Legal Services and the Family Lawyer*, 28 FAM. L.Q. 421, 423 (1994).

<sup>2</sup> For a previous discussion of limited scope representation in the context of access to justice, see Fern Fisher-Brandveen & Rochelle Klempner, *Unbundled Legal Services: Untying the Bundle in New York State*, 29 FORDHAM URB. L.J. 1107 (2002).

<sup>3</sup> The Task Force's 2010, 2011, 2012, and 2013 Reports are available at the website of the Task Force, <http://www.nycourts.gov/ip/access-civil-legal-services>.

been the subject of testimony,<sup>4</sup> as has been the burden that lack of representation places on the courts and other litigants.<sup>5</sup> Various published sources – while acknowledging that full representation for everyone is best and unbundled services are not appropriate in every case – have urged using unbundled services to expand access to justice for many.<sup>6</sup>

Unbundling would improve the [*pro se*] client’s ability to obtain advice, help draft legal documents, provide limited representation, or otherwise obtain other legal services from an attorney in a more affordable fashion. Self-help litigants would more likely complete their matter successfully with limited help rather than none at all. Benefits also accrue to the legal system as a whole, since greater preparation and precision by self-help litigants results directly in a reduction of errors in documents and procedures, reduced demands on court personnel, and crowded dockets.<sup>7</sup>

The public is receptive to using unbundled legal services. A survey conducted by the American Bar Association (ABA) in 2011 determined that once survey participants were provided with the definition of unbundled legal services, two-thirds were interested in exploring the option to resolve their personal legal issues.<sup>8</sup>

On the national level, the ABA has been advocating for an increase in the availability of limited scope representation for many years. On February 11, 2013,

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<sup>4</sup> See, e.g., TASK FORCE TO EXPAND ACCESS TO CIVIL LEGAL SERVICES IN NEW YORK, REPORT TO THE CHIEF JUDGE OF THE STATE OF NEW YORK 21-23 (2013), *available at* [http://www.nycourts.gov/ip/access-civil-legal-services/PDF/CLS-TaskForceReport\\_2013.pdf](http://www.nycourts.gov/ip/access-civil-legal-services/PDF/CLS-TaskForceReport_2013.pdf); TASK FORCE TO EXPAND ACCESS TO CIVIL LEGAL SERVICES IN NEW YORK, REPORT TO THE CHIEF JUDGE OF THE STATE OF NEW YORK 16-18 (2012), *available at* [http://www.nycourts.gov/ip/access-civil-legal-services/PDF/CLS-TaskForceREPORT\\_Nov-2012.pdf](http://www.nycourts.gov/ip/access-civil-legal-services/PDF/CLS-TaskForceREPORT_Nov-2012.pdf); TASK FORCE TO EXPAND ACCESS TO CIVIL LEGAL SERVICES IN NEW YORK, REPORT TO THE CHIEF JUDGE OF THE STATE OF NEW YORK 21-23 (2011) [hereinafter 2011 TASK FORCE REPORT], *available at* [http://www.nycourts.gov/ip/access-civil-legal-services/PDF/CLS-2011TaskForceREPORT\\_web.pdf](http://www.nycourts.gov/ip/access-civil-legal-services/PDF/CLS-2011TaskForceREPORT_web.pdf),

<sup>5</sup> See, e.g., 2011 TASK FORCE REPORT, *supra* note 4, at 18-23 (2011).

<sup>6</sup> See generally Michael Millemann et al., *Rethinking the Full-Service Representation Model: A Maryland Experiment*, 30 CLEARINGHOUSE REV. 1178 (1997), *available at* [http://civilrighttocounsel.org/uploaded\\_files/111/Rethinking\\_the\\_Full\\_Service\\_Model\\_\\_Millemann\\_.pdf](http://civilrighttocounsel.org/uploaded_files/111/Rethinking_the_Full_Service_Model__Millemann_.pdf); John T. Broderick, Jr. & Ronald M. George, *A Nation of Do-It-Yourself Lawyers*, NEW YORK TIMES, Jan. 1, 2010, at A21, *available at* <http://www.nytimes.com/2010/01/02/opinion/02broderick.html>; Alicia M. Farley, *An Important Piece of the Bundle: How Limited Appearances Can Provide an Ethically Sound Way to Increase Access to Justice for Pro Se Litigants*, 20 GEO. J. LEGAL ETHICS 563 (2007).

<sup>7</sup> Bradley A. Vauter, *Unbundling: Filling the Gap*, 79 MICH. B.J. 1688, 1689 (2000), *available at* <http://www.michbar.org/journal/article.cfm?articleID=159&volumeID=14&viewType=archive>.

<sup>8</sup> AMERICAN BAR ASSOCIATION STANDING COMMITTEE ON THE DELIVERY OF LEGAL SERVICES, PERSPECTIVES ON FINDING PERSONAL LEGAL SERVICES: THE RESULTS OF A PUBLIC OPINION POLL 19 (2011), *available at* [http://www.americanbar.org/content/dam/aba/administrative/delivery\\_legal\\_services/20110228\\_aba\\_harris\\_survey\\_report.pdf](http://www.americanbar.org/content/dam/aba/administrative/delivery_legal_services/20110228_aba_harris_survey_report.pdf). Only 6% of participants initially described themselves as “very familiar” with unbundled legal services. *Id.*

the ABA adopted a Resolution encouraging practitioners to consider unbundling legal services as a means of increasing access to justice, as well as supporting efforts by bar associations and courts to educate lawyers and the public about limited scope representation.<sup>9</sup> Most recently, in August 2014, the ABA Standing Committee on the Delivery of Legal Services followed up with a White Paper analyzing the ways in which various states are formulating and modifying rules – including rules of professional conduct and of procedure – to enable lawyers to provide limited scope representation to clients who would otherwise proceed unrepresented and to regulate limited scope representation.<sup>10</sup> That White Paper was intended to be, and is, a very useful resource for policymakers interested in developing appropriate rules to enable lawyers to provide limited assistance to unrepresented litigants.<sup>11</sup>

Additionally, countless reports and commentary about limited scope representation have pointed out that it has benefits for practicing attorneys and that attorneys report satisfaction when their practices encompass limited scope representation.<sup>12</sup> One article noted that once the unbundling was permitted, some lawyers even began practicing on an entirely unbundled basis and some found it opened the door to new business.<sup>13</sup> Another opined that the limited scope representation market is large and untapped and may be especially well suited to

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<sup>9</sup> American Bar Association House of Delegates Resolution 108, Feb. 11, 2013, included as Exhibit A to this Report. The Resolution is available at [http://www.americanbar.org/content/dam/aba/events/legal\\_aid\\_indigent\\_defendants/2013/05/nat\\_l\\_mtg\\_of\\_accesstojusticecmmnchairs/ls\\_sclaid\\_atj\\_adopted\\_unbundling\\_resolution\\_108.pdf](http://www.americanbar.org/content/dam/aba/events/legal_aid_indigent_defendants/2013/05/nat_l_mtg_of_accesstojusticecmmnchairs/ls_sclaid_atj_adopted_unbundling_resolution_108.pdf).

<sup>10</sup> See AMERICAN BAR ASSOCIATION STANDING COMMITTEE ON THE DELIVERY OF LEGAL SERVICES, AN ANALYSIS OF RULES THAT ENABLE LAWYERS TO SERVE SELF-REPRESENTED LITIGANTS (2014), included as Exhibit B to this Report. This report is available at [http://www.americanbar.org/content/dam/aba/administrative/delivery\\_legal\\_services/ls\\_del\\_unbundling\\_white\\_paper\\_2014.pdf](http://www.americanbar.org/content/dam/aba/administrative/delivery_legal_services/ls_del_unbundling_white_paper_2014.pdf).

<sup>11</sup> Rule 1.2(c) of the New York Rules of Professional Conduct provides that, “A lawyer may limit the scope of representation if the limitation is reasonable under the circumstances, the client gives informed consent and where necessary notice is provided to the tribunal and/or opposing counsel.” 22 N.Y. COMP. CODES R. & REGS. tit. 22, § 1200 (2014).

<sup>12</sup> See, e.g., MISSOURI BAR SPECIAL COMMITTEE ON LIMITED SCOPE REPRESENTATION, REPORT OF THE SPECIAL COMMITTEE ON LIMITED SCOPE REPRESENTATION 9 (2007), available at <http://www.courts.mo.gov/file.jsp?id=5847>; SUPREME JUDICIAL COURT STEERING COMMITTEE ON SELF-REPRESENTED LITIGANTS, ADDRESSING THE NEEDS OF SELF-REPRESENTED LITIGANTS IN OUR COURTS: FINAL REPORT AND RECOMMENDATIONS (2008) (report of a judicial committee established by Massachusetts), available at <http://www.mass.gov/courts/docs/sjc/docs/self-rep-final-report.pdf>; Anthony P. Capozzi, *Responding to the Pro Per Crisis*, CALIFORNIA BAR JOURNAL (FEBRUARY 2004), <http://archive.calbar.ca.gov/%5CArchive.aspx?articleId=54777&categoryId=54521&month=2&year=2004> (last visited Nov. 10, 2014).

<sup>13</sup> J. Timothy Eaton & David Holtermann, *Expanding Access to Justice: Limited Scope Representation is Here*, CHICAGO B. ASS’N REC., Apr. 2010, at 36, 38. The same article noted that providing limited scope representation benefitted the Massachusetts courts because unrepresented litigants submitted better pleadings, the litigants were more realistic about their cases, frivolous motions were fewer in number, and litigants better understood the process. *Id.* at 39.



young lawyers seeking to build a high-volume practice.<sup>14</sup> In Massachusetts, which has allowed limited assistance representation since 2009, a family law practitioner said that limited scope practice can be “enormously profitable.”<sup>15</sup>

As one commentator succinctly expressed it:

[Limited Assistance Representation] is good business for everyone. The public will have access to lawyers for a discrete service such as preparing pleadings or appearing at a temporary order hearing. Lawyers will have a paying client instead of no client, and the court will receive help in processing a case.<sup>16</sup>

### **The Status of Limited Scope/Unbundled Services in New York**

Legal services providers have historically provided unbundled services to clients through advice, coaching and ghostwriting of papers. New York lags behind other states in using the limited assistance concept in the making of limited appearances in court cases. This is partly due to opposition by legal services providers who have expressed the view that accepting less than full representation for their clients cuts against the civil right-to-counsel movement, devalues the legal needs of low-income individuals and provides sub-standard representation to clients.<sup>17</sup>

As for the private bar, the New York City Bar Association was a partner in the first New York City Civil Court Volunteer Lawyer for the Day Program.<sup>18</sup> The Brooklyn

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<sup>14</sup> Phillip Friday, *Limited Scope Representation = One Answer to Pro Se Litigation*, IN CHAMBERS: THE OFFICIAL PUBLICATION OF THE TEXAS CENTER FOR THE JUDICIARY, <https://www.yourhonor.com/in-chambers/single-issue-feature/Fall-2013/Limited-Scope-Representation-One-Answer-to-Pro-Se-Litigation> (last visited Nov. 10, 2014).

<sup>15</sup> Christina P. O’Neill, *Law a la Carte: Limited Assistance Representation’s Impact on the Court System and Lawyers*, 17 MASS. B. ASS’N LAW. J., no. 10, July 2010 at 1, available at <http://www.massbar.org/publications/lawyers-journal/2010/july/law-%C3%A0-la-carte-limited-assistance-representation%27s-impact-on-the-court-system-and-lawyers>; for a similar discussion of limited scope representation in Illinois, see John T. Phipps, *Editor’s column: New “limited scope legal representation” rule gives solo and small firm practitioners special opportunity to expand practice with “unbundled legal services,”* 38 GEN. PRAC., SOLO & SMALL FIRM, no. 5, March 2010, available at <https://www.isba.org/sections/generalpractice/newsletter/2010/03/editorscolumnnewlimitedscopelegalrepresentation>.

<sup>16</sup> Edward M. Ginsburg, *Commentary: Ways to Make Legal Fees More Affordable for the Public*, MASS. LAW. WKLY., Mar. 9, 2009, available at [http://www.americanbar.org/content/dam/aba/migrated/legalservices/delivery/downloads/mass\\_lawyers\\_weekly\\_march\\_11\\_2009.doc](http://www.americanbar.org/content/dam/aba/migrated/legalservices/delivery/downloads/mass_lawyers_weekly_march_11_2009.doc).

<sup>17</sup> Reference is to sentiments expressed by legal services attorneys and members of the tenant’s bar to Hon. Fern Fisher, Deputy Chief Administrative Judge for the New York City Court, who also serves as Director of the New York State Courts Access to Justice Program.

<sup>18</sup> See OFFICE OF THE ADMINISTRATIVE JUDGE OF THE CIVIL COURT OF THE CITY OF NEW YORK, OFFICE OF THE DEPUTY CHIEF ADMINISTRATIVE JUDGE FOR JUSTICE INITIATIVES AND THE NYC BAR ASSOCIATION’S COMMITTEE ON LEGAL SERVICES, VOLUNTEER LAWYER FOR A DAY PROJECT REPORT: A TEST OF UNBUNDLED LEGAL SERVICES IN THE NEW YORK CITY HOUSING COURT (2008),

Bar Association and the New York County Lawyers Association are current partners with the court system in unbundled programs.<sup>19</sup> Further, we have been advised that the New York State Bar Association's President's Committee on Access to Justice is studying the recommendation that the Task Force makes in this report, and the Committee's position may soon be presented to the State Bar's Executive Committee for consideration. The support of the Task Force and the Administrative Board for expansion of unbundling could advance acceptance of the concept.

New York may also benefit from a public relations effort to advance limited scope representation in litigation. Judges and attorneys are not sufficiently aware of the subject and the positive outcomes that ensue for courts, lawyers and clients.<sup>20</sup> In addition, law students in most law schools are not exposed to the concept. An early introduction to the subject in law school can help create a new culture of practicing law that will include both full and limited scope representation.

Unbundling via limited appearance in New York has been advanced by court-approved *pro bono* programs. Judges agree in advance to accept the limited appearance retainers of volunteer attorneys. These programs have operated with success and have been well received by the recipients of the services and by judges.<sup>21</sup>

However, a significant issue for private practitioners and legal service providers who are not in court-sanctioned programs is that they may run into problems withdrawing from cases at the completion of the agreed-to limited representation.<sup>22</sup> Rule 321(b) of the New York Civil Practice Law and Rules requires court approval for an attorney's withdrawal from a case.<sup>23</sup> Attorneys are reluctant to

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available at [http://www.nycourts.gov/courts/nyc/housing/pdfs/vlfdreport\\_0208.pdf](http://www.nycourts.gov/courts/nyc/housing/pdfs/vlfdreport_0208.pdf).

<sup>19</sup> See *Court-Sponsored Volunteer Attorney Program: Volunteer Program Descriptions*, N.Y. STATE UNIFIED COURTS Sys., [http://www.nycourts.gov/attorneys/volunteer/vap/program\\_descriptions.shtml](http://www.nycourts.gov/attorneys/volunteer/vap/program_descriptions.shtml) (last visited Nov. 19, 2014).

<sup>20</sup> For reports on the success of limited appearances and other forms of unbundling, see Lisa Young, *Limited Scope Representation: An Experiment in San Diego Housing Court (2008)* (unpublished paper), available at [http://works.bepress.com/cgi/viewcontent.cgi?article=1000&context=lisa\\_young](http://works.bepress.com/cgi/viewcontent.cgi?article=1000&context=lisa_young); and Millemann, *supra* note 6.

<sup>21</sup> See generally VOLUNTEER LAWYER FOR A DAY PROJECT REPORT: A TEST OF UNBUNDLED LEGAL SERVICES IN THE NEW YORK CITY HOUSING COURT, *supra* note 18. Currently, in the New York City Civil Court, there are Volunteer Lawyer for the Day Programs in both Housing and Consumer Debt cases. In Erie County, a Volunteer Lawyer for the Morning in housing cases is in operation. See *Background Information*, ERIE COUNTY BAR ASSOCIATION VOLUNTEER LAWYERS PROJECT, <http://www.ecbavlp.com/SingleItem.aspx?docid=2> (last visited Nov. 21, 2014).

<sup>22</sup> For a discussion of this and other attorney concerns relating to limited scope services, see *Fisher-Brandveen & Klempner*, *supra* note 2, at 1114–21.

<sup>23</sup> N.Y. C.P.L.R. 321(b) (McKINNEY 2014).

appear in cases on a limited basis without assurance that the court will release them from cases. Other states provide alternatives worthy of serious consideration, as discussed in the next section. A large volume of research, analysis and commentary is available on the practical and ethical considerations involved.<sup>24</sup>

### **Progress in Other States**

At least 24 states have adopted court rules and/or rules of civil procedure that make it easier for attorneys to take on limited scope representation.<sup>25</sup> Key among these rules are those governing an attorney's withdrawal from a matter in which the attorney has made a limited appearance on the record. The withdrawal rules, among these states, generally fall into five categories.

The first, and most popular approach, is for courts to allow withdrawal – without leave of court – upon the filing of a Notice of Withdrawal or Notice of Completion of the limited representation. The 17 states that have adopted this type of court rule and/or rule of civil procedure include: Alabama, Alaska, Colorado, Florida, Idaho, Indiana, Iowa, Massachusetts, Missouri, Montana, Nebraska, New Hampshire, New Mexico, North Dakota, Tennessee, Vermont and Washington.<sup>26</sup>

One especially interesting approach in Massachusetts comes from its program that recognizes Limited Assistance Representation attorneys practicing in all

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<sup>24</sup> The ABA website provides a “bibliography” of articles, books and report, case law references, court rules and ethics opinions regarding limited appearances. See *Standing Committee on the Delivery of Legal Services: Pro Se Unbundling Resource Center—Limited Appearances*, AM. BAR ASS'N, [http://www.americanbar.org/groups/delivery\\_legal\\_services/resources/pro\\_se\\_unbundling\\_resource\\_center/limited\\_appearances.html](http://www.americanbar.org/groups/delivery_legal_services/resources/pro_se_unbundling_resource_center/limited_appearances.html).

<sup>25</sup> Alabama, Alaska, Arizona, California, Colorado, Florida, Idaho, Illinois, Indiana, Iowa, Kansas, Maine, Massachusetts, Missouri, Montana, Nebraska, New Hampshire, New Mexico, North Dakota, Tennessee, Utah, Vermont, Washington and Wyoming. See *Standing Committee on the Delivery of Legal Services: Pro Se Unbundling Resource Center—Court Rules*, AM. BAR ASS'N, [http://www.americanbar.org/groups/delivery\\_legal\\_services/resources/pro\\_se\\_unbundling\\_resource\\_center/court\\_rules.html](http://www.americanbar.org/groups/delivery_legal_services/resources/pro_se_unbundling_resource_center/court_rules.html) (last visited Nov. 21, 2014).

<sup>26</sup> See ALA. CODE R.C.P. 87(c) (West 2014); ALASKA STAT. ANN. R.C.P. 81(e)(2)(D) (West 2014); COLO. REV. STAT. ANN. R.C.P. 121(c)(5) (West 2014); FLA. STAT. ANN. FAMILY LAW R.P. 12.040(c)(1) (West 2014) (relating to family law matters); IDAHO CODE ANN. R.C.P. 11(b)(5) (West 2014) (relating to representation of pro bono clients); IND. CODE ANN. § 34 R. TRIAL P. 3.1(l) (West 2014); IOWA CODE ANN. R.C.P. 1.404(4) (West 2014 Trial Court of the Commonwealth [of Massachusetts], District Court Department Standing Order 1-11, Jan. 25, 2011); MO. SUP. CT. R. 55.03(e)(3); MONT. CODE ANN. § 25-20-4.2 (West 2014); NEB. REV. STAT. ANN. R. SUP. CT. 6-1109(i) (West 2014); N.H. REV. STAT. ANN. R. SUPER. CT. 17(f) (2014); N.M. STAT. ANN. DIST. CT. R. 1-089(C) (West 2014); N.D. CENT. CODE ANN. R.C.P. 11(e) (West 2014); N.D. CENT. CODE ANN. CT. R. 11.2(d) (West 2014); TENN. CODE ANN. R.C.P. 11.01(c) (West 2014); VT. STAT. ANN. R.C.P. 79.1(h)(3) (West 2014) (note that under this provision, an attorney who seeks to withdraw before that purpose has been accomplished may do so only on motion and notice, for good cause and on terms, as provided in Rule 79.1(f), which is similar to the approach adopted in Maine, see *infra* text accompanying note 33); WASH. REV. CODE ANN. SUPER. CT. C.R. 70.1(b) (West 2014).

Divisions of the Probate and Family Court.<sup>27</sup> Attorneys must take specified training supplied by the court system and submit a simple application.<sup>28</sup> The court system also provides forms for notices of limited appearance and for withdrawal of limited appearance, and the court system maintains directories of qualified attorneys by county to help litigants find help.<sup>29</sup> The court system's active involvement in promoting limited assistance has significantly advanced the acceptance of limited scope representation in Massachusetts.

The second approach, used in Arizona, Illinois and Kansas, is adopting a court rule that allows for withdrawal of the attorney upon the filing of a Notice of Withdrawal with Consent or the filing of a Notice of Withdrawal that allows for a period of objection.<sup>30</sup> Where the client consents or makes no objection, withdrawal is effective without leave of court. Otherwise, these states set forth a procedure for court involvement in determining whether withdrawal is permitted.

The third approach is unique to California. There, court rules require attorneys to submit both a form application to be relieved as counsel and a form order for court review; judicial approval of the withdrawal is necessary even if there is no objection.<sup>31</sup> However, the wording of the California court rule is that, absent an objection, all that is required is "judicial signature."<sup>32</sup>

Maine adopted a fourth approach. Its rule exempts attorneys engaged in limited representation from the rules generally applicable to attorneys seeking to withdraw as counsel. However, where an attorney is seeking to withdraw "from the limited appearance itself," Maine's general withdrawal rules apply.<sup>33</sup>

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<sup>27</sup> Program information is available at the Massachusetts court system's website. See *Limited Assistance Representation (LAR)*, MASSACHUSETTS COURT SYS., <http://www.mass.gov/courts/programs/legal-assistance/lar-gen.html>. For a training manual for limited assistance representation in various Massachusetts trial courts, see TRIAL COURT OF MASSACHUSETTS LIMITED ASSISTANCE REPRESENTATION TRAINING MANUAL, *available at* <http://massprobono.org/library/attachment.251368> (last visited Nov. 10, 2014).

<sup>28</sup> To become a certified Limited Assistance Representation Attorney, the attorney must view a court-supplied video and written materials and complete a Statement of Qualification, all of which are provided on the court system's website. See *Instructions to Becoming a Certified LAR Attorney*, MASSACHUSETTS COURT SYS., <http://www.mass.gov/courts/forms/pfc/pfc-inst-self-qualify-lar.html> (last visited Nov. 15, 2014).

<sup>29</sup> See *Find a Limited Representation Attorney*, MASSACHUSETTS COURT SYSTEM, <http://www.mass.gov/courts/programs/legal-assistance/pfc-lar-attorneys-lc.html> (last visited Nov. 15, 2014).

<sup>30</sup> ARIZ. REV. STAT. ANN. R.C.P. 5.2(c)(1) (West 2014); ILL. COMP. STAT. ANN. SUP. CT. R. 13(c)(7)(ii) (West 2014); ; KAN. STAT. ANN. SUP. R. CT. 115A(b)(6) (14 day period of objection and absent that withdrawal is effective)...

<sup>31</sup> CAL. R. CT. 3.36(c)-(h) (West 2014).

<sup>32</sup> CAL. R. CT. 3.36(f).

<sup>33</sup> ME. REV. STAT. R.C.P. 89(a) (West 2014).

Finally, Wyoming adopted what appears to be the fifth and broadest approach. Its Uniform Rules for the District Court provide that “[a]n attorney who has entered a limited entry of appearance shall be deemed to have withdrawn when the attorney has fulfilled the duties of the limited appearance.”<sup>34</sup>

## **Recommendations**

The Working Group has concluded that the time is ripe to expand using limited services to help close the civil legal services gap in New York.

Accordingly, the Working Group recommends that the Administrative Board of the Courts support limited scope representation by adopting an administrative policy expressing the Administrative Board’s support.

In addition, we suggest that consideration be given to developing more court-partnered or court-approved limited representation programs; to encouraging bar associations to embrace limited scope representation, especially insofar as it enhances access to justice for unrepresented litigants; to educating judges, lawyers and the public about the subject and to encouraging law schools to include the concept of limited scope representation/unbundling in law school curricula.

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<sup>34</sup> WYO. STAT. ANN. UNIFORM R. DIST. CT. 102(c) (West 2014).

EXHIBIT A

ABA Resolution 108 (Feb. 11, 2013)

AMERICAN BAR ASSOCIATION

STANDING COMMITTEE ON THE DELIVERY OF LEGAL SERVICES

REPORT TO THE HOUSE OF DELEGATES

RESOLUTION

- 1 RESOLVED, that the American Bar Association encourage practitioners to consider limiting the  
2 scope of their representation, when appropriate, as a means of increasing access to legal services.  
3
- 4 FURTHER RESOLVED, that the American Bar Association encourage and support the efforts  
5 of national, state, local and territorial bar associations, the judiciary and court administrations,  
6 and CLE providers to take measures to assure that practitioners who limit the scope of their  
7 representation do so with full understanding and recognition of their professional obligations.  
8
- 9 FURTHER RESOLVED, that the American Bar Association encourage and support the efforts  
10 of national, state, local and territorial bar associations, the judiciary and court administrations,  
11 and those providing legal services to make the public better aware of the availability of limited  
12 scope representation as an option to help meet the legal needs of the public.

## **REPORT**

### **I. Overview**

Research clearly indicates that a growing number of people are foregoing the assistance of lawyers when confronted with a civil legal issue and are addressing their matters through self-representation. In many instances, people are turning to self-help alternatives, such as document preparation services available over the Internet.<sup>1</sup>

Lawyers who provide some of their services in a limited scope manner facilitate greater access to competent legal services. Limited scope representation has taken on several names, including “discrete task representation,” “limited assistance representation,” and “unbundled legal services.” According to the New York Civil Courts, “unbundled legal services” involve “a practice in which the lawyer and client agree that the lawyer will provide some, but not all, of the work involved in traditional full service representation. Simply put, the lawyers provide only the agreed upon tasks, rather than the whole “bundle,” and the clients perform the remaining tasks on their own.”<sup>2</sup>

To be clear, limited scope representation is used in the pro bono and legal aid settings, but is not limited to free legal services. Lawyers who unbundle their services in the marketplace charge their full rate, expand their client base because the cost per case is more affordable, and effectively compete with document preparation services.

The American Bar Association has set out the circumstances under which lawyers may limit the scope of their representation in Rule 1.2(c) of the Model Rules of Professional Conduct. This Rule requires lawyers who limit the scope of their representation to do so only in those cases where the limitation is reasonable under the circumstances and the client gives informed consent to the limitation.

Although Rule 1.2(c) was adopted in 2002 and has been broadly embraced by the states since then, public opinion research demonstrates that a substantial portion of the public is unaware of the option to limit the scope of representation.

Access to competent legal services for those with personal, civil legal problems can be advanced through the ABA’s support of limited scope representation, advancement of the professional obligations of lawyers that provide limited scope representation and encouragement of justice system stakeholders to inform the public about opportunities for limited scope representation.

### **II. The Growth of Self-Representation**

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<sup>1</sup> Online document preparation provider LegalZoom represents that it has served approximately 2 million customers over the past 10 years and generated \$156 million in 2011. See <http://www.sec.gov/Archives/edgar/data/1286139/000104746912005763/a2209299zs-1.htm#SUMMARY>

<sup>2</sup> <http://www.nycourts.gov/courts/nyc/civil/definitions.shtm#u>



The ABA's seminal legal needs study from 1994 documented the ways in which those of moderate and low incomes approach the justice system for their legal needs. The survey indicated that 40 percent of low-income households and 46 percent of moderate-income households had at least one new legal problem in the prior year. Less than four out of ten of those in moderate-income households with a new legal problem turned to the civil justice system to deal with their problems. The clear majority of both low and moderate-income household members handled the problem on their own, took no action or consulted a third-party other than a lawyer.<sup>3</sup>

Since this survey was conducted, other research shows that the number of litigants who self-represent has increased in many areas. National data indicates that in family law matters, between 60 and 90 percent of the cases involve at least one self-represented party.<sup>4</sup> In New York, nearly two million litigants self-represent each year.<sup>5</sup> California has over 150,000 divorce cases per year. At least one party is unrepresented in 70 percent of them. A New Hampshire report indicates that in 70 percent of the domestic relations matters there at least one party is self-represented.<sup>6</sup> In Oregon, about seven out of ten litigants in family law matters self-represent.<sup>7</sup> According to a Utah study conducted in 2005, both sides in debts collection cases were represented in only three percent of the cases. In addition, 81 percent of respondents in divorce cases self-represent there. In evictions, 97 percent of respondents self-represented.<sup>8</sup>

In 2009, the ABA Coalition for Justice surveyed judges to measure the impact of the economic downturn on the courts. Six out of ten judges who participated in the survey reported that the number of self-represented litigant had increased. Just over a third indicated it had stayed the same, but only 3 percent of the judges reported that more litigants were coming to court with representation. In addition, the self-represented litigants were unprepared, with many having an unsatisfactory outcome. High percentages of judges reported that self-represented litigants failed to include important evidence, committed procedural errors and were ineffective in raising objections, examining witnesses and crafting arguments. Nearly two-thirds of the judges reported that the outcomes of self-represented parties were worse than if they had been represented.

The Internet has fueled alternative resources for those who self-represent. The issues are not limited to litigation, but also include the most common transactional matters. Simple search engine probes will lead consumers to scores, if not hundreds, of companies that

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<sup>3</sup> *Legal Needs and Civil Justice: Major Findings from the Comprehensive Legal Needs Study*, American Bar Association, 1994,

<http://www.americanbar.org/content/dam/aba/migrated/legalservices/downloads/sclaid/legalneedstudy.pdf>

<sup>4</sup> <http://www.californialawreview.org/articles/self-represented-litigants-in-family-law-the-response-of-california-s-courts>

<sup>5</sup> [https://docs.google.com/View?id=dczwqkbc\\_182d3k4gndf](https://docs.google.com/View?id=dczwqkbc_182d3k4gndf)

<sup>6</sup> <http://www.californialawreview.org/articles/self-represented-litigants-in-family-law-the-response-of-california-s-courts>

<sup>7</sup> <http://www.osbar.org/publications/bulletin/11jul/barcounsel.html>

<sup>8</sup> <http://www.californialawreview.org/articles/self-represented-litigants-in-family-law-the-response-of-california-s-courts>

provide services to the do-it-yourself estate planners or those who seek to incorporate their businesses. Online legal service providers are sometimes backed with millions of dollars in venture capital. One company advertises that over 15 million individuals and businesses have used their services. Another touts that it has over 2 million satisfied customers.

### **III. Improving Access to Legal Services through Limited Scope Representation**

In 2010, then New Hampshire Chief Justice Broderick and then California Chief Justice George joined to publish an Op-Ed in the *New York Times* entitled, “A Nation of Do-It-Yourself Lawyers.” While supporting the goal of a right to counsel in some civil cases, the Chief Justices wrote that it is essential to close the “justice gap” and that “unbundling” is one of the tools to do so. They indicated that lawyers who provide limited scope representation are being responsive to new realities. They stated, “...that for those whose only option is to go it alone, at least some limited, affordable time with a lawyer is a valuable option we should all encourage. In fact, we believe that limited scope representation rules will allow lawyers – especially sole practitioners – to serve people who might otherwise have never sought legal assistance.”

Over the past decade, several states have examined aspects of self-representation and concluded that limited scope representation is a model of delivering legal services that is responsive to problems that arise from self-represented litigants. For example, in 2008, the Massachusetts Supreme Judicial Court Steering Committee on Self-Representation issued a report entitled, “Addressing the Needs of Self-Represented Litigants in Our Court.”

The report states:

Experience has shown that LAR [Limited Assistance Representation] is appropriate for use in many categories typically involving self-represented parties and that it is an extremely helpful innovation for several reasons: (1) it allows legal aid and pro bono attorneys to assist more people; (2) it allows people who cannot afford full service representation but who have some funds to pay a lawyer to obtain meaningful assistance with their legal problem; and (3) it has positive impact on the operations of the court. In states where this method of representation has been widely used (California and Maine being notable examples) it has also shown itself to be of great benefit to the private bar; attorneys find that providing limited scope representation connects them with litigants who would otherwise not hire an attorney and that representing clients on a limited assistance basis is professionally satisfying and profitable.<sup>9</sup>

The Joint Iowa Judges Association and Iowa State Bar Association Task Force on Pro Se Litigation has advanced a similar position. In its 2005 report, the Task Force states:

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<http://www.americanbar.org/content/dam/aba/migrated/legalservices/delivery/downloads/maselfrepfinalreport.authcheckdam.pdf>

We believe we must shift from thinking of legal services as a dichotomy of represented/unrepresented, or “all or nothing,” to conceptualizing and facilitating legal services delivery along a continuum... We believe that more prospective clients would seek lawyers’ services if they were free to contract with lawyers for the completion of limited and designated tasks... Limited representation by the private bar offers a way to expand legal services to people of limited financial means. This will leave these litigants better prepared and should relieve judges and other court staff from the pressures of giving advice or advocacy. It can also offer lawyers an opportunity to adapt a law practice that offers “all or nothing” services into one in which they may enter agreements with litigants to limit the scope of their representation to discrete legal tasks, as they often do with their transactional clients.<sup>10</sup>

The 2006 Report and Recommendations of the Supreme Court of Ohio Task Force on Pro Se and Indigent Litigants came to the same conclusions as Massachusetts, Iowa and other states that have addressed this issue. The Task Force took a system-wide look at the needs created by self-represented litigants and concluded that practitioners are uniquely situated to provide a portion of the necessary assistance.

The Report states:

Many, if not most, unrepresented litigants need more than procedural assistance (e.g. what form to use, how to docket their case, what time to appear in court). They also need assistance with decision-making and judgment; they need to know their options, possible outcomes and strategies to pursue their objectives... The task force believes that pro se litigants can, in appropriate cases, optimize their outcomes if they can obtain assistance from a lawyer with discrete limited phases or aspects of their respective cases. The opportunity for limited representation is especially valuable to the otherwise unrepresented individual when that individual cannot afford or otherwise obtain representation with respect to all aspects of a case. Counsel’s limited appearance may not only advantage that attorney’s client but also may help the justice system operate more smoothly.<sup>11</sup>

While the reports from the state task forces and commissions, along with the Op-Ed from the chief justices, all stress the value of limited scope representation as one of the methods of addressing the justice gap and expanding access to legal services, they all also stress the need for sound policies and rules to govern the conduct of lawyers who agree with clients to limit the scope of their representation.

#### **IV. Policies Governing Limited Scope Representation**

As a result of the work of the ABA Commission on Ethics 2000, the House of Delegates amended the Model Rules of Professional Conduct to revise Rule 1.2(c). The Rule

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<http://www.americanbar.org/content/dam/aba/migrated/legalservices/delivery/downloads/iowaprosetaskforcereport2005.authcheckdam.pdf>

<sup>11</sup> [http://www.sconet.state.oh.us/publications/prose/report\\_april06.pdf](http://www.sconet.state.oh.us/publications/prose/report_april06.pdf)

addresses the conditions under which a lawyer may agree with a client to limit the representation. The Rule states, “A lawyer may limit the scope of representation if the limitation is reasonable under the circumstances and the client gives informed consent.”<sup>12</sup>

The reporter’s notes on the amendment to this rule indicate that the change is designed to clarify the lawyer’s obligations and to expand access to the services of a lawyer. The notes state, in part,

The Commission recommends that paragraph (c) be modified to more clearly permit, but also more specifically regulate, agreements by which a lawyer limits the scope of representation to be provided to a client. Although lawyers enter into such agreements in a variety of practice settings, this proposal in part is intended to provide a framework within which lawyers may expand access to legal services by providing limited but nonetheless valuable legal services to low and moderate-income persons who otherwise would be unable to obtain counsel.<sup>13</sup>

Forty-one states have now adopted Rule 1.2(c) or a substantially similar rule.<sup>14</sup> Most of those states that have varied from the Model Rule require the client’s consent to be in writing. A few have set out a checklist of tasks to be assumed when the lawyer provides a limited scope of representation.

On the one hand, the standards to provide limited scope representation set out in Rule 1.2(c) are easily articulated. On the other hand, those provisions may be challenging to implement in practice.

Rightly so, the Rule places the burden on the lawyer to determine if and when limited scope representation is appropriate. The lawyer must measure the capacity of the potential client to assume the responsibility of the segmented tasks. These tasks may be as simple as filing documents at the courthouse or as complex as negotiating an agreement or bringing a contested matter before a tribunal. The lawyer must both measure the capability of the potential client and the complexity of the legal issue to meet this standard. Consequently, the lawyer must be every bit as competent in the subject matter as a lawyer who exclusively provides full services in that field, or perhaps more so.

Several states have closely examined the emergence of self-representation in their jurisdiction through task forces or special committees, such as those noted above. Ultimately, these entities have called for changes in rules of professional conduct, rules of procedure and rules of the courts to clarify the obligations of lawyers providing limited scope representation. The issues that have emerged are set out in a white paper published by the Standing Committee on the Delivery of Legal Services in 2002 and updated in

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[http://www.americanbar.org/groups/professional\\_responsibility/publications/model\\_rules\\_of\\_professional\\_conduct/rule\\_1\\_2\\_scope\\_of\\_representation\\_allocation\\_of\\_authority\\_between\\_client\\_lawyer.html](http://www.americanbar.org/groups/professional_responsibility/publications/model_rules_of_professional_conduct/rule_1_2_scope_of_representation_allocation_of_authority_between_client_lawyer.html)

<sup>13</sup>

[http://www.americanbar.org/groups/professional\\_responsibility/policy/ethics\\_2000\\_commission/e2k\\_rule1\\_2rem.html](http://www.americanbar.org/groups/professional_responsibility/policy/ethics_2000_commission/e2k_rule1_2rem.html)

<sup>14</sup> [http://www.americanbar.org/groups/professional\\_responsibility/policy/rule\\_charts.html](http://www.americanbar.org/groups/professional_responsibility/policy/rule_charts.html)

2009, entitled “An Analysis of Rules that Enable Lawyers to Serve Pro Se Litigants.”<sup>15</sup> The issues include the communications with opposing counsel, certification of pleadings when providing document preparation, duties to the court when providing document preparation, entry of appearances and limited appearances, and conditions and circumstances governing withdrawal of a matter before a tribunal. Alaska, Arizona, California, Colorado, Florida, Iowa, Maine, Missouri, New Hampshire, New Mexico, Utah, Washington and Wyoming are among the states that have provided clarification of the lawyer’s duties through changes to their rules. Other states are in the process of making these considerations and several more have provided clarification through their interpretations of existing rules by way of ethics opinions.<sup>16</sup>

The ABA has opined about limited scope representation in different settings. ABA Ethics Opinion 07-446 clarifies the lawyer’s responsibilities when limiting the scope of representation to the drafting of pleadings. The opinion indicates that it is consistent with the Model Rules of Professional Conduct for a lawyer to do so.<sup>17</sup> In addition, ABA Ethics Opinion 08-451 discusses outsourcing legal work. Drawing a parallel between limited scope representation and outsourcing, the opinion indicates that limited scope representation affords the same opportunities to clients as are available to lawyers – the ability to determine which services the attorney will complete in an effort to reduce costs while maximizing attorney capital.<sup>18</sup> Scores of state ethics opinions addressing aspects of limited scope representation have been collected at the ABA Pro Se/Unbundling Resource Center, at

[http://www.americanbar.org/groups/delivery\\_legal\\_services/resources/pro\\_se\\_unbundling\\_resource\\_center/ethics\\_opinions.html](http://www.americanbar.org/groups/delivery_legal_services/resources/pro_se_unbundling_resource_center/ethics_opinions.html).

Even though substantial changes have been implemented in the policies governing lawyers who provide limited scope representation and the ABA and states have begun to clarify the lawyer’s responsibilities when providing limited scope representation, the public remains largely unaware of the unbundling option.

## **V. Public Awareness of Limited Scope Representation**

Anecdotal information and some research suggest that there are wide variations from state to state about the usage of limited scope representation. A 2009 California survey of primarily domestic relations lawyers found that half prepared documents without appearing as counsel on the case. Half reviewed documents prepared by the clients. Forty percent coached clients to prepare for hearings and the same percentage made limited appearances. Only a quarter of the respondents did not unbundle their services.<sup>19</sup> On the other hand, a former president of the Montana State Bar reported that limiting the scope

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<sup>15</sup> [http://apps.americanbar.org/legalservices/delivery/downloads/prose\\_white\\_paper.pdf](http://apps.americanbar.org/legalservices/delivery/downloads/prose_white_paper.pdf)

<sup>16</sup> [http://www.americanbar.org/groups/delivery\\_legal\\_services/resources.html](http://www.americanbar.org/groups/delivery_legal_services/resources.html)

<sup>17</sup> [http://www.abanet.org/legalservices/delivery/downloads/aba\\_07\\_446\\_2007.pdf](http://www.abanet.org/legalservices/delivery/downloads/aba_07_446_2007.pdf)

<sup>18</sup> <http://www.abanet.org/media/youraba/201004/formalOpinion08-451.pdf>

<sup>19</sup>

of representation by drafting pleadings has not caught on in Washington and he doubts that it would in Montana.<sup>20</sup>

Until recently, even less was known about the public's view of limited scope representation. However, in 2010, the Standing Committee on the Delivery of Legal Services commissioned Harris Interactive to conduct a national public opinion survey examining aspects of how people find legal services.<sup>21</sup> One set of questions focused on limited scope representation, which in the survey was referred to as "unbundling."

The Committee assumed that some percentage of people would be unfamiliar with the concept of limited scope representation, or unbundling, and therefore began the series of questions with a statement. Since there was no universal definition of limited scope representation or unbundling,<sup>22</sup> the Committee structured the following statement for the purpose of this survey:

Some lawyers are unbundling their services. "Unbundling" means that the lawyer and the client team up to divide the work between them. Instead of the lawyer doing everything, the lawyer does some of the work and the client does some of the work. For example, a lawyer may give the client instructions on how to fill out the paperwork necessary for court and the client then completes the forms. This would save money on attorneys' fees, but may take a lot of your time.

Survey respondents were then asked how familiar they were with unbundling. The choices were "very familiar," "familiar," "somewhat familiar," and "not at all familiar."

Six percent – just over one out of 20 – of the survey respondents reported they were very familiar with unbundling legal services. An additional five percent reported they were familiar with it. Eighteen percent reported they were somewhat familiar and 70% indicated they were not at all familiar with unbundled legal services. Seven out of ten people across the county reported they are not at all familiar with limited scope representation.

The level of familiarity with unbundling was uniform across the age and economic cohorts, with one exception. Those with household annual incomes less than \$15,000 per year reported that they were somewhat familiar with unbundling at a rate substantially higher than the respondents as a whole (32% compared to 18%).

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<sup>20</sup> <http://www.montanabar.org/associations/7121/November%202010%20mt%20lawyer.pdf>

<sup>21</sup> Perspectives on Finding Personal Legal Services, ABA Standing Committee on the Delivery of Legal Services 2011, at [http://www.americanbar.org/content/dam/aba/administrative/delivery\\_legal\\_services/20110228\\_aba\\_harris\\_survey\\_report.pdf](http://www.americanbar.org/content/dam/aba/administrative/delivery_legal_services/20110228_aba_harris_survey_report.pdf)

<sup>22</sup> Note that Wikipedia now defines "unbundled legal services" as "a method of legal services in the United States in which an attorney and client agree to limit the scope of the attorney's involvement in a law suit or other legal action, leaving responsibility to those other aspects of the case to the client." See [http://en.wikipedia.org/wiki/Unbundled\\_legal\\_services](http://en.wikipedia.org/wiki/Unbundled_legal_services)

The survey then probed the extent to which people were interested in the concept of limited scope representation for their legal matters. Respondents were asked “If you had a personal legal matter to deal with, how likely would you be to talk to a lawyer about the possibility of unbundled legal services?” About a third of the respondents reported there were very likely to do so and another third reported they were somewhat likely to explore this option. Those of moderate incomes, with family household incomes between \$35,000 and \$50,000 per year, were more likely to do so. Half of those surveyed who with moderate incomes reported there were very likely to talk to a lawyer about unbundling.

Finally, the survey asked people whether it was important to them if a lawyer they were considering using offered an unbundling option. Sixty-two percent of the respondents indicated it was somewhat or very important that their potential lawyer offer this option. This percentage scaled up as income groups lowered. About half of those with incomes over \$100,000 per year believed it was somewhat or very important that their perspective lawyer offer unbundled services. However, four out of five respondents with incomes of less than \$15,000 per year believed it was somewhat or very important for their lawyer to offer unbundling as an option.

## **VI. Moving Forward with Limited Scope Representation**

We have every reason to believe self-representation will continue at high, if not increasing, levels. Document preparation providers are a well-funded alternative to the services provided by practitioners and show signs of becoming high volume, institutionalized entities. For many, the costs of traditional services make the use of a lawyer out of reach. The organized bar has an obligation to use all reasonable resources to assure people have access to the benefits that can only be provided by lawyers. The ABA and several states have made rule changes to better enable lawyers to provide limited scope representation and to clarify the lawyer’s obligations when doing so. Nevertheless, people are unfamiliar with the concept of limited scope representation. When that concept is presented to them, a high percentage of people find this option a possibility they want to explore.

Consequently, it is imperative for the ABA to provide support for the concept of limited scope representation. This support should go beyond accommodation and stimulate discussion, debate and interest among all stakeholders in our system of justice. Likewise, it should employ greater measures to broaden the public’s awareness of this option for legal services. At the same time, the ABA should be the leader in providing clarity to practitioners on the propriety of limited scope representation and assure that lawyers provide these services with obligations no less than those that apply in full representation.

Respectfully submitted,

H. Ritchey Hollenbaugh, Chair  
Standing Committee on the Delivery of Legal Services  
[Month] 2012

### **GENERAL INFORMATION FORM**

Submitting Entity: Standing Committee on the Delivery of Legal Services

Submitted By: H. Ritchey Hollenbaugh

1. Summary of Resolution(s).

This resolution urges the American Bar Association to encourage practitioners to consider limiting the scope of their representation when appropriate as a means of increasing access to legal services. The resolution also urges that the ABA to encourage bar associations, the judiciary and court administrations and CLE providers to take efforts to assure that such representation is carried out with full understanding and recognition of professional obligations and that the Association encourage efforts by bar associations, the judiciary and court administrations, and those providing legal services to make the public better aware of the availability of such services as an option.

2. Approval by Submitting Entity.

The proposed resolution was approved by the Standing Committee on the Delivery of Legal Services on June 9, 2012.

3. Has this or a similar resolution been submitted to the House or Board previously?

Neither this resolution nor a similar resolution has been submitted to the House or Board previously.

4. What existing Association policies are relevant to this Resolution and how would they be affected by its adoption?



Two Association policies are relevant to this Resolution. In 2002, the House of Delegates adopted Recommendation 401, amending Rule 1.2(c) of the ABA Model Rules of Professional Conduct to state, “A lawyer may limit the scope of representation if the limitation is reasonable under the circumstances and the client gives informed consent.”

In 2010, the House of Delegates adopted Recommendation 104, to adopt the ABA Model Access Act of 2010. Section 3.B.iv. of that Act states, “Limited scope representation as defined herein shall be available to financially eligible individuals where the limited service provided is required because self-help assistance alone would prove inadequate or is not available and where such limited scope representation is sufficient in itself or in combination with self-help assistance to provide the applicant with effective access to justice in the particular case in the specific forum. In matters before those courts or other forums in which representation can be provided only by licensed legal professionals, however, limited scope representation can only be substituted for full representation when permitted by Section 3.B.iii above.”

If adopted, this Resolution would support and complement those policies.

5. What urgency exists which requires action at this meeting of the House?

The ABA has the responsibility of ensuring that its rules and policies are updated and reflect the evolution of legal practice. Given the growing numbers of self-represented litigants, it is imperative that the ABA facilitate public awareness and provide clarity to practitioners regarding the benefits of limited scope representation in addressing barriers to access to justice.

6. Status of Legislation. (If applicable)

Not applicable.

7. Brief explanation regarding plans for implementation of the policy, if adopted by the House of Delegates.

This resolution can best be implemented through facilitating discussion among stakeholders across the country. Such discussions will focus on measures to broaden public awareness and clarification to practitioners on the propriety of limited scope representation.

8. Cost to the Association. (Both direct and indirect costs)

No cost to the association is anticipated.

9. Disclosure of Interest. (If applicable)

None known.

10. Referrals.

This resolution and background report has been circulated to the chairs and staff of the following ABA entities:

11. Contact Name and Address Information. (Prior to the meeting. Please include name, address, telephone number and e-mail address)

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## **EXECUTIVE SUMMARY**

### 1. Summary of the Resolution

This resolution urges the American Bar Association to encourage practitioners to consider limiting the scope of their representation when appropriate as a means of increasing access to legal services. The resolution also urges that the ABA to encourage bar associations, the judiciary and court administrations and CLE providers to take efforts to assure that such representation is carried out with full understanding and recognition of professional obligations and that the Association encourage efforts by bar associations, the judiciary and court administrations, and those providing legal services to make the public better aware of the availability of such services as an option.

### 2. Summary of the Issue that the Resolution Addresses

A growing trend of self-representation has revealed a need for self-help alternatives to facilitate access to competent legal services. While limited scope representation is a cost-effective solution, research has demonstrated that many people who would benefit from such services are not aware of the option. Additionally, practitioners lack clear guidance on how to effectively provide limited scope representation.

### 3. Please Explain How the Proposed Policy Position will address the issue

This resolution supports the implementation of greater measures to broaden public awareness and provide clarity to practitioners on the propriety of limited scope representation.

### 4. Summary of Minority Views

None.

EXHIBIT B

ABA Standing Committee on the Delivery of Legal Services, An Analysis  
of Rules That Enable Lawyers to Serve Self-Represented Litigants  
(August 2014)

**AN ANALYSIS OF RULES  
THAT ENABLE LAWYERS  
TO SERVE SELF-REPRESENTED LITIGANTS**

A White Paper

by the

ABA Standing Committee on the  
Delivery of Legal Services

ABA Standing Committee on the Delivery of Legal Services  
321 N. Clark Street  
Chicago, IL 60654  
[www.ambar.org/delivery](http://www.ambar.org/delivery)

August, 2014

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The views expressed herein have not been approved by the House of Delegates or the Board of Governors of the American Bar Association and, accordingly, should not be construed as representing the policy of the American Bar Association.

# **ABA Standing Committee on the Delivery of Legal Services**

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## I. Introduction

This white paper has been prepared by the American Bar Association’s Standing Committee on the Delivery of Legal Services. The purpose of the paper is to provide policy-makers with information and analysis on the ways in which various states are formulating or amending rules of professional conduct, rules of procedure and other rules and laws to enable lawyers to provide a limited scope of representation to clients who would otherwise proceed on a pro se basis, and to regulate that representation.

Specific policies cover: defining the scope of representation; clarifying communications between counsel and parties; creating parameters for the lawyer’s role in document preparation, including disclosure of the lawyer’s assistance; governing the entry of appearances and withdrawals for limited scope representation; and excusing conflicts checks for some limited scope services.

These specific issues are discussed below, following a brief background section. In addition, the white paper concludes with two appendices. Appendix A provides policy-makers with a worksheet focused on the decisions that need to be addressed to enable lawyers to provide assistance to self-represented litigants. Appendix B includes the specific rules that are discussed throughout the paper.

## II. Background

When going to state court, most people proceed pro se most of the time. High volume state courts, including traffic, housing and small claims, are dominated by self-represented litigants.<sup>1</sup> Over the course of the past 25 years, domestic relations courts in many jurisdictions have shifted from those where litigants were predominately represented by lawyers to those where self-represented litigants are most common. In these areas of the courts, self-representation is no longer a matter of growth, but rather a status at a saturated level.<sup>2</sup> Anecdotal evidence suggests that self-representation is increasing in other personal civil matters, as well.<sup>3</sup>

The courts have responded to the paradigm where litigants are frequently self-represented by providing a variety of services to assist these litigants. Within the courthouse, some courts have added services. Some courts now provide guides, who give directions and offer general information.<sup>4</sup> Courts in Washington, California<sup>5</sup> and Florida<sup>6</sup> have established courthouse

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<sup>1</sup> See *Self-Represented Litigants and Court Legal Services Responses to Their Needs: What We Know*, by John Greacen (undated), at <http://www.courts.ca.gov/partners/documents/SRLwhatwewknow.pdf>, reporting on an internal analysis of four California counties, where 91.1 percent of small claims and 81.1 of landlord/tenant proceedings went forward with at least one pro se litigant. See also, *No Time for Justice: A Study of Chicago Eviction Court*, by the Chicago Lawyers Committee for Better Housing and the Chicago-Kent College of Law Class of 2004 Honors Scholar (December 2003), finding that in 96 percent of observed eviction cases at least one party was unrepresented.

<sup>2</sup> Id., Greacen, at 7

<sup>3</sup> See the poll of court administrators and judges reported in *Meeting the Challenge of Pro Se Litigation*, Goldschmidt, et al., American Judicature Society (1998).

<sup>4</sup> For example, the Hawai’i State Judiciary has sponsored the Ho’okele Court Navigation Project, which includes a “court concierge” desk located at the entrances of main court buildings.

<sup>5</sup> See, *A Description of California Courts’ Programs for Self-Represented Litigants*, Hough, 2003, at <http://www.courts.ca.gov/partners/documents/harvard.pdf>

<sup>6</sup> See Florida Rule 12.750 Family Self-Help Programs, at [http://phonl.com/fl\\_law/rules/famlawrules/famrul12750.htm](http://phonl.com/fl_law/rules/famlawrules/famrul12750.htm)

facilitators who assist with detailed procedural information and form preparation on a one-to-one basis. Other courts have established desks staffed by volunteer lawyers who provide similar individual information.<sup>7</sup> And, many courts have established self-help centers, based on a model originated in the Maricopa County branch of the Superior Court of Arizona.<sup>8</sup> These centers provide forms, packets of information and sometimes, technological tools to provide directions and answers for an array of procedural questions.

State courts have also provided extensive information through the Internet. Many courts provide downloadable forms and a few incorporate document assembly tools so that litigants can either fill in the forms online or answer questions that are used to assemble the forms needed for the litigant's matter.<sup>9</sup>

Self-represented litigants also now have the widely available resources of private document preparation services, both online and over-the-counter. The demand for this assistance appears high. Despite facing allegations of unauthorized practice of law, one online document preparation company reports serving over two million customers since operations began in 2001.<sup>10</sup>

Even though the courts and the marketplace are providing substantial assistance to self-represented litigants, the scope of this assistance is limited.<sup>11</sup> Many, if not most, litigants need more than the procedural assistance offered by these resources. They need to know more than which forms to use, how to docket their cases and what time to appear in court. They need assistance with decision-making and judgment. They need to know their options, possible outcomes and the strategies to pursue their objectives.<sup>12</sup> In some cases, self-represented litigants need advocates for some portion of their matter. These services can only come from lawyers.

With the input of lawyers, self-represented litigants can benefit from getting legal advice specific to their factual issues. Beyond mere advice, some self-represented litigants also need direction on completing their forms in ways that not only make the forms legally compliant, but strategically advantageous to the litigant. They can benefit from document preparation that is not done merely mechanically, but executed with foresight and judgment. Additionally, some self-represented litigants can optimize their outcomes if they have a lawyer advocate their interests before the tribunal. This may not be necessary for the entire litigation, but only for a limited purpose.

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<sup>7</sup> See, for example, the Minnesota Legal Advice Clinics & Self-Help Centers at <http://www.mncourts.gov/selfhelp/?page=251>.

<sup>8</sup> See, <https://www.superiorcourt.maricopa.gov/SuperiorCourt/Self-ServiceCenter/>

<sup>9</sup> For a list of online self-service centers, see the ABA Pro Se/Unbundling Resource Center, at [http://www.americanbar.org/groups/delivery\\_legal\\_services/resources.html](http://www.americanbar.org/groups/delivery_legal_services/resources.html)

<sup>10</sup> See, [www.legalzoom.com](http://www.legalzoom.com)

<sup>11</sup> Services in the marketplace are limited by state-based statutes governing the unauthorized practice of law. Limitations to court-based programs are found within their own enabling legislation. See *supra* note 7. See also the Supreme Court of Wisconsin order 1-18 (2002), In the matter of the creation of rules providing guidance on assistance to individual court users, at <http://www.wicourts.gov/sc/rulhear/DisplayDocument.pdf?content=pdf&seqNo=1129>

<sup>12</sup> In *The Self-Help Friendly Court*, National Center for State Courts (2002), Richard Zorza labels this the Analysis Barrier, and states, "Most self-help assistance programs report as the key problem that telling people the law was not enough. Litigants often need far more help than the program could give them in analyzing the implications of the law, in applying that law to the facts, and then in forging out of the law and the facts a coherent and persuasive legal argument" at 17.

The added input from lawyers not only assists the litigants, but the courts, as well. The better the litigant is prepared, the more efficiently the court operates. While judges would no doubt prefer fully represented litigants, the choice in most venues is a self-represented litigant who is well prepared or one who is not. Courts can avoid litigants who are in a procedural revolving door when those litigants have access to the services lawyers provide.

Yet lawyers who provide personal civil legal services frequently do not meet the needs of self-represented litigants.<sup>13</sup> While they offer the full spectrum of legal services, lawyers are often unwilling to separate or unbundle their services and provide a limited scope of representation to litigants, although they typically do so when representing business interests and in transactional matters. Indeed the litigation system is not designed to accommodate this limited scope of representation model for the most part, although it does occur within some situations. For example, the process of challenging a court's jurisdiction is in itself a limited scope of representation. Similarly, when a lawyer represents a client through the trial stage, but not on appeal, the scope of representation is limited.

Twenty years ago the courts were ill-equipped to handle self-represented litigants in domestic relations, but many have since re-tooled themselves to do so through courthouse facilitators, self-help centers, online resources and related projects. The traditional services offered by lawyers combined with the more recent innovations in the courts result in a dichotomy in many states, however, where people are either represented by a lawyer or proceed with their matter on a pro se basis, relying on resources other than lawyers.

Until recently, neither the court system nor the legal profession had been fully prepared to embrace a model in which lawyers provide some, but not all, of the services of value to a litigant. Yet some courts and bar associations are moving forward, often collaboratively with other stakeholders such as legal aid providers, to facilitate limited scope representation, and to clearly define the circumstances under which these services are permissible.

Policies to enable lawyers to provide limited scope representation of civil litigants are being advanced through two concurrent initiatives. One is the result of Ethics 2000, the ABA endeavor to review and amend the ABA Model Rules of Professional Conduct, which began in 1997 and concluded with adopted revisions to the Model Rules in 2002.<sup>14</sup> States are in the process of reviewing the revised Model Rules, and adopting, adapting or rejecting the specific changes, including Model Rules 1.2(c) and 6.5, which are discussed in detail below.

The second initiative involves individual state collaborative analyses of limited scope representation policies. Rather than focusing on the ethics rules as a whole, as Ethics 2000 did, these initiatives are statewide efforts that examine the dynamics of self-represented litigation. Many of these state initiatives stem from the 1999 National Conference on Pro Se Litigation, produced by the American Judicature Society. All jurisdictions have amended at least some of

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<sup>13</sup> See, for example, Recommendations from the Boston Bar Association Task Force on Unrepresented Litigants, calling for an increase in the availability of lawyers who provide unbundled services, at <http://www.bostonbar.org/prs/reports/unrepresented0898.pdf>

<sup>14</sup> Details about Ethics 2000 are at [http://www.americanbar.org/groups/professional\\_responsibility/policy/ethics\\_2000\\_commission.html](http://www.americanbar.org/groups/professional_responsibility/policy/ethics_2000_commission.html)

their rules in response to their analysis of the specific aspects of limited scope representation.<sup>15</sup> Some states are at earlier stages of this process than other states, however.

The policy issues that have been addressed as a result of both of these initiatives thus far are:

- Defining the scope of representation;
- Clarifying communications between counsel and parties;
- Creating parameters for the lawyer's role in document preparation, including disclosure of the lawyer's assistance;
- Governing the entry of appearances and withdrawals for limited scope representation; and
- Excusing conflicts checks for limited services programs.

States that have analyzed issues of self-represented litigation have stressed various directions. Several have recommended further research into specific areas. Some have suggested on-going entities,<sup>16</sup> and others have identified specific issues that they do, or do not, wish to explore further.<sup>17</sup> But these reports express a common need to address the changes in the delivery of legal services, most often with rules that give a greater certainty to the process.

### III. Rules Authorizing Limited Scope Representation

#### ABA Model Rule 1.2(c)

As part of Ethics 2000, the ABA amended Model Rule 1.2(c) to explicitly and unambiguously permit a lawyer to limit the scope of the representation. According to the Reporter's Explanation of Changes:

The Commission recommends that paragraph (c) be modified *to more clearly permit, but also more specifically regulate*, agreements by which a lawyer limits the scope of the representation to be provided a client. Although lawyers enter into such agreements in a variety of practice settings, this proposal in part is intended to provide a framework within which lawyers may expand access to legal services by providing limited but nonetheless valuable legal services to low or moderate-income persons who otherwise would be unable to obtain counsel. (Ital. added)<sup>18</sup>

Prior to the Ethics 2000 amendment, Model Rule 1.2(c) had stated:

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<sup>15</sup> See Court Rules at the ABA Pro Se/Unbundling Resource Center, at [http://www.americanbar.org/groups/delivery\\_legal\\_services/resources/pro\\_se\\_unbundling\\_resource\\_center/court\\_rules.html](http://www.americanbar.org/groups/delivery_legal_services/resources/pro_se_unbundling_resource_center/court_rules.html)

<sup>16</sup> See the Report of the Nebraska Supreme Court Committee on Pro Se Litigation (Nov 2002) at <http://www.americanbar.org/content/dam/aba/migrated/legalservices/delivery/downloads/nebraskaproserereport.authcheckdam.pdf>

<sup>17</sup> The Recommendations and Report of the Minnesota State Bar Association Pro Se Implementation Committee (July 2002) specifically recommends inter alia that its rules of professional responsibility be amended to relax conflicts of interest for non-profit and court-annexed limited legal services programs. Cf. the Report and Recommendations on Unbundled Legal Services of the Commission on Providing Access to Middle Income Consumers of the New York State Bar Association, which states that "Limited appearances in litigation matters should not be permitted as a general matter."

<sup>18</sup> Model Rule 1.2 Reporter's Explanation of Changes (undated)

“A lawyer may limit the objective of the representation if the client consents after consultation.”

The rule was amended to state:

“A lawyer may limit the scope of representation *if the limitation is reasonable under the circumstances and the client gives informed consent.*” (Emphasis added)

In addition to the rule change, the comment to Model Rule 1.2 was substantially changed to explicitly permit limited scope representation. The comment offers examples of reasonable limitations, for instance, a brief telephone call when a client is seeking to secure general information about the law in order to handle a common and typically uncomplicated legal problem.<sup>19</sup>

One thing worth noting about Model Rule 1.2(c) is that informed consent does not require a client to provide *written* consent under the Model Rule. The Standing Committee on the Delivery of Legal Services opposed efforts to include a pervasive writing requirement when the Ethics 2000 Commission considered this issue.<sup>20</sup> While written consent to a limited scope representation is clearly a best practice that should be encouraged in many settings, the Committee believed that such an ethical requirement would frustrate the ability of lawyers to provide services through telephone hotlines, such as Hotlines for the Elderly, sponsored by AARP, or other electronic communications that do not lend themselves to an exchange of written or signed documents.

## **State Rules: Varying Written Consent Requirements**

### ***No Written Consent Mandate***

Most states<sup>21</sup> that have adopted the revisions to Model Rule 1.2(c) have followed the ABA model that includes an informed consent requirement, but does not mandate that it be in writing. Similarly, eight states<sup>22</sup> have retained rules that resemble the version of the ABA Model Rule from before Ethics 2000, where rather than informed consent, “consent after consultation” is required and there is no indication that this needs to be in writing.

### ***Written Consent Preferred***

Two states include statements in their rules that it is *preferred* that consent be in writing. Tennessee Rule 1.2(c) is almost identical to the Model Rule except that it indicates a preference that the client gives informed consent in writing.<sup>23</sup> Ohio Rule 1.2(c) does not require informed consent and adds that limits to the scope of representation be communicated to the client “preferably in writing.”<sup>24</sup> Like those states articulating a preference for written consent within the rule itself, five states articulate a similar preference for written consent in their comment

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<sup>19</sup> For the complete change to the comment, see paragraphs 6 through 8, at <http://www.abanet.org/cpr/e2k/e2k-rule12.html>

<sup>20</sup> See testimony of John Skilton, then chair of the ABA Standing Committee on the Delivery of Legal Services, in Los Angeles, February 1999, at [http://www.americanbar.org/groups/professional\\_responsibility/policy/ethics\\_2000\\_commission/skilton.html](http://www.americanbar.org/groups/professional_responsibility/policy/ethics_2000_commission/skilton.html)

<sup>21</sup> AZ, AR, CO, CT, DC, DE, GA, ID, IL, IN, KY, LA, MD, MN, MS, NE, NV, NH, NJ, NM, NY, NC, OK, OR, PA, RI, SC, SD, UT, VT, WA, and WI

<sup>22</sup> AK, HI, ME, MA, MI, ND, TX, VA, and WV

<sup>23</sup> See, <http://www.tncourts.gov/rules/supreme-court/8>

<sup>24</sup> <http://www.supremecourt.ohio.gov/LegalResources/Rules/ProfConduct/profConductRules.pdf>

sections. Commentary indicating a preference comes in various forms. For instance, comment [8] for North Carolina Rule 1.2(c) says “although paragraph (c) does not require that the client’s informed consent to a limited scope representation be in writing, a specification of the scope of representation will normally be a necessary part of any written communication of the rate or basis of the lawyer’s fee.”<sup>25</sup> Comment [8] for Idaho Rule 1.2 indicates that it is “encouraged” that consent be in writing.<sup>26</sup> Comment [6A] for Maine Rule 1.2 indicates that while written agreements aren’t required, “to the extent a writing can be obtained, it is a better practice to do so for both the lawyer and the client.”<sup>27</sup> And finally, New Hampshire indicates that writing is not required, but then provides a form “to facilitate disclosure and explanation of the limited nature of representation in litigation.”<sup>28</sup>

### ***Written Consent Required***

Other states *require* that consent be in writing. One such state is Kansas, its Supreme Court Rule 1.2(c) as well as its U.S. District Court, District of Kansas Local Rule 83.5.8(a) providing that “a lawyer may limit the scope of the representation if the limitation is reasonable under the circumstances and the client gives informed consent in writing.”<sup>29</sup> Another example is Florida, which has simply modified its version of Rule 1.2(c) to require the client to consent to the limited scope representation in writing after consultation.<sup>30</sup>

A few states<sup>31</sup> have identically modified their versions of Rule 1.2(c) requiring written consent, but, in doing so, create several exceptions. These exceptions include representation that consists solely of telephone consultation, representation provided by a lawyer employed by or participating in a nonprofit or court-annexed legal services program that consists solely of information, advice or the preparation of court forms, and representation that occurs as the result of court appointment for a limited purpose. A few states also clarify that when written consent is required, it creates the presumption that the “representation is limited to the services described in writing and that the attorney does not represent the client generally, or in any matters other than those identified in the writing”<sup>32</sup>

On the other hand, Missouri and Wyoming have created amendments to their versions of Rule 1.2(c) that have the client and attorney contract for the scope of the representation and the specific aspects of the limitation within a designated form. These forms have been appended to the rules and are a part of their rules of professional conduct.<sup>33</sup>

Missouri Rule 4-1.2(c) requires informed consent in writing, signed by the client. The written notice must be substantially similar to the court approved form “Notice and Consent to Limited

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<sup>25</sup> <http://www.ncbar.com/rules/rules.asp?page=5>

<sup>26</sup> See, <http://isb.idaho.gov/pdf/rules/irpc.pdf>

<sup>27</sup> [http://www.maine.gov/tools/whatsnew/index.php?topic=mebar\\_overseers\\_bar\\_rules&id=87817&v=article](http://www.maine.gov/tools/whatsnew/index.php?topic=mebar_overseers_bar_rules&id=87817&v=article)

<sup>28</sup> [http://www.courts.state.nh.us/rules/pcon/pcon-1\\_2.htm](http://www.courts.state.nh.us/rules/pcon/pcon-1_2.htm)

<sup>29</sup> <http://www.ksd.uscourts.gov/rule-83-5-8-limited-scope-representation-in-civil-cases-2/>

<sup>30</sup> See, <http://www.floridabar.org/divexe/trtfb.nsf/FV/AE46B451CFA28E2885257170006BA282>

<sup>31</sup> IA, AL, MT and WI

<sup>32</sup> AL, IA and WI

<sup>33</sup> See Appendix to Maine Rule 3.4(i) at [http://mebaroverseers.org/attorney\\_regulation/bar\\_rules.html?id=63312](http://mebaroverseers.org/attorney_regulation/bar_rules.html?id=63312)

Scope Representation” provided in the comment to Rule 4-1.2. Similar to the Maine Limited Scope Representation Agreement, the Missouri form defines limits to the lawyer’s representation, and explicitly states that the lawyer will not provide any other service without a written revision to the agreement. The form contains a checklist of services the lawyer may provide and identifies costs and fees associated with the representation. The client must indicate that he or she understands the provisions set out in the limited scope representation agreement, and must provide contact information for the court.<sup>34</sup>

Wyoming’s Rule 1.2(c) requires the lawyer who limits the objective or means of representation to fully disclose the limitations to the client. The rule includes a provision that requires written consent, but carves out telephone consultations. Rule 1.2(c)(3) states, “Unless the representation of the client consists solely of telephone consultation, the disclosure and consent required by this subsection shall be in writing.” The rule then indicates that the use of a written notice and consent form set out by the Board of Judicial Policy and Administration creates the presumptions that the representations are limited as described in the form and the attorney does not otherwise represent the client. The form, set out as an appendix to the rule, provides for the lawyer and client to fill in the limitations of the representation, under general topics of advice, document preparation or review and going to court. The form also stresses the need for the client to include an address where the opposing party and the court may reach him or her.<sup>35</sup>

As states examine policies governing the limited scope of representation, many will address the obligation to define the scope through writings. However, the policies do not have to conclude that a written agreement is always necessary, or conversely, never required. States should consider the circumstances where a written agreement is valuable and those where it is likely to create barriers. The rules should then advance those considerations.

### **The Conflict Between ABA Model Rules 1.2(c) and 1.1**

As noted in the introduction, court administrators and non-lawyer legal service providers in the marketplace, such as document preparation services, provide general *legal information* that is not based on the specific individual facts, while only lawyers are capable of providing clients with *legal advice* about specific matters. This raises a question about whether a lawyer can provide a client with only legal information, such as that provided by a document preparation service, *without further inquiry*. The question is important in relation to the limited scope of representation because a lawyer who cannot limit the scope of services in a way that includes an option for merely giving legal information loses the ability to provide a full array of unbundled services and to compete with the document preparation services and other legal service providers. The challenge is to craft policy that maintains legal services dedicated specifically for the skills particular to lawyers while at the same time enabling lawyers to serve a marketplace that sometimes wants something other than those skills.

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<sup>34</sup> See, <http://www.courts.mo.gov/courts/ClerkHandbooksP2RulesOnly.nsf/c0c6ffa99df4993f86256ba50057dcb8/8195dff3462d90ba86256ca6005211c1?OpenDocument>

<sup>35</sup> See, [http://courts.state.wy.us/CourtRules\\_Entities.aspx?RulesPage=AttorneysConduct.xml](http://courts.state.wy.us/CourtRules_Entities.aspx?RulesPage=AttorneysConduct.xml)

The difficulty is in the relationship between the obligations created by Model Rule 1.1, addressing competence, and Model Rule 1.2(c), addressing the scope of limited services. The comment to Model Rule 1.1 provides an expansive definition of “competence” and states in part, “Competent handling of a particular matter includes *inquiry into and analysis of the factual and legal elements of the problem*...An agreement between the lawyer and the client regarding the scope of the representation may limit the matters for which the lawyer is responsible.”<sup>36</sup> (Ital. added) The comment then makes reference to Model Rule 1.2(c). The comment to Model Rule 1.2(c) states on this point, “Although an agreement for a limited representation does not exempt a lawyer from the duty to provide competent representation, the limitation is a factor to be considered when determining the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation.”<sup>37</sup>

If, by definition, competent representation necessitates some degree of inquiry and analysis and a lawyer may not limit representation to the extent that the representation exempts the lawyer from competent representation, then the logical conclusion is that a lawyer may not limit representation to the extent that the lawyer is excused from the obligation to conduct inquiry and analysis. Regardless of the intention of those drafting (and adopting) Model Rule 1.2(c), it would appear the outcome is one that handicaps the ability of the lawyer to limit his or her services and to compete with those who provide only legal information.

### **Reconciling ABA Model Rules 1.2(c) and 1.1**

If policy-makers want to provide a full range of limited scope representation options and enable lawyers to provide clients with the services those clients are demanding in the marketplace, they could address this issue by:

- (a) Modifying the comments to Rules 1.1 and 1.2(c) to clarify that a lawyer and client may agree to limit the representation to nothing more than legal information when that is all the client wants the lawyer to provide, and that in those instances accurate information is deemed competent without the requirement of the lawyer to make further inquiry or analysis. Amending the comments in this way would advance the objective of Ethics 2000 to “more clearly permit” limited scope representations;<sup>38</sup> or
- (b) More explicitly enabling lawyers to compete with document preparation services by making reference in the comment of MR 1.2(c) to MR 5.7, which governs law-related services. The reference would indicate that the lawyer may provide services such as document preparation as long as they are provided separate from the lawyer’s practice. This alternative is more difficult than merely excusing the lawyer’s obligation to make reasonable inquiry because it requires the lawyer to institutionalize the separate law-related service, rather than fold it into the practice of law.

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<sup>36</sup> See, [http://www.abanet.org/cpr/mrpc/rule\\_1\\_1\\_comm.html](http://www.abanet.org/cpr/mrpc/rule_1_1_comm.html)

<sup>37</sup> See, [http://www.abanet.org/cpr/mrpc/rule\\_1\\_2\\_comm.html](http://www.abanet.org/cpr/mrpc/rule_1_2_comm.html)

<sup>38</sup> Supra note 21.



Many states<sup>39</sup> have addressed this issue by adopting the ABA Model Rule 1.2(c) comment section (or a substantially similar version) addressing competency, which reads:

Although this Rule affords the lawyer and client substantial latitude to limit the representation, the limitation must be reasonable under the circumstances. If, for example, a client's objective is limited to securing general information about the law the client needs in order to handle a common and typically uncomplicated legal problem, the lawyer and client may agree that the lawyer's services will be limited to a brief telephone consultation. Such a limitation, however, would not be reasonable if the time allotted was not sufficient to yield advice upon which the client could rely. Although an agreement for a limited representation does not exempt a lawyer from the duty to provide competent representation, the limitation is a factor to be considered when determining the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation.

Other states<sup>40</sup> have adopted versions that indicate that limited scope representation agreements must accord with competency requirements set out in other state rules. For example, the comments for Alabama Rule 1.2 say "an agreement concerning the scope of representation must accord with the Rules of Professional Conduct and other law. Thus, the client may not be asked to agree to representation so limited in scope as to violate Rule 1.1, or to surrender the right to terminate the lawyer's services or the right to settle litigation that the lawyer might wish to continue."<sup>41</sup>

Furthermore, many states have addressed the competency issue as it applies to limited scope representation in the comment section for Rule 1.1. Most of these states<sup>42</sup> have chosen to include the clause from Comment [5] for the ABA Model Rule which states "an agreement between the lawyer and the client regarding the scope of the representation may limit the matters for which the lawyer is responsible."

Alabama, Ohio and Wyoming have included their own additions to this clause. The comments for Alabama Rule 1.1 add "in such circumstances, competence means the knowledge, skill, thoroughness, and preparation reasonably necessary for such limited representation."<sup>43</sup> Comments [4] and [5] to Wyoming Rule 1.1 states, in part, "A lawyer may accept representation where the requisite level of competence can be achieved in reasonable preparation. This applies as well to a lawyer who is appointed as counsel for an unrepresented person...A lawyer and client may agree, pursuant to Rule 1.2(c) or Rule 6.5, to limit the scope of the representation. In such circumstances, competence means the legal knowledge, skill, thoroughness and preparation reasonably necessary for the limited representation..."<sup>44</sup> The comments for Ohio Rule 1.1 add

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<sup>39</sup> AK, AZ, AR CO, CT, DE, FL, GA, ID, IL, IN, IA, KY, ME, MD, MN, MS, NE, ND, NH, NM, NY, NC, OH, OK, PA, SC, SD, TN, UT, VT, WA, WI, and WY.

<sup>40</sup> AL, AZ, DC, HI, MA, MI, MO, VA, and RI

<sup>41</sup> [http://judicial.alabama.gov/library/rules/cond1\\_2.pdf](http://judicial.alabama.gov/library/rules/cond1_2.pdf)

<sup>42</sup> AR, CO, CT, DE, ID, IL, IN, IA, KY, ME, MN, MS, MO, NE, NH, NM, NY, NC, ND, OK, PA, RI, SC, SD, TN, UT, VT, WA, and WI.

<sup>43</sup> [http://judicial.alabama.gov/library/rules/cond1\\_1.pdf](http://judicial.alabama.gov/library/rules/cond1_1.pdf)

<sup>44</sup> See, <http://www.courts.state.wy.us/WSC/CourtRule?RuleNumber=62>

“the lawyer should consult with the client about the degree of thoroughness and the level of preparation required, as well as the estimated costs involved under the circumstances.”<sup>45</sup>

## IV. Rules Clarifying Communications between Counsel and Parties

### ABA Model Rules 4.2 and 4.3

ABA Model Rules 4.2<sup>46</sup> and 4.3<sup>47</sup> govern the communications of parties. Rule 4.2 protects a person who is represented by counsel and prohibits an adverse lawyer from communicating with a person he or she knows to be represented in the matter, unless the lawyer has consent from the opposing lawyer or has legal authority for the communication. Rule 4.3 is designed to prevent an adverse lawyer from taking advantage of an unrepresented opposing party and prohibits the lawyer from stating or implying that he or she is disinterested and prohibits the lawyer from giving the unrepresented party legal advice other than to obtain a lawyer.

These rules, of course, address the dichotomy of those who are fully represented and those who are self-represented. They do not effectively address the circumstance of when a self-represented litigant receives limited scope representation from a lawyer. However, the thirteen states that have adopted policies governing this paradigm have amended their counterpart rules, giving direction to lawyers who oppose self-represented litigants in court.<sup>48</sup>

### State Rules Governing Communications

Arizona has adopted a rule with nearly identical language as Model Rule 4.2.<sup>49</sup> While Nebraska has also adopted the Model Rule 4.2, it has additionally added a comment meant to govern communication in limited scope representation. The comment, however, only partially explains such communication expectations. Comment [10] to Nebraska Rule 3-504.2 states, “In the event an “Entry of Limited Appearance” is filed, opposing counsel may communicate with such lawyer’s client on matters outside the scope of limited representation, and by filing such limited appearance, the lawyer and the client shall be deemed to have consented to such communication.” As the rule indicates, it is applicable only in matters where the limited scope representation attorney has entered a limited appearance with the court and does not govern communication in other circumstances.<sup>50</sup>

Nine states address the issues with nearly identical language.<sup>51</sup> The rules provide that the party receiving limited scope representation is to be considered by opposing counsel to be unrepresented unless that opposing counsel is provided with written notice of the limited scope

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<sup>45</sup> <http://www.supremecourt.ohio.gov/LegalResources/Rules/ProfConduct/profConductRules.pdf>

<sup>46</sup> See, [http://www.abanet.org/cpr/mrpc/rule\\_4\\_2.html](http://www.abanet.org/cpr/mrpc/rule_4_2.html)

<sup>47</sup> See, [http://www.abanet.org/cpr/mrpc/rule\\_4\\_3.html](http://www.abanet.org/cpr/mrpc/rule_4_3.html)

<sup>48</sup> AL, AK, AZ, CO, FL, IA, ME, MT, MO, NE, NH, UT and WA

<sup>49</sup> See <http://www.azcourts.gov/Portals/20/2013%20Aug%20Rules/R%2012%200027.pdf>

<sup>50</sup> See, <http://www.supremecourt.ne.gov/rules/pdf/Ch3Art5.pdf>

<sup>51</sup> AL, FL, IA, ME, MT, NH, UT, WA and WI; see the ABA Pro Se/Unbundling Resource Center at <http://www.abanet.org/legalservices/delivery/delunbundrules.html> for links to each of these state rules.

representation. Comment [11] to Washington Rule 4.2 states, “An otherwise unrepresented person to whom limited representation is being provided or has been provided in accordance with Rule 1.2(c) is considered to be unrepresented for purposes of this rule unless the opposing lawyer knows of, or has been provided with, a written notice of appearance under which, or a written notice of time period during which, he or she is to communicate only with the limited representation lawyer as to the subject matter within the limited scope of representation.”<sup>52</sup> Alabama Rule 4.2(b),<sup>53</sup> Florida Rule 4-4.2(b),<sup>54</sup> Iowa Rule 32:4.2(b),<sup>55</sup> Maine Rule 4.2(b),<sup>56</sup> Montana Rule 4.2,<sup>57</sup> New Hampshire Rule 4.2<sup>58</sup> and Utah Rule 4.2(b)<sup>59</sup> are all virtually identical.

Colorado’s rules are somewhat inconsistent. It first places the burden on the self-represented party to communicate the fact of any limited scope representation to opposing counsel. Comment [9A] for Rule 4.2, governing communications with a person represented by counsel, states, in part, “A *pro se* party to whom limited representation has been provided . . . is considered to be unrepresented for purposes of this rule unless the lawyer has knowledge to the contrary.”<sup>60</sup> However, Comment [2A] for Colorado Rule 4.3, governing a lawyer’s dealings with an unrepresented party, states that self-represented litigants who receive limited scope representation should be considered unrepresented for the purposes of that rule.<sup>61</sup>

Florida, Washington and Utah all have similar versions of Rule 4.3, which call for parties who have received limited assistance to be treated as unrepresented parties unless they have been notified in writing of the representation.

Alaska and Missouri address communication in limited scope representation as part of a modified version of ABA Model Rule 1.2(c). The language in Alaska Rule 1.2(c) (3)<sup>62</sup> and Missouri Rule 4-1.2 (e)<sup>63</sup> are nearly identical and find that an otherwise unrepresented person to whom limited scope representation is being provided is considered unrepresented for Rule 4.2 and 4.3. Exceptions to this rule include written notice of the matters or time period for which opposing counsel should communicate with the limited scope representation lawyer.

Creating a common understanding among lawyers about when a self-represented litigant is represented may be a difficult challenge. While state rules are designed to protect self-

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<sup>52</sup> See, [http://www.courts.wa.gov/court\\_rules/?fa=court\\_rules.display&group=ga&set=RPC&ruleid=garpc4.2](http://www.courts.wa.gov/court_rules/?fa=court_rules.display&group=ga&set=RPC&ruleid=garpc4.2)

<sup>53</sup> See, [http://www.courts.wa.gov/court\\_rules/?fa=court\\_rules.display&group=ga&set=RPC&ruleid=garpc4.2](http://www.courts.wa.gov/court_rules/?fa=court_rules.display&group=ga&set=RPC&ruleid=garpc4.2)

<sup>54</sup> See, <http://www.floridabar.org/divexe/rtfb.nsf/FV/D9F2CB6782C1A3A585257171006BBE07>

<sup>55</sup> See, <http://search.legis.state.ia.us/nxt/gateway.dll/ic?f=templates&fn=default.htm>

<sup>56</sup> See, [http://www.maine.gov/tools/whatsnew/index.php?topic=mebar\\_overseers\\_bar\\_rules&id=88232&v=article](http://www.maine.gov/tools/whatsnew/index.php?topic=mebar_overseers_bar_rules&id=88232&v=article)

<sup>57</sup> See, [http://courts.mt.gov/library/montana\\_laws.mcp.x](http://courts.mt.gov/library/montana_laws.mcp.x)

<sup>58</sup> See, [http://www.courts.state.nh.us/rules/pcon/pcon-4\\_2.htm](http://www.courts.state.nh.us/rules/pcon/pcon-4_2.htm)

<sup>59</sup> See, [http://www.utcourts.gov/resources/rules/ucja/ch13/4\\_2.htm](http://www.utcourts.gov/resources/rules/ucja/ch13/4_2.htm)

<sup>60</sup> See, <http://www.cobar.org/index.cfm/ID/20495/subID/22459/CETH/>

<sup>61</sup> Id

<sup>62</sup> See, <http://www.state.ak.us/courts/prof.htm#1.2>

<sup>63</sup> See,

<http://www.courts.mo.gov/courts/ClerkHandbooksP2RulesOnly.nsf/c0c6ffa99df4993f86256ba50057dcb8/8195dff3462d90ba86256ca6005211c1?OpenDocument>

represented litigants and also assure that counsel receives information from opposing counsel, counsel should also have the responsibility of complying with the terms of the limited scope representation as communicated to opposing counsel. Rules should be considered that impose an obligation on counsel for the represented party to communicate with counsel for the self-represented litigant only to the extent of the limited scope representation as identified by counsel for the self-represented litigant.

## **V. Rules Creating Parameters for the Lawyer's Role in Document Preparation**

### **The Conflict Between Limited Scope Document Preparation and the Certification of Pleadings**

Model Rule 1.2(c) seems to permit a lawyer to ethically provide the limited service of document preparation on behalf of otherwise self-represented litigants. However, rules of civil procedure sometimes create obstacles that make it impractical for a lawyer to provide limited services. The rules of civil procedure typically require a lawyer who represents a party to sign the pleadings.

The signing, under the rules, serves as a verification or certification that the pleadings are well grounded in fact, warranted by existing law or a good faith argument for the extension, modification or reversal of existing law, and not interposed for any improper purpose, such as harassment. In full representation, a lawyer must make these representations after reasonable inquiry. This reasonable inquiry is not necessarily based solely on representations from the litigant.

While it is important to take steps to avoid frivolous litigation, the lawyer's obligation to certify pleadings is not consistent with the limited nature of document preparation. The state rules of civil procedure generally work toward preserving the dichotomy of full representation versus self-representation when placing the burden on the lawyer to make reasonable inquiry pursuant to this segmented service.

### **State Rules of Civil Procedure Governing Certification of Pleadings**

A handful of states have addressed aspects of civil procedure, giving direction for issues that pertain to document preparation. Since the ABA's Ethics 2000 initiative examined only the Rules of Professional Conduct, and not rules of civil procedure, the states that have examined this issue have done so as independent state initiatives. This began with rule changes in Colorado in 1999.

#### ***Point 1: Factual Representation of Litigant vs. Independent Inquiry***

Some states require lawyers who draft pleadings as a discrete function to certify those pleadings, but allow the lawyer to primarily rely on the factual representation of the litigant rather than to conduct an independent inquiry.

Some states have addressed this issue by permitting the lawyer to rely on the self-represented party's representation of facts in most situations.<sup>64</sup> For instance, Alabama Rule of Civil Procedure 11(b), which is fundamentally identical to a handful of other states'<sup>65</sup> rules, reads:

In providing such drafting assistance, *the attorney may rely on the otherwise self-represented person's representation of the facts, unless the attorney has reason to believe that such representation is false or materially insufficient.*<sup>66</sup> (ital. added)

Some states' rules add that if the attorney has reason to believe that such representation is false or materially insufficient, the attorney shall make an independent reasonable inquiry into the facts.<sup>67</sup>

Maine Bar Rule 3.6(a)(2) clarifies conduct during limited scope representation and is applicable to the provision of drafting assistance. It states, "[A lawyer shall not] handle a legal matter without preparation adequate in the circumstances, provided that, with respect to the provision of limited representation, the lawyer may rely on the representation of the client and the preparation shall be adequate within the scope of the limited representation."<sup>68</sup>

### ***Point 2: Notifying the Court***

Some states are concerned that the courts will be misled if the role of the lawyer in drafting is not revealed to the court. In some jurisdictions, the lawyer's name and contact information must be disclosed. In others, the court must merely be advised that the litigant had the assistance of a lawyer.

Some jurisdictions believe it is important to formally notify the court in some manner that the self-represented litigant has had the assistance of counsel in the drafting of pleadings. This belief is generated from the notion that the courts give self-represented litigants greater leeway and that if a litigant has had the undisclosed assistance of counsel, the litigant then stands to get both that assistance and the court's leeway. It is sometimes said that such an outcome would deceive the court. Professor Jona Goldschmidt rebuts this idea in his law review article, *In Defense of Ghostwriting*,<sup>69</sup> in which he notes that rules require the courts to liberally construe pleadings regardless of whether they are drafted by a lawyer or a litigant. Therefore, he concludes it is irrelevant whether the self-represented litigant received the benefit of counsel in the preparation of pleadings.

Accordingly, five jurisdictions have adopted provisions requiring that pleadings and other documents include both notice of the lawyer's role in drafting as well as the lawyer's contact information. Colorado C.R.C.P. 11(b)<sup>70</sup> and Rule of County Court Civil Procedure 311(b)<sup>71</sup>

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<sup>64</sup> AL, AR, CO, IL, IA, MO, MT, WA and WI

<sup>65</sup> AZ, CO, IA, MO, MT, and WA

<sup>66</sup> <http://judicial.alabama.gov/library/rules/cv11.pdf>

<sup>67</sup> AR, IA, WA and WI

<sup>68</sup> See, <http://mebaroverseers.org/Maine%20Bar%20Rules/rule%203.6.htm>

<sup>69</sup> 29 Fordham Urban L J 1145 (2002)

<sup>70</sup> See, [http://www.michie.com/colorado/lpext.dll/corules/2/3/242/447?f=templates&fn=document-frame.htm&2.0#JD\\_2-r11](http://www.michie.com/colorado/lpext.dll/corules/2/3/242/447?f=templates&fn=document-frame.htm&2.0#JD_2-r11)

<sup>71</sup> See, <http://www.michie.com/colorado/lpext.dll?f=templates&fn=main-h.htm&cp>

provide that pleadings drafted by a lawyer must include the lawyer's name, address, telephone number and registration number. Iowa Rule 1.423 also requires disclosure, including the name and contact information for the attorney providing drafting assistance. The rule clarifies that an attorney need not sign the document.<sup>72</sup>

The rules in Nebraska, Nevada and Oregon all share similarities with Colorado and Iowa by requiring disclosure and contact information, but add their own slight variations. Nebraska Rule of Professional Conduct 3-501.2(c)<sup>73</sup> and Court Rule of Pleading in Civil Cases 6-1111(b)<sup>74</sup> both allow attorneys to prepare pleadings and other documents to be filed with the court as long as the filings include the phrase "prepared by" along with the name, business address, and bar number of the lawyer preparing the documents. A Nebraska lawyer is not required to sign the document once the nature of assistance and contact information has been disclosed.<sup>75</sup> Nevada Rule 5.28 requires that a lawyer who contracts to limit the scope of representation state that limitation "in the first paragraph of the first paper or pleading filed on behalf of that client."<sup>76</sup> Oregon Uniform Trial Court Rule 2.010(7)<sup>77</sup> adds that any document not bearing the name and Bar number of the attorney must bear or be accompanied by a certificate provided by the roles (or one that is substantially similar).<sup>78</sup>

Four jurisdictions have provisions that require disclosure of the attorney's assistance with the pleadings, but do not require the attorney's name and contact information. In the Florida Family Law Rules of Procedure Rule 12.040, a party who has received a lawyer's assistance in document preparation must certify that fact in the pleadings or documents.<sup>79</sup> The Florida Rules of Professional Conduct state in the comment to Rule 4-1.2, "If a lawyer assists a *pro se* litigant by drafting any document to be submitted to a court, the lawyer is not obligated to sign the document. However, the lawyer must indicate "Prepared with the assistance of counsel" on the document to avoid misleading the court which otherwise might be under the impression that the person, who appears to be proceeding *pro se*, has received no assistance from a lawyer."<sup>80</sup> Similarly, Wisconsin

The rules in Alabama, Kansas and New Hampshire closely resemble the rules in Florida, by requiring disclosure but not the attorney's name or contact information. Alabama's Rule of Civil Procedure 11 states that any pleading, motion, or other paper that an attorney assists with must end with the following statement: "This document was prepared with the assistance of a licensed

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<sup>72</sup> See, <http://search.legis.state.ia.us/nxt/gateway.dll/ic?f=templates&fn=default.htm>

<sup>73</sup> See, <http://www.supremecourt.ne.gov/rules/pdf/Ch3Art5.pdf>

<sup>74</sup> See, <http://supremecourt.ne.gov/supreme-court-rules/ch3/art5> and <http://supremecourt.ne.gov/supreme-court-rules/2284/%C2%A7-6-1111-signing-pleadings>

<sup>75</sup> See, <http://www.supremecourt.ne.gov/rules/pdf/Ch3Art5.pdf>

<sup>76</sup> See, <http://www.leg.state.nv.us/courtrules/EighthDCR.html>

<sup>77</sup> See, [http://courts.oregon.gov/OJD/docs/programs/utcr/2010\\_UTCR\\_ch02.pdf](http://courts.oregon.gov/OJD/docs/programs/utcr/2010_UTCR_ch02.pdf)

<sup>78</sup> See, [http://courts.oregon.gov/OJD/docs/programs/utcr/2010\\_UTCR\\_ch02.pdf](http://courts.oregon.gov/OJD/docs/programs/utcr/2010_UTCR_ch02.pdf)

<sup>79</sup> See,

[http://www.floridabar.org/TFB/TFBResources.nsf/Attachments/416879C4A88CBF0485256B29004BFAF8/\\$FILE/311%20Family%20Law.pdf](http://www.floridabar.org/TFB/TFBResources.nsf/Attachments/416879C4A88CBF0485256B29004BFAF8/$FILE/311%20Family%20Law.pdf)

<sup>80</sup> See, <http://www.floridabar.org/divexe/trtfb.nsf/FV/AE46B451CFA28E2885257170006BA282>

Alabama lawyer pursuant to Rule 1.2(c), Alabama Rules of Professional Conduct.”<sup>81</sup> Likewise, Kansas Supreme Court Rule 115A(c) indicates that an attorney assisting in preparing a pleading, motion, or other paper, must insert at the bottom of the paper: “prepared with assistance of a Kansas licensed attorney.”<sup>82</sup> Similarly, Wisconsin rules require that the filings “clearly indicate” that “This document was prepared with the assistance of a lawyer.”<sup>83</sup> And, New Hampshire Rule of Civil Procedure 17(g) indicates that any pleading drafted by a limited scope representation attorney must “conspicuously” contain the statement “This pleading was prepared with the assistance of a New Hampshire attorney.” The stipulation only applies when the attorney has not entered an appearance with the court, or when a previously filed appearance does not include representation related to the specified document.<sup>84</sup> However, U.S. District Court, District of Kansas Local Rule 83.5.8(b) provides that 115A(c) does not apply in the District of Kansas instead requires that any attorney preparing a pleading, motion or other paper for a specific case enter a limited appearance and sign the document.<sup>85</sup>

While Massachusetts does not have a rule addressing such document preparation scenarios, its Supreme Court issued an Order effective May 1, 2009 stating that an attorney assisting a client in preparing a document only needs to insert the following notation: “prepared with assistance of counsel.”<sup>86</sup>

On the other hand, the California Rules of Court explicitly excuses the lawyer who drafts documents in a family matter from the obligation to disclose. Family Law Rule 5.70(a) states, “In a family law proceeding, an attorney who contracts with a client to draft or assist in drafting legal documents, but not to make an appearance in the case, is not required to disclose within the text of the document that he or she was involved in preparing the document.”<sup>87</sup> California Civil Rule 3.37 creates a nearly identical provision for document preparation in civil matters not related to family law.<sup>88</sup>

Missouri Rule 55.03 resembles the California rules and states, in part, “...An attorney who assists in the preparation of a pleading, motion, or other filing for an otherwise self-represented person is not required to sign the document...”<sup>89</sup>

Neither North Carolina nor Utah has promulgated official rules on this issue, but both have published ethics opinions on the topic. North Carolina’s 2008 Formal Ethics Opinion 3 declares “a lawyer may assist a pro se litigant by drafting pleadings and giving advice without making an appearance in the proceeding and without disclosing or ensuring the disclosure of his assistance

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<sup>81</sup> See, <http://judicial.alabama.gov/library/rules/cv11.pdf>

<sup>82</sup> See, [http://www.kscourts.org/Rules/District\\_Rules/Rule%20115A.pdf](http://www.kscourts.org/Rules/District_Rules/Rule%20115A.pdf)

<sup>83</sup> See, <http://www.wicourts.gov/supreme/docs/1310petition.pdf>

<sup>84</sup> See, <http://www.nhbar.org/uploads/pdf/RulesCivilProcedureDraft011807.pdf>

<sup>85</sup> See, <http://www.ksd.uscourts.gov/rule-83-5-8-limited-scope-representation-in-civil-cases/>

<sup>86</sup> See, <http://www.mass.gov/courts/case-legal-res/rules-of-court/sjc/lar.html>

<sup>87</sup> See, [http://www.courts.ca.gov/cms/rules/index.cfm?title=five&linkid=rule5\\_70](http://www.courts.ca.gov/cms/rules/index.cfm?title=five&linkid=rule5_70)

<sup>88</sup> See, [http://www.courts.ca.gov/cms/rules/index.cfm?title=three&linkid=rule3\\_37](http://www.courts.ca.gov/cms/rules/index.cfm?title=three&linkid=rule3_37)

<sup>89</sup> See, <http://www.courts.mo.gov/courts/ClerkHandbooksP2RulesOnly.nsf/0/7db1c05900034fdc86256ca60052152c?OpenDocument>

to the court unless required to do so by law or court order.”<sup>90</sup> Likewise, Utah Opinion No. 08-01 states that in the absence of an express court rule to the contrary, an attorney may help prepare written submissions for a self-represented litigant “without disclosing or ensuring the disclosure to others of the nature or extent of such assistance.” A rare dissenting opinion appears, arguing that the main opinion is logically inconsistent with the Tenth Circuit decision *Duran v Carris*, incompatible with judicial and ethics opinions in other jurisdictions, and potentially harmful to equal justice ideals.<sup>91</sup>

### ***Point 3: Appearances as a Result of Signing Pleadings***

The obligation to sign pleadings may result in an appearance and where it does, several states have recognized the need to create an exception and preclude the lawyer who is providing limited services from an obligation to provide more expanded services than he or she agreed to provide.

The obligation to disclose is significant because in some states the signing of pleadings can create an appearance, obligating the lawyer to perform services beyond those that he or she contracted with the client to perform. Wyoming has explicitly carved out an exception to such an obligation. Wyoming Rule 102(a)(1) states in part, “An attorney appears in a case: . . . (B) By permitting the attorney’s name to appear on any pleadings or motions, except that an attorney who assisted in the preparation of a pleading and whose name appears on the pleading as having done so shall not be deemed to have entered an appearance in the matter . . .”<sup>92</sup>

Iowa Rule 1.423(3) makes a similar exception for attorneys who provide drafting assistance by stating in part, “The identification of an attorney who has provided drafting assistance in the preparation of a pleading or paper shall not constitute an entry of appearance by the attorney . . .”<sup>93</sup> Nebraska Rule of Professional Conduct 3-501.2 (c) and the Wisconsin Supreme Court Rule 20:1.2 (cm) both create an almost identical provision.<sup>94</sup>

To summarize:

- Some states require lawyers who draft pleadings as a discrete function to certify those pleadings, but allow the lawyer to primarily rely on the factual representation of the litigant rather than to conduct an independent inquiry.
- Some states are concerned that the courts will be misled if the role of the lawyer in drafting is not revealed to the court. In some jurisdictions, the lawyer’s name and contact information must be disclosed. In others, the court must merely be advised that the litigant had the assistance of a lawyer.

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<sup>90</sup> <http://www.ncbar.com/ethics/ethics.asp?page=1&keywords=114>

<sup>91</sup> [http://utahbar.org/rules\\_ops\\_pols/ethics\\_opinions/op\\_08\\_01dissent.html](http://utahbar.org/rules_ops_pols/ethics_opinions/op_08_01dissent.html)

<sup>92</sup> See, <http://www.courts.state.wy.us/WSC/CourtRule?RuleNumber=32>

<sup>93</sup> See, <http://search.legis.state.ia.us/nxt/gateway.dll/ic?f=templates&fn=default.htm>

<sup>94</sup> See, <http://supremecourt.ne.gov/supreme-court-rules/ch3/art5> and <http://legis.wisconsin.gov/rsb/scr/5200.pdf>



- The obligation to sign pleadings may result in an appearance and where it does, several states have recognized the need to create an exception and preclude the lawyer who is providing limited services from an obligation to provide more expanded services than he or she agreed to provide.

## **VI. Rules Governing the Entry of Appearances and Withdrawals in Court**

Just as some litigants can benefit from lawyers who assist them with document preparation, others can benefit from lawyers who represent them in court for a portion of their legal matter. For example, a litigant in a divorce proceeding may not be able to afford a lawyer for the entire case, but have the need for a lawyer for a hearing to obtain an order of protection.

Under the traditional model of full representation, a lawyer who enters an appearance and, therefore becomes the attorney of record, is presumed to be the litigant's representative for all matters within that case. This is a convenient arrangement that facilitates court administration and case management. The lawyer receives all notices, is responsible for progressing the case and can only withdraw with leave of the court after motion and hearing. While there is no doubt this system is beneficial to the court and to opposing parties, it also perpetuates the dichotomy where litigants are assumed either to have representation or to be proceeding self-represented. As with limits on document preparation, a system that contributes to this dichotomy is likely to result in more self-represented litigants who are less prepared to efficiently advance their legal matter. If we presume that self-represented litigation administratively encumbers the courts, it seems reasonable that a system clarifying limited appearances, and expediting withdrawals, would contribute to the smooth functioning of the courts.

As part of state initiatives to adopt policies advancing limited scope representation, many states have now revised rules to permit and clarify procedures for limited appearances and expedited withdrawals. Note that this discussion focuses only on limited scope representation, and does not refer to limited appearances entered for the purpose of challenging jurisdiction.

The rules of the states address three issues: 1) the manner in which the lawyer creates the limited appearance, 2) the obligation to provide the opposing side with notice, and 3) the procedure for withdrawal.

### **Creating the Limited Appearance**

A limited appearance may be created by oral or written declaration to the court. Nevada Rule 5.28 permits a lawyer to merely appear in court and provide notice of the limitation. It states, in part, "...[I]f the attorney appears at a hearing on behalf of a client pursuant to a limited scope contract, the attorney shall notify the court of that limitation at the beginning of the hearing."<sup>95</sup>

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<sup>95</sup> See, <http://www.leg.state.nv.us/courtrules/EighthDCR.html>

More commonly, states require a written document that sets out the limitation in some manner. Wyoming Rule 102 allows a written appearance to be limited “by its terms, to a particular proceeding or matter.”<sup>96</sup> Missouri Rule 55.03 contains a nearly identical requirement.<sup>97</sup>

New Mexico Rule of Professional Conduct 16-303(E) requires the lawyer who appears for a client in a limited manner to disclose the scope of the representation to the court. New Mexico Rules of Civil Procedure clarify that the disclosure must occur in the form of a written notice that identifies the nature of the limitation. The rules require that the attorney note the limitation in the signature block of any paper the attorney files and also require that the signature block include an address where service may be made on the client.<sup>98</sup>

Several states require the use of court approved forms to notify the court of an attorney’s limited appearance. California Civil Rule 3.36 permits an attorney to make a limited appearance in a civil case, other than a family law matter, so long as the party and attorney provide written notice of their agreement. The rule requires the filing and service of the court-approved Notice of Limited Scope Representation, which outlines the representation and includes signatures from both client and attorney.<sup>99</sup> California Family and Juvenile Rule 5.71 creates a provision that requires a Notice of Limited Scope Representation in family court matters.<sup>100</sup>

Similarly, Arizona Rule of Civil Procedure 5.1(c) states that an attorney may make a limited appearance “by filing and serving a Notice of Limited Scope Representation” and that the notice shall specify the matters, hearings, or issues with regard to which the limited scope representation applies.<sup>101</sup> Arizona Rule of Family Law Procedure 9(b) governs limited appearances in family law proceedings and requires the filing of a Notice of Limited Scope Representation that specifies the matter or issues for which the attorney will represent the party. While specifically allowing limited appearances with written notification, it clarifies that “nothing in the rule shall limit an attorney’s ability to provide limited services to a client without appearing of record in any judicial proceedings”.<sup>102</sup>

Delaware Family Court Rule of Civil Procedure 5(b)(2) permits an attorney to enter an appearance by filing a written notice of appearance using a Family Court generated form. The notice must specify the matter for which the attorney will appear, and the appearance is then limited to the specific petition filed.<sup>103</sup>

New Hampshire Rule of Professional Conduct 1.2(f)(1) stipulates that a lawyer may provide limited scope representation to a client involved in a proceeding before a tribunal, if the

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<sup>96</sup> See, <http://www.courts.state.wy.us/WSC/CourtRule?RuleNumber=62>

<sup>97</sup> See, <http://www.courts.mo.gov/courts/ClerkHandbooksP2RulesOnly.nsf/0/7db1c05900034fdc86256ca60052152c?OpenDocument>

<sup>98</sup> See, Rule of Civil Procedure for the District Court 1-089, Rule of Civil Procedure for the Magistrate Courts 2-107 and Rule of Civil Procedure for the Metropolitan Courts 3-107 at <http://www.nmonesource.com/nmnxtadmin/NMPublic.aspx>

<sup>99</sup> See, [http://www.courts.ca.gov/cms/rules/index.cfm?title=three&linkid=rule3\\_36](http://www.courts.ca.gov/cms/rules/index.cfm?title=three&linkid=rule3_36)

<sup>100</sup> See, [http://www.courts.ca.gov/cms/rules/index.cfm?title=five&linkid=rule5\\_71](http://www.courts.ca.gov/cms/rules/index.cfm?title=five&linkid=rule5_71)

<sup>101</sup> See, <http://www.azcourts.gov/Portals/20/2013%20Aug%20Rules/R%2012%200027.pdf>

<sup>102</sup> See, [http://www.supreme.state.az.us/rules/ramd\\_pdf/R-05-0008.pdf](http://www.supreme.state.az.us/rules/ramd_pdf/R-05-0008.pdf)

<sup>103</sup> See, [http://courts.delaware.gov/Rules/?FCcivill\\_jan06.pdf](http://courts.delaware.gov/Rules/?FCcivill_jan06.pdf)

limitations are fully disclosed and explained, and the client gives informed consent. The sample form provided in Rule 1.2(g) was devised to meet the requirement for full disclosure when an attorney makes a limited appearance.<sup>104</sup> Rule of Professional Conduct 1.2(f)(1) is supplemented by Rule of Civil Procedure 17(c). The rule further clarifies that an attorney providing limited scope representation may file a limited appearance in a non-criminal case. It states in part “...An attorney who has filed a Limited Appearance and who later files a pleading or motion outside the scope of the limited representation, shall be deemed to have amended the Limited Appearance to extend to such filing...”<sup>105</sup>

Illinois Rule 13(c)(6) indicates that when an attorney has entered into a written agreement with a party to provide limited scope representation, the attorney shall file notice using the form attached to the rule. The attorney must identify each aspect of the proceeding to which the limited scope appearance pertains. The rule then indicates that a new Notice of Limited Scope Appearance must be filed for any additional aspects of the proceeding in which the attorney intends to appear, but that the party will not be required to pay more than one appearance fee per case.<sup>106</sup>

Louisiana District Court Rule 9.12 requires written notice that specifically states the limitation of legal services by subject matter, proceeding, date, or time period. Such notice must be filed with or prior to the initial pleading or prior to the initial hearing. Both the signatures of the attorney and client are required, unless the client is unavailable to sign at filing in which case the client must file a certificate attesting to the scope of the representation within 10 days.<sup>107</sup>

The Massachusetts Supreme Court clarified its limited scope representation rules in a May 1, 2009 Order. The Order includes a Notice of Limited Appearance form and indicates that the attorney must state precisely the event to which the limited appearance pertains and any discrete issues within the event that the appearance covers. Then, the Order clarifies that an attorney may file a notice for more than one court event within a case.<sup>108</sup>

Kansas Supreme Court Rule 115A(b)(1) establishes that an attorney entering a limited appearance must file a notice with the court. The notice must state the court proceeding to which the limited appearance pertains and any specific issues covered by the appearance. A form is provided and the Rule states that “notice is sufficient if it is on the judicial council form.”<sup>109</sup>

Several states have rules stating that notice must be filed with the court, but do not provide a specific form. North Dakota Court Rule 11(e) simply indicates that the party receiving assistance of an attorney on a limited basis “must file the notice of limited representation with the court.”<sup>110</sup>

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<sup>104</sup> See, [http://www.courts.state.nh.us/rules/pcon/pcon-1\\_2.htm](http://www.courts.state.nh.us/rules/pcon/pcon-1_2.htm)

<sup>105</sup> See, <http://www.nhbar.org/uploads/pdf/RulesCivilProcedureDraft011807.pdf>

<sup>106</sup> See, <http://www.state.il.us/court/SupremeCourt/Rules/Amend/2013/061413.pdf>

<sup>107</sup> See, [http://www.lasc.org/rules/dist.ct/11\\_27\\_12DistrictCourtAmendmentsOrder.pdf](http://www.lasc.org/rules/dist.ct/11_27_12DistrictCourtAmendmentsOrder.pdf)

<sup>108</sup> See, <http://www.mass.gov/courts/case-legal-res/rules-of-court/sjc/lar.html>

<sup>109</sup> See, [http://www.kscourts.org/Rules/District\\_Rules/Rule%20115A.pdf](http://www.kscourts.org/Rules/District_Rules/Rule%20115A.pdf)

<sup>110</sup> See, <http://www.ndcourts.gov/court/rules/CIVIL/rule11.htm>

Others include additional clauses to their requirements that notice be filed suggesting that such notice must articulate the scope of and/or matters for which the attorney will appear.<sup>111</sup> Indiana Rule of Trial Procedure 3.1(I) states that an attorney limiting the scope of representation “shall file a notice of temporary or limited representation,” adding that the notice shall contain contact information and a description of the temporary or limited status.<sup>112</sup> And in Wisconsin, Milwaukee County Family Division Rule 5.6(a) indicates that notice of appearance filed by an attorney limiting the scope of representation “shall state the proceedings at which the court may expect the attorney to be present or other function for which the court may expect the attorney to be responsible.<sup>113</sup> Similarly, Wisconsin statute 802.045(2) requires that the notice of limited appearance contain “The specific proceeding(s) or issue(s) within the scope of the limited representation.”<sup>114</sup>

Florida Rule 12.040 adds a requirement that the litigant acknowledge the limited appearance by stating that an attorney of record shall be attorney of record throughout the family law matter, “unless at the time of appearance the attorney files a notice, signed by the party, specifically limiting the attorney’s appearance only to the particular proceeding or matter in which the attorney appears.”<sup>115</sup>

Nebraska includes a similar requirement. Nebraska Rule 3-501.2 permits limited appearances, with a written requirement. It states, “If, after consultation, the client consents in writing, a lawyer may enter a “Limited Appearance” on behalf of any otherwise unrepresented party involved in a court proceeding, and such appearance shall clearly define the scope of the lawyer’s limitation.”<sup>116</sup>

Maine Rule 11(b) specifically addresses limited appearances and states in part, “To the extent permitted by the Maine Bar Rules, an attorney may file a limited appearance on behalf of an otherwise unrepresented litigant. The appearance shall state precisely the scope of the limited representation...”<sup>117</sup>

Tennessee Rule of Civil Procedure 11.01(b) indicates that an attorney shall file “at the beginning of the representation an initial notice of limited scope representation with the court.” The rule then goes on to specify that such written notice does not need to disclose the terms of the agreement.<sup>118</sup>

A number of states include provisions requiring the limited appearance to be filed at the beginning of the proceeding, preventing lawyers from essentially abandoning their clients, which is a risk when a client is unable to pay fees beyond the initial retainer. The Washington CR 70.1

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<sup>111</sup> FL, NE, ME, IN, WI and TN

<sup>112</sup> See, [http://www.in.gov/judiciary/rules/trial\\_proc/index.html#\\_Toc313019747](http://www.in.gov/judiciary/rules/trial_proc/index.html#_Toc313019747)

<sup>113</sup> See, <http://county.milwaukee.gov/ImageLibrary/Groups/cntyCourts/documents/lrgencivcrimfam4152010.pdf>

<sup>114</sup> See, <http://www.wicourts.gov/supreme/docs/1310petition.pdf>

<sup>115</sup> See, [http://www.floridabar.org/TFB/TFBResources.nsf/Attachments/416879C4A88CBF0485256B29004BFAF8/\\$FILE/311%20Family%20Law.pdf](http://www.floridabar.org/TFB/TFBResources.nsf/Attachments/416879C4A88CBF0485256B29004BFAF8/$FILE/311%20Family%20Law.pdf)

<sup>116</sup> See, <http://www.supremecourt.ne.gov/rules/pdf/Ch3Art5.pdf>

<sup>117</sup> See, [http://www.courts.maine.gov/rules\\_adminorders/rules/MRCivPONLY7-10.pdf](http://www.courts.maine.gov/rules_adminorders/rules/MRCivPONLY7-10.pdf)

<sup>118</sup> [http://www.tncourts.gov/sites/default/files/sc\\_order\\_amending\\_tn\\_rules\\_of\\_civil\\_procedure.pdf](http://www.tncourts.gov/sites/default/files/sc_order_amending_tn_rules_of_civil_procedure.pdf)

states in part, “If specifically so stated in a notice of limited appearance *filed and served prior to or simultaneous with the proceeding*, an attorney’s role may be limited to one or more individual proceedings in the action.”<sup>119</sup> [Ital. added] Alabama Rule of Civil Procedure 87,<sup>120</sup> Colorado Rule of Civil Procedure 121,<sup>121</sup> Iowa Rule 1.404(3),<sup>122</sup> Administrative Order 14-10 of the Superior Court of DC<sup>123</sup> and Montana Rule of Civil Procedure 4.2<sup>124</sup> are substantively similar.

Similarly, Alaska Rule of Civil Procedure 81(d) explicitly allows limited appearances, and requires that an attorney file and serve an entry of appearance before or during the proceeding. The entry of appearance must state that the attorney’s appearance is limited and must identify the limitation by date, time period or subject matter. It then requires the attorney to serve all parties of record with the limited entry of appearance.<sup>125</sup>

Utah and Vermont permit limited appearances so that an attorney may act as counsel for a specific motion, discovery procedure, or hearing. Utah Rule 75(b) more clearly defines limited appearances and requires the attorney to file a Notice of Limited Appearance signed by attorney and self-represented party. It states, in part, “. . .The Notice shall specifically describe the purpose and scope of the appearance and state that the party remains responsible for all matters not specifically described in the notice. The clerk shall enter on the docket the attorney’s name and a brief statement of the limited appearance. . .”<sup>126</sup> Vermont Rule 79.1(1) is nearly identical.<sup>127</sup>

### **Notice to the Opposing Side**

In addition to rules that specifically address limited appearances, several states have amended their rules of civil procedures to govern service of pleadings and other papers in limited appearances. While requirements for service vary, a number of states have rules that specifically define when, if at all, service is required upon the limited scope representation attorney.

Most of the states that have addressed this require notice to the lawyer who has filed a limited appearance, but only in connection with the proceedings or matters for which the attorney has appeared. For example, Washington Rules CR 70.1 and CRLJ 70.1 set out the obligation to give notice to the lawyer who has filed a limited appearance. The rules state, “Service on an attorney who has made a limited appearance for a party shall be valid . . .only in connection with the specific proceedings for which the attorney has appeared, including any hearing or trial at which the attorney appeared and any subsequent motions for presentation of orders.”<sup>128</sup> Other rules that only require service on the attorney in matters within the scope of the Notice of Limited

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<sup>119</sup> See, [http://www.courts.wa.gov/court\\_rules/?fa=court\\_rules.display&group=sup&set=CR&ruleid=supcr70.1](http://www.courts.wa.gov/court_rules/?fa=court_rules.display&group=sup&set=CR&ruleid=supcr70.1)

<sup>120</sup> <http://judicial.alabama.gov/library/rules/cv87.pdf>

<sup>121</sup> [http://www.courts.state.co.us/userfiles/file/Court\\_Probation/Supreme\\_Court/Rule\\_Changes/2011/2011\\_13\\_redlined.pdf](http://www.courts.state.co.us/userfiles/file/Court_Probation/Supreme_Court/Rule_Changes/2011/2011_13_redlined.pdf)

<sup>122</sup> See, <http://search.legis.state.ia.us/nxt/gateway.dll/ic?f=templates&fn=default.htm>

<sup>123</sup> See, <http://pdfserver.amlaw.com/nlj/Limited%20Scope%20Representation%20order.pdf>

<sup>124</sup> <http://leg.mt.gov/bills/mca/25/20/25020001042.htm>

<sup>125</sup> See, <http://www.state.ak.us/courts/civ2.htm#81>

<sup>126</sup> See, <http://www.utcourts.gov/resources/rules/urcp/urcp075.html>

<sup>127</sup> See, <http://www.utcourts.gov/resources/rules/urcp/urcp075.html>

<sup>128</sup> See, [http://www.courts.wa.gov/court\\_rules/?fa=court\\_rules.display&group=sup&set=CR&ruleid=supcr70.1](http://www.courts.wa.gov/court_rules/?fa=court_rules.display&group=sup&set=CR&ruleid=supcr70.1)

Appearance include those in: Alabama, Colorado, Delaware, the District of Columbia Superior Court, Idaho, Iowa, Kansas, Massachusetts, Montana, North Dakota and Utah.

Some states require service in all matters.<sup>129</sup> New Hampshire Rule of Civil Procedure 3(b) states, in part, “When an attorney has filed a limited appearance under Rule 14(d) on behalf of an opposing party, copies of pleadings filed and communications to the court shall be furnished both to the opposing party who is receiving the limited representation and to the limited representation attorney...” Once the attorney files a withdrawal of limited appearance, service is only made on the self-represented litigant.<sup>130</sup> California Civil Rule 3.36(b) is substantially similar.<sup>131</sup>

Arizona Rule of Civil Procedure 5.1(c)(2) and Rule of Family Law Procedure 9(B) create similar provisions, and require service on the limited scope representation attorney for all matters. It is clarified that service on an attorney who has made a limited appearance does not extend the attorney’s responsibility for representation beyond the specific matter for which the attorney appeared.<sup>132</sup> Similarly, Administrative Order 14-10 for the Superior Court of the District of Columbia states that service on attorneys for matters outside the scope of the limited appearance does not extend the scope of the attorney’s representation; 14-10 further states that an attorney may extend a limited appearance only by filing and serving a new notice.<sup>133</sup>

Wisconsin statute 801.14 (2m) provides that “anything required to be served under sub. (1) shall be served upon both the otherwise self-represented person who is receiving the limited scope representation and to the limited scope representation attorney,” and clarifies that once a notice of termination form is filed, no further service is required.<sup>134</sup>

Vermont Rule of Civil Procedure 79.1(4) says “every paper required by Rule 5 to be served upon a party’s attorney that is to be served after entry of a limited appearance shall be served upon the party and upon the attorney entering that appearance unless the attorney has been granted leave to withdraw.” Vermont’s Rule of Family Proceedings 15(h) is similarly broad.<sup>135</sup>

Florida creates a similar provision, but with one addition. Florida Family Law Rule of Procedure 12.040(f) adds that if notice of a hearing that is not within the scope of the representation is received, “the attorney shall notify the court and the opposing party that the attorney will not attend the court proceeding or hearing because it is outside the scope of the representation.”<sup>136</sup>

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<sup>129</sup> NH, CA, AZ, FL, VT, TN and WI

<sup>130</sup> See, <http://www.nhbar.org/uploads/pdf/RulesCivilProcedureDraft011807.pdf>

<sup>131</sup> See, California Rule 3.36(b) at [http://www.courts.ca.gov/cms/rules/index.cfm?title=three&linkid=rule3\\_36](http://www.courts.ca.gov/cms/rules/index.cfm?title=three&linkid=rule3_36)

<sup>132</sup> See, [http://www.supreme.state.az.us/rules/ramd\\_pdf/R-05-0008.pdf](http://www.supreme.state.az.us/rules/ramd_pdf/R-05-0008.pdf) and <http://www.azcourts.gov/Portals/20/2013%20Aug%20Rules/R%2012%200027.pdf>

<sup>133</sup> See, <http://pdfserver.amlaw.com/nlj/Limited%20Scope%20Representation%20order.pdf>

<sup>134</sup> See, <http://www.wicourts.gov/supreme/docs/1310petition.pdf>

<sup>135</sup> See, <http://www.lexisnexis.com/hottopics/vtstatutesconstctrules/>

<sup>136</sup> [http://www.floridabar.org/TFB/TFBResources.nsf/Attachments/416879C4A88CBF0485256B29004BFAF8/\\$FILE/311%20Family%20Law.pdf](http://www.floridabar.org/TFB/TFBResources.nsf/Attachments/416879C4A88CBF0485256B29004BFAF8/$FILE/311%20Family%20Law.pdf)

Tennessee Rule of Civil Procedure 11(b) similarly indicates that an attorney shall file notice to the court when having received notice on a matter that is outside the scope of representation.<sup>137</sup>

Illinois Supreme court Rule 11 requires service of all documents on both the attorney and the party represented on a limited scope basis. Such service must continue until the court enters an order allowing the attorney to withdraw or the attorney's representation automatically terminates under Rule 13(c)(7)(ii).

Missouri Rule 43.01(b) requires service on the self-represented person and not the attorney unless the attorney serves the opposing party with a copy of the notice of limited appearance that establishes a time period for service on the attorney.<sup>138</sup>

In contrast, Maine Rule 5(b) requires service only upon the self-represented person. It states, in part, "...When an attorney has filed a limited appearance under Rule 11(b), service upon the attorney is not required..."<sup>139</sup>

### **Procedures for Withdrawal**

Although the ABA Model Rules do not specifically address limited appearances and their withdrawals, Rule 1.16 sets out the appropriate circumstances for terminating representation. The comment to this rule notes, "Ordinarily, a representation in a matter is completed when the agreed-upon assistance has been concluded." It then refers to Rules 1.2(c), addressing the scope of limited representation and 6.5, establishing procedures for a lawyer's participation in a limited scope legal services program. While policy-makers should be certain to examine the role of the ethics rules governing this area, both limited and appearances and their withdrawals are most often addressed through rules of procedure.

Withdrawals of limited appearance are done in the states on a *de facto* basis or through an administrative process. They do not require leave of court in these particular states, except as noted below.

Wyoming and Maine explicitly provide a *de facto* withdrawal. Wyoming Rule 102 states, in part, "An attorney who has entered a limited entry of appearance shall be deemed to have withdrawn when the attorney has fulfilled the duties of the limited entry of appearance."<sup>140</sup> Maine rules create a nearly identical provision.<sup>141</sup>

Vermont Rule 79.1 states, in part, "An attorney who has entered a limited appearance shall be granted leave to withdraw as a matter of course when the purpose for which the appearance was

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<sup>137</sup> [http://www.tncourts.gov/sites/default/files/sc\\_order\\_amending\\_tn\\_rules\\_of\\_civil\\_procedure.pdf](http://www.tncourts.gov/sites/default/files/sc_order_amending_tn_rules_of_civil_procedure.pdf)

<sup>138</sup> See, <http://www.courts.mo.gov/courts/ClerkHandbooksP2RulesOnly.nsf/0/f54a7a01ed6d17e186256ca600521339?OpenDocument>

<sup>139</sup> See, [http://www.courts.maine.gov/rules\\_adminorders/rules/MRCivPONLY7-10.pdf](http://www.courts.maine.gov/rules_adminorders/rules/MRCivPONLY7-10.pdf)

<sup>140</sup> See, <http://www.courts.state.wy.us/WSC/CourtRule?RuleNumber=32>

<sup>141</sup> See, Maine Bar Rule 3.4(a)(3) at [http://mebaroverseers.org/attorney\\_regulation/bar\\_rules.html?id=63312.htm](http://mebaroverseers.org/attorney_regulation/bar_rules.html?id=63312.htm) and Maine Rule of Civil Procedure 89(a) at [http://www.courts.maine.gov/rules\\_adminorders/rules/MRCivPONLY7-10.pdf](http://www.courts.maine.gov/rules_adminorders/rules/MRCivPONLY7-10.pdf)

entered has been accomplished.” It also outlines a procedure for termination when the attorney seeks to withdraw before completing limited scope representation.<sup>142</sup>

Delaware Rule 5(b)(2) creates a similar provision. It states, in part, “[an appearance] shall terminate when the time for appeal has elapsed from the final order entered by the Court.” The rule clarifies that withdrawal before this time period is possible only through application by the attorney and by order of the court.<sup>143</sup>

Administrative Order 14-10 of the Superior Court of DC provides a *de facto* withdrawal if the notice of limited representation specifically states the scope of the appearance by date or time period, but otherwise requires the attorney to file a notice of completion, to be served on each of the parties, including the attorney’s client.<sup>144</sup> Rule 14-10 also states that if a case continues to a jury trial, the attorney must either withdraw prior to *voir dire* or continue representation through the return of the verdict.<sup>145</sup>

Some states’ rules require the lawyer to file a notice of completion or termination.<sup>146</sup> Each state requires the filing to provide the court with the name and address of the person the lawyer had represented in the proceeding. Washington Rules CR 70.1 and CRLJ 70.1 state, in part, “At the conclusion of such proceedings the attorney’s role terminates without the necessity of leave of court, upon the attorney filing notice of completion of limited appearance which notice shall include the client information required by rule 71(c)(1).”<sup>147</sup> Florida Rule 12.040(c)<sup>148</sup>, Iowa Rule 1.404(4)<sup>149</sup> and Alaska Rule 81(e)<sup>150</sup> are adaptations of this provision and require notice to be upon the client and all other parties. Massachusetts addresses withdrawal requirements in a similar manner, but adds that the court may impose sanctions for the failure to file such notice.<sup>151</sup> Wisconsin similarly allows a limited scope attorney to terminate representation without leave of court by serving upon all parties (including the client) a notice of termination. The rule requires that the notice include the client’s contact information, a statement that the attorney has completed all services within the scope of the Notice of Limited Appearance, and a statement that the attorney has completed all acts ordered by the court.<sup>152</sup>

Several states require written notice, but do not require such notice to include contact information for the otherwise self-represented litigant. Missouri Rule 55.03(c) states, “An attorney who files a notice of limited appearance withdraws when the attorney has fulfilled the

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<sup>142</sup> See, [http://michie.lexisnexis.com/vermont/lpext.dll/vtrules/e/198/1a8?f=templates&fn=document-frame.htm&2.0#JD\\_vrcp-791](http://michie.lexisnexis.com/vermont/lpext.dll/vtrules/e/198/1a8?f=templates&fn=document-frame.htm&2.0#JD_vrcp-791)

<sup>143</sup> See, <http://courts.delaware.gov/forms/download.aspx?id=39308>

<sup>144</sup> <http://pdfserver.amlaw.com/nlj/Limited%20Scope%20Representation%20order.pdf>

<sup>145</sup> Id.

<sup>146</sup> WA, FL, IA, AK, MA, WI

<sup>147</sup> See, [http://www.courts.wa.gov/court\\_rules/?fa=court\\_rules.display&group=sup&set=CR&ruleid=supcr70.1](http://www.courts.wa.gov/court_rules/?fa=court_rules.display&group=sup&set=CR&ruleid=supcr70.1)

<sup>148</sup> See,

[http://www.floridabar.org/TFB/TFBResources.nsf/Attachments/416879C4A88CBF0485256B29004BFAF8/\\$FILE/311%20Family%20Law.pdf](http://www.floridabar.org/TFB/TFBResources.nsf/Attachments/416879C4A88CBF0485256B29004BFAF8/$FILE/311%20Family%20Law.pdf)

<sup>149</sup> See, <http://search.legis.state.ia.us/nxt/gateway.dll/ic?f=templates&fn=default.htm>

<sup>150</sup> See, [www.state.ak.us/courts/civ2.htm#81](http://www.state.ak.us/courts/civ2.htm#81)

<sup>151</sup> <http://www.mass.gov/obcbbo/rpc1.htm>

<sup>152</sup> See, <http://www.wicourts.gov/supreme/docs/1310petition.pdf>



duties set forth in the notice and files a termination of limited appearance with the court.”<sup>153</sup> Missouri Rule of Professional Conduct 4-1.16(c) supplements Rule 55.03(c). Rule 4-1.16(c) clarifies that a lawyer who files a notice of termination of limited appearance need not comply with the law requiring permission from the tribunal. It states, in part, “...Except when such notice [termination of limited appearance] is filed, a lawyer shall continue representation when ordered to do so by a tribunal notwithstanding good cause for terminating the representation.”<sup>154</sup>

Utah Rule 74(b),<sup>155</sup> Indiana Rule of Trial Procedure 3.1,<sup>156</sup> Montana Rule of Civil Procedure 4.2,<sup>157</sup> Idaho Rule of Civil Procedure 11(b)(5) addressing limited pro bono,<sup>158</sup> and Colorado Rule of Civil Procedure 121<sup>159</sup> are all substantively similar to Missouri Rule 55.03(c), but do not include counterparts in their Rules of Professional Conduct.<sup>160</sup> Colorado’s rule contains a clarifying sentence that such service is valid only in connection with the specific proceeding for which the attorney appears.

Alabama, Wisconsin and North Dakota also have similar provisions requiring notice of termination, but add that upon filing a notice, the attorney must provide certification of service on the client. Alabama Rule of Civil Procedure 87 simply states “The attorney’s role terminates without the necessity of leave of court upon the attorney’s filing a notice of completion of limited scope representation with a certification of service on the client.”<sup>161</sup> Milwaukee County Family Division Rule 5.6(d) indicates that upon submitting a proposed order for withdrawal, the attorney must serve a copy upon the client and all parties.<sup>162</sup> North Dakota Rule of Civil Procedure 11(e)<sup>163</sup> is substantially similar and North Dakota Rule of Court 11.2(d) adds that the rules governing withdrawal of attorneys do not apply to attorneys representing a party under a notice of limited scope representation unless the attorney seeks to withdraw from the limited scope representation itself.<sup>164</sup>

Deviating from the states that require notice of termination, New Hampshire Rule 17(f) permits automatic termination, so long as the attorney provides the court, and all other parties, with a “withdrawal of appearance.” The rule also addresses withdrawal when the attorney has not yet completed all limited scope representation tasks. In such circumstances, the attorney must

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<sup>153</sup> See, <http://www.courts.mo.gov/courts/ClerkHandbooksP2RulesOnly.nsf/0/7db1c05900034fdc86256ca60052152c?OpenDocument>

<sup>154</sup> See, <http://www.courts.mo.gov/courts/ClerkHandbooksP2RulesOnly.nsf/c0c6ffa99df4993f86256ba50057dcb8/202f47458d8080c986256ca6005211aa?OpenDocument>

<sup>155</sup> See, <http://www.utcourts.gov/resources/rules/urcp/urcp074.html>

<sup>156</sup> [http://www.in.gov/judiciary/rules/trial\\_proc/index.html#\\_Toc313019747](http://www.in.gov/judiciary/rules/trial_proc/index.html#_Toc313019747)

<sup>157</sup> <http://supremecourtdocket.mt.gov/view/AF%2007-0157%20Rule%20Change%20--%20Order?id=%7b74651E53-E69E-4101-B614-4D48E1FF894D%7d>

<sup>158</sup> <http://www.isc.idaho.gov/ircp11b5>

<sup>159</sup> [http://www.courts.state.co.us/userfiles/file/Court\\_Probation/Supreme\\_Court/Rule\\_Changes/2011/2011\\_13\\_redlined.pdf](http://www.courts.state.co.us/userfiles/file/Court_Probation/Supreme_Court/Rule_Changes/2011/2011_13_redlined.pdf)

<sup>160</sup> See, <http://www.utcourts.gov/resources/rules/urcp/urcp074.html>

<sup>161</sup> See, <http://judicial.alabama.gov/library/rules/cv87.pdf>

<sup>162</sup> <http://county.milwaukee.gov/ImageLibrary/Groups/cntyCourts/documents/lrgencivcrimfam4152010.pdf>

<sup>163</sup> <http://www.ndcourts.gov/court/rules/CIVIL/rule11.htm>

<sup>164</sup> <http://www.ndcourts.gov/court/rules/NDROC/rule11.2.htm>

follow traditional procedures for withdrawal.<sup>165</sup> New Mexico rules create nearly identical requirements for withdrawal from limited appearances.<sup>166</sup>

Nebraska Rule 3-501.2(e) creates a similar provision, but with an additional requirement. It requires the limited scope representation attorney to file a “Certificate of Completion of Limited Representation” within ten days of completion of representation and for copies to be served on all other parties. The rule further clarifies that filing of such certificate does not require court approval.<sup>167</sup>

Other states have more detailed procedures for withdrawal from limited appearances. Nevada requires a lawyer to file a “Substitution of Attorney,” substituting the client for the lawyer. The lawyer must state that he or she was hired to perform a limited service and the service has been completed. The lawyer must also include a copy of the limited services retainer agreement showing the scope of the service the lawyer was hired to perform. The lawyer must also serve copies of the substitution on the client and all other parties or their lawyers.<sup>168</sup>

California Civil Rule 3.36<sup>169</sup> and Family and Juvenile Rule 5.71<sup>170</sup> include safeguards with a slightly more formal system. A lawyer who has completed tasks set out in the court’s Notice of Limited Scope Representation form, serves the client with an Application to be Relieved as Counsel Upon Completion of Limited Scope Representation and a form for the client to file an objection to the application. If no objection is filed within 15 days, the lawyer then files an updated form and order with the clerk of the court. After the order has been signed, the lawyer must serve copies on the client and all parties who have appeared. If the client objects within the 15 days, a hearing is set to determine whether the lawyer will be given leave to withdraw.

Arizona Rule of Civil Procedure 5.2(C) and Rule of Family Law Procedure 9(B) both outline two ways in which an attorney may withdraw- either with or without consent. In the event an attorney completes all tasks specified in the limited scope representation agreement, the attorney may file a Notice of Withdrawal and Consent. The notice states the attorney will no longer represent the party, and includes contact information for the self-represented party. A copy is provided to all other parties.

In the event an Arizona attorney has completed the tasks specified in the Notice of Limited Scope Representation but the client has not signed a Notice of Withdrawal with Consent, the attorney may make a motion to withdraw. If, after served upon client and all other parties, no objection is filed in ten dates, the court will sign the motion. If an objection is filed, the court may conduct a hearing to determine if they attorney did complete all tasks outlined in the limited scope representation agreement.<sup>171</sup>

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<sup>165</sup> See, <http://www.nhbar.org/uploads/pdf/RulesCivilProcedureDraft011807.pdf>

<sup>166</sup> See, Rule of Civil Procedure for the District Court 1-089, Rule of Civil Procedure for the Magistrate Court 2-108, Rule of Civil Procedure for the Metropolitan Court 3-108 at <http://www.nmonesource.com/nmnxtadmin/NMPublic.aspx>

<sup>167</sup> See, <http://www.supremecourt.ne.gov/rules/pdf/Ch3Art5.pdf>

<sup>168</sup> See, <http://www.leg.state.nv.us/courtrules/EighthDCR.html>

<sup>169</sup> See, [http://www.courts.ca.gov/cms/rules/index.cfm?title=three&linkid=rule3\\_36](http://www.courts.ca.gov/cms/rules/index.cfm?title=three&linkid=rule3_36)

<sup>170</sup> See, [http://www.courts.ca.gov/cms/rules/index.cfm?title=five&linkid=rule5\\_71](http://www.courts.ca.gov/cms/rules/index.cfm?title=five&linkid=rule5_71)

<sup>171</sup> See, [http://www.supreme.state.az.us/rules/ramd\\_pdf/R-05-0008.pdf](http://www.supreme.state.az.us/rules/ramd_pdf/R-05-0008.pdf)

Tennessee requires an attorney to file a notice of completion of limited scope representation that is accompanied by a declaration that the terms of the limited scope agreement have been satisfied. The attorney is required to give the unrepresented person at least 14 days advance written notice of this notice of completion.<sup>172</sup>

Illinois Supreme Court Rule 13 addresses both withdrawal upon completing representation as well as withdrawal for any other reason other than completion of the representation. Upon completion of the representation, an attorney shall withdraw by oral motion or by filing a Notice of Withdrawal of Limited Scope Appearance. Opportunities for a party to object to the withdrawal are included in the rule and if the ground for the Objection is that the attorney has not completed the representation, the court must hold an evidentiary hearing.<sup>173</sup>

Kansas requires an attorney to file a notice of withdrawal of limited appearance, serving the notice on the clients and parties, and allows a 14 day period of time for an objection to be filed before the withdrawal becomes effective. A judicial council form is provided and the client's contact information is required. A notice of withdrawal is required for each proceeding for which the attorney has filed and the court may impose sanctions for failure to file a notice of withdrawal according to the rules.<sup>174</sup>

And finally, Louisiana's rules address both procedures for filing a motion to withdraw as well as ex parte withdrawal procedures. If the limited scope representation has been completed, the attorney may make a motion to withdraw, including a certification that the services have been completed. The court may allow an attorney to withdraw by ex parte motion if the representation has been concluded. The court may also allow an attorney to withdraw by ex parte motion if no hearing or trial is scheduled.<sup>175</sup>

## VII. Excusing Conflicts Checks for Limited Services Programs

As noted in the introduction, volunteer lawyers are often involved in court-sponsored programs that provide pro se litigants with individual consultations and document preparation in civil legal matters such as domestic relations, guardianships, housing and small claims. Similarly, legal aid offices and nonprofit law firms sponsor clinics, operate telephone hotlines and otherwise lend limited support, short of full representation.

### Limited Scope Representation as Legal Information

Some courts and programs have concluded that the services the participating lawyers provide in these settings are merely legal information and not legal advice, reasoning that general legal information does not give rise to the creation of an attorney-client relationship and therefore the rules of professional conduct do not apply.

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<sup>172</sup> See, [http://www.tncourts.gov/sites/default/files/sc\\_order\\_amending\\_tn\\_rules\\_of\\_civil\\_procedure.pdf](http://www.tncourts.gov/sites/default/files/sc_order_amending_tn_rules_of_civil_procedure.pdf)

<sup>173</sup> See, <http://www.state.il.us/court/SupremeCourt/Rules/Amend/2013/061413.pdf>

<sup>174</sup> [http://www.kscourts.org/Rules/District\\_Rules/Rule%20115A.pdf](http://www.kscourts.org/Rules/District_Rules/Rule%20115A.pdf)

<sup>175</sup> See, [http://www.lasc.org/rules/dist.ct/11\\_27\\_12DistrictCourtAmendmentsOrder.pdf](http://www.lasc.org/rules/dist.ct/11_27_12DistrictCourtAmendmentsOrder.pdf)

This perspective has a number of adverse consequences. First, the program unnecessarily limits the assistance it provides. On the one hand, it has lawyers who are trained advocates offering their services. Yet, the program limits that level of service and tells the lawyers they cannot serve as advocates or even give fact-specific advice. In this respect, the abilities of the lawyers are underutilized. Second, the self-represented litigants are short-changed. They have a resource that has the capacity to answer their questions to optimize their outcomes, but is unable to provide that advice. Perhaps most importantly, the litigants are not given the protections otherwise available to clients of lawyers under the Rules of Professional Responsibility. The litigants are not protected from conflicts of interest, their communications are not confidential, and the lawyers are not required to be competent when providing these services.

### **Limited Scope Representation as Legal Advice**

On the other hand, if a program were to deem its services legal advice tantamount to the creation of an attorney-client relationship, participating lawyers would be required to check for conflicts of interests not only for themselves, but also for imputed conflicts with the other members of their firms. This, of course, limits the pool of lawyers who are available to participate. However, volunteer lawyers may be willing to extend their services to provide short-term limited legal advice if they have no obligation to check conflicts of interests, but only face conflicts when the lawyer has actual knowledge of one. This is the basis for ABA Model Rule 6.5, a new rule promulgated as a result of the Ethics 2000 initiative.<sup>176</sup>

### **ABA Model Rule 6.5**

According to the Reporter's Explanation of Changes, "Rule 6.5 is a new Rule in response to the Commission's concern that a strict application of the conflict-of-interest rules may be deterring lawyers from serving as volunteers in programs in which clients are provided short-term limited legal services under the auspices of a nonprofit organization or a court-annexed program."<sup>177</sup>

While lawyers should always consider a full conflict check with the lawyer's firm to be a best practice, MR 6.5 excuses from the obligation to check for conflicts of interest lawyers who are participating in nonprofit or court programs offering limited legal services where there is no expectation of continuing representation. If the lawyer has actual knowledge of a conflict, the rules governing conflicts for the attorney and imputed conflicts for members of the attorney's firm continue to apply. In such a case, the lawyer would need to terminate any representation upon learning of the conflict.

Not only does the rule remove the disincentive preventing lawyers from participating, but it also preserves protection of the clients where there is a risk of harm from a conflict. When the representation begins and ends with a single brief encounter, the lawyer who is not personally aware of a conflict cannot jeopardize the interests of the client.

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<sup>176</sup> See, [http://www.abanet.org/cpr/mrpc/rule\\_6\\_5.html](http://www.abanet.org/cpr/mrpc/rule_6_5.html)

<sup>177</sup> Model Rule 6.5 Reporter's Explanation of Changes, at <http://www.americanbar.org/content/dam/aba/migrated/leadership/2002/401/65rem.authcheckdam.pdf>

The scope of this rule should be examined when considering limited scope representation. Model Rule 6.5 encompasses lawyers who participate in nonprofit organizations or courts. It does not limit the scope to *pro bono* programs, nor to lawyers who volunteer their services. The rule goes beyond a mere rationale to facilitate greater participation by lawyers in volunteer programs. It also advances the ability of people to access limited legal services in a way that maintains protection against the adverse consequences of conflicts of interests.

### State Rules Governing Conflicts

Forty-five states have either adopted Model Rule 6.5,<sup>178</sup> or have adopted a substantively similar rule.<sup>179</sup> States that have adopted a substantially similar version of Model Rule 6.5 include Arizona, California, Connecticut, Maine, Minnesota, Mississippi, New Hampshire, North Dakota, Wisconsin, and Wyoming.<sup>180</sup>

One slight variation of the Model Rule that states have adopted involves the indicated types of programs to which the rule applies. Rather than indicating that the rule to “programs sponsored by a nonprofit organization or court,” Minnesota Rule of Professional Conduct 6.5<sup>181</sup> and Mississippi Rule of Professional Conduct 6.5<sup>182</sup> indicate that the rule applies to pro bono programs or services. California Rule of Professional Conduct 1-650<sup>183</sup> and Wisconsin Rule of Professional Conduct 6.5<sup>184</sup> list the types of programs to which the rule applies, including nonprofit organizations, bar associations, and law schools. California adds “government agency” to this list.

The other states that have adopted substantially similar versions of the Model Rule vary in a number of ways. New Hampshire Rule of Professional Conduct 6.5 applies to “one-time consultations” rather than “short-term limited legal services.”<sup>185</sup> Maine Rule of Professional Conduct 6.5 uses the word “aware” rather than “knows” in clause (a)(1) in reference to knowledge of a conflict for the purposes of being subject to Rules 1.7 and 1.9(a).<sup>186</sup> Connecticut Rule of Professional Conduct 6.5 has an added clause that addresses securing the client’s informed consent and the terms by which an attorney may offer advice to the client.<sup>187</sup> Wyoming Rule of Professional Conduct 6.5 also indicates that informed consent is necessary and adds a clause indicating that consent shall be in writing unless the representation consists solely of

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<sup>178</sup> AL, AK, AZ, AR, CO, DE, DC, HI, ID, IL, IN, IA, KY, LA, MD, MA, MI, MT, NE, NV, NJ, NM, NC, OH, OK, OR, PA, RI, SC, SD, TN, UT, VT, VA and WI

<sup>179</sup> Research conducted by the StC on the Delivery of Legal Services

<sup>180</sup> For a chart showing the status of state action on Ethics 2000, see [http://www.americanbar.org/groups/professional\\_responsibility/policy/ethics\\_2000\\_commission.html](http://www.americanbar.org/groups/professional_responsibility/policy/ethics_2000_commission.html)

<sup>181</sup> <http://lprb.mncourts.gov/rules/Documents/MN%20Rules%20of%20Professional%20Conduct.pdf>

<sup>182</sup> <http://courts.ms.gov/Images/Opinions/167564.pdf>

<sup>183</sup> <http://rules.calbar.ca.gov/Rules/RulesofProfessionalConduct/CurrentRules/Rule1650.aspx>

<sup>184</sup> <http://www.wicourts.gov/sc/scrule/DisplayDocument.html?content=html&seqNo=45324#Nonprofit>

<sup>185</sup> [http://www.courts.state.nh.us/rules/pcon/pcon-6\\_5.htm](http://www.courts.state.nh.us/rules/pcon/pcon-6_5.htm)

<sup>186</sup> [http://www.maine.gov/tools/whatsnew/index.php?topic=mebar\\_overseers\\_bar\\_rules&id=88269&v=article](http://www.maine.gov/tools/whatsnew/index.php?topic=mebar_overseers_bar_rules&id=88269&v=article)

<sup>187</sup> <http://www.jud.ct.gov/Publications/PracticeBook/PB.pdf>

telephone consultation(s).<sup>188</sup> North Dakota Rule of Professional Conduct 6.5 has an added clause clarifying how the rule interacts with Rules 1.9 and 1.10.<sup>189</sup> And, Arizona Ethics Rule 6.5 adds that Ethics Rule 1.5 (governing fees) does not apply to a representation governed by this rule and for which the lawyer does not charge a fee.<sup>190</sup>

Washington and New York both have adopted rules that govern conflicts within the nonprofit or court program with more detail. Washington Rule of Professional Conduct 6.5 clarifies that the rules do not prohibit a lawyer from providing limited legal services for the purpose of determining eligibility of a client for assistance by the program. It also details when an attorney will be subject to rules 1.7, 1.9(a), 1.10 and 1.18(e), providing an exception. In order to qualify for the exception, a program must adhere to the standards indicated for screening procedures, notices of conflict to clients, and the prohibition of disseminating information related to the representation.<sup>191</sup>

New York Rule of Professional Conduct 6.5 provides a much more detailed version of the Model Rule as well. Notably, it includes an extra clause that defines short-term limited legal services as services “providing legal advice or representation free of charge as part of a program described in paragraph (a) with no expectation that the assistance will continue beyond what is necessary to complete an initial consultation, representation or court appearance.” It also adds that lawyers providing short-term limited legal services must secure the client’s informed consent. And finally, it adds a more expanded clause addressing conflicts of interest:

This Rule shall not apply where the court before which the matter is pending determines that a conflict of interest exists or, if during the course of the representation, the lawyer providing the services becomes aware of the existence of a conflict of interest precluding continued representation.<sup>192</sup>

Florida Family Law Rule of Procedure 12.750 governing family self-help programs does not follow the Model Rule, but instead details the establishment of, a list of services provided, limitations on such services, and ethical guidelines for family self-help programs.<sup>193</sup> Florida’s Rules of Professional Conduct do not include a rule addressing self-help programs more generally.

## VIII. Conclusion

The information provided in this white paper serves as a basis for understanding the policies addressed by those states that have confronted the challenges of self-represented litigation. Each of these states has taken steps to allow lawyers to provide a broader range of legal services and

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<sup>188</sup> <http://www.courts.state.wy.us/WSC/CourtRule?RuleNumber=62>

<sup>189</sup> <http://www.ndcourts.gov/court/rules/Conduct/rule6.5.htm>

<sup>190</sup> <http://www.azcourts.gov/Portals/20/2013%20Aug%20Rules/R%2012%200027.pdf>

<sup>191</sup> See, Washington RPC 6.5, at [http://www.courts.wa.gov/court\\_rules/?fa=court\\_rules.display&group=ga&set=RPC&ruleid=garpc6.5](http://www.courts.wa.gov/court_rules/?fa=court_rules.display&group=ga&set=RPC&ruleid=garpc6.5)

<sup>192</sup> [http://www.nycla.org/siteFiles/NYRulesofProfessionalConduct4109\\_362.pdf](http://www.nycla.org/siteFiles/NYRulesofProfessionalConduct4109_362.pdf)

<sup>193</sup> [http://www.floridabar.org/TFB/TFBResources.nsf/Attachments/416879C4A88CBF0485256B29004BFAF8/\\$FILE/311%20Family%20Law.pdf](http://www.floridabar.org/TFB/TFBResources.nsf/Attachments/416879C4A88CBF0485256B29004BFAF8/$FILE/311%20Family%20Law.pdf)

represent self-represented litigants under systems that are clearly set out in their policies and that are understood by the courts, the litigants and the lawyers.

The attached worksheet presents a checklist of the issues and specific state remedies. It is designed to assist other policy-makers to comprehensively address this fundamental shift in the delivery of legal services from a system that mandates litigants to either have lawyers or go it alone to one where lawyers can agree with their clients to provide services along a continuum of legal needs.

**APPENDIX A:  
WORKSHEET**

A Worksheet to Determine Rule Changes that Enable Lawyers to Serve *Pro Se* Litigants

- I. Defining the Scope of Representation
  - A. Will lawyers and clients benefit if the state defines the scope of a lawyer's representation explicitly and with clarity? See ABA Model Rule 1.2(c), generally.
  
- II. Required Writing for Limited Tasks
  - A. When a lawyer agrees with a client to provide limited representation, should the rules require the agreement to be written? See Florida Rule 4-1.2(c) Missouri 4-1.2(c)
    1. Will a writing requirement preclude the delivery of legal services through hotlines or electronic media or should it include exemptions? See Iowa Rule 32:1.2(c) and Wyoming Rule 1.2(c) for exceptions.
    2. Consider when a writing advances the representation and when it creates a barrier.
  
- III. Standardized Form
  - A. Should a writing be in a standardized form?
    1. For a checklist, see Maine Rule 3.4(i) and Missouri Rule 4-1.2 appendices.
    2. For an open-ended form, see Wyoming Rule 1.2(c) appendix.
  
- IV. Contact Information
  - A. Should the writing inform the otherwise unrepresented client of the need to provide contact information to the court and opposing party or counsel? See Wyoming Rule 1.2(c) and Missouri Rule 4-1.2 appendices.
  
- V. Setting the Limits of Limited Scope Representation – Obligation to Make Inquiry
  - A. Should the scope of representation be defined in a way that permits a lawyer to give a client only legal information, without an obligation to make inquiry and analysis as set forth in the comment to ABA Model Rule 1.1, governing competence? This would allow the lawyer to offer the same degree of services as those offered by lay-sponsored legal document preparation services and still provide the benefits inherent in an attorney-client relationship. See Comment [5] to Wyoming Rule 1.1.
  
  - B. If the jurisdiction decides to enable the lawyer to limit the scope of representation in a way that allows the lawyer to compete with a document preparation service, it should reconcile the comments to Rules 1.1 and 1.2(c) so that accurate factual information is deemed competent without the



## APPENDIX A: WORKSHEET

requirement of the lawyer to make further inquiry or analysis. The comment to Rule 1.2(c) could also reference MR 5.7, regarding the lawyer's obligations when providing law-related services.

- VI. Clarifying Communications Between Counsel and Opposing *Pro Se* Parties
- A. Should opposing counsel be prohibited from communicating with a party who receives limited scope representation?
1. Allow counsel to presume the opposing party is unrepresented (and thus allow counsel to communicate with the opposing party) unless the lawyer for the otherwise self-represented party informs counsel otherwise. See Colorado Rule 4.2, Florida Rule 4-4.2(b), Iowa Rule 32:4.2(b), Maine Rule 3.6(f), New Hampshire Rule 4.2, Utah Rule 4.2(b), Washington Rule 4.2, Alaska Rule 1.2(c)(3) and Missouri Rule 4-1.2(e).
  2. Allow counsel to presume the opposing party is unrepresented (and prohibit opposing counsel from giving the opposing party advice) unless the lawyer for the otherwise self-represented party informs opposing counsel in writing. See Washington 4.3, Florida 4-4.3(b) and Utah 4.3(b).
- B. Should opposing counsel be required to communicate according to the directions from the counsel for the *pro se* litigant and not continue contacting counsel for the *pro se* litigant outside of that counsel's direction? See Comment [10] to Nebraska Rule 3-504.2.
- VII. Document Preparation – Certification of Pleadings
- A. Should a lawyer who provides the limited representation of document preparation be required to certify pleadings?
1. The lawyer may rely on the litigant's representation of facts unless there is reason to believe they are false or materially insufficient. See Washington CR 11(b) and CRLJ 11(b), Colorado CRCP Rule 11(b), Iowa Rule 1.423(2), Maine Rule 3.6(a)(2) and Missouri Rule 55.03(c)(3).
- VIII. Document Preparation – Obligation to Inform the Court
- A. Should the court be formally notified that a lawyer drafted the pleadings? Is the court at risk of being misled if the lawyer does not identify himself or herself? Is it sufficient to indicate that a lawyer has prepared the documents, or is there justification that requires full individual identification of the lawyer?
1. Must include the lawyer's name, address, telephone and registration numbers. See Colorado CRCP 11(b) and Rule of County Court Civil Procedure 11(b), Iowa Rule 1.423, and Nebraska Rule 3-501.2(c).
  2. Lawyer must state the limitation of the services in first paragraph of pleading. See Nevada Rule 5.28.

## APPENDIX A: WORKSHEET

3. Lawyer's assistance must be certified in the pleadings or documents, See Florida Family Law Rules of Procedure 12.040
  4. Document must state, "Prepared with the assistance of counsel" See Florida 4-1.2(c) and New Hampshire Rule 17.
  5. No obligation to disclose that the lawyer prepared the forms. See California Rules 5.70(a) and 3.37 and Missouri Rule 55.03.
- IX. Document Preparation – Entry of Appearance
- A. If the filing of signed pleadings creates the entry of an appearance, should the rule be amended to exempt lawyers providing limited scope representation? See Wyoming Rule 102(a)(1), Iowa Rule 1.423(3) and Nebraska Rule 3-501.2(c).
- X. Limited Appearance – Entry
- A. How may a lawyer who appears in court in a limited role enter an appearance?
    1. Requirement for lawyer to give notice of limited representation to the court at the beginning of a hearing. See Nevada Rule 5.28 and New Mexico Rules 16-303(E), 1-089(A), 2-107(C), and 3-107(C).
    2. Permit written appearance to be limited by its terms to a particular proceeding or matter. See Wyoming Rule 102 and Missouri Rule 55.03.
  - B. How do we assure the otherwise self-represented litigant understands the limits of the representation?
    1. Require litigant to sign an acknowledgement, See Florida Rule 12.040 and Nebraska 3-501.2(d).
    2. Require the appearance to state the precise scope of the limited representation. See Arizona Rule 9(b), California Civil Rule 3.36, Delaware Rule 5(b)(2), Maine Rule 11(b), New Hampshire Rule 1.2(f)(1), Utah Rule 75 and Vermont Rule 79.1(1). See also Maine Rule 3.4(i) appendix, New Hampshire Rule 1.2(g) and Arizona Rule 97, Form 1.
  - C. How do we protect against *de facto* limited representation, where the lawyer leaves the client before the matter is concluded?
    1. Require notice of limited appearance to be filed prior to or simultaneously with the proceeding. See WA Rules CR 70.1 and CRLJ 70.1, Iowa Rule 1.404(3), Alaska 81(d).
- XI. Limited Appearance – Obligation to Serve Pleadings and Other Papers
- A. What is the opposing side's obligation to serve pleadings and other papers to counsel who files a limited appearance?
    1. Service is required only in connection with the specific proceedings for which the lawyer has appeared. See Washington Rules CR 70.1 and CRLJ 70.1, Utah 5(b)(1), Delaware Rule 5(b)(2), and Iowa Rule 1.442(2) .

## APPENDIX A: WORKSHEET

2. Service is required for all matters until the attorney files a withdrawal of limited appearance. See New Hampshire Rule 3, California 3.36(b), and Arizona Rule 9(B).
3. Service is required only if opposing party served with copy of limited appearance that establishes a time period for service on attorney. See Missouri Rule 43.01(b).
4. Service is not required. See Maine Rule 5(b).

### XII. Limited Appearance – Withdrawal

#### A. How may a limited appearance be concluded? Is leave of court required?

1. The appearance ends when the lawyer fulfills his or her duties. See Wyoming Rule 102, Maine Rule 3.4(a)(3), Vermont Rule 79.1, and Delaware Rule 5(b)(2).
2. The appearance ends with the filing of a notice of completion that provides the court with the name and address of the person represented. See Washington Rules CR 70.1 and CRLJ 70.1, Florida Rule 12.040, Iowa Rule 1.404(4) and Alaska Rule 81(e).
3. The appearance ends with the filing of a notice of completion (no contact information required). See Missouri Rules 55.03, Missouri Rule 4-1.16(c), Utah Rule 74(b) and New Mexico Rules 1-089, 2-108 and 3-108.
4. The appearance ends when the lawyer files a substitution of attorney, substituting the client, or files a withdrawal of appearance. A copy of the limited services retainer agreement must be attached and copies filed served on the client, all parties or their lawyers. See Nevada Rule 5.28(b), New Hampshire Rule 17(f) and Nebraska 3-501.2(e).
5. With notice and opportunity for a hearing. See California Rules 5.71 and 3.36.
6. The appearance ends when the attorney files a notice of withdrawal and obtains client consent. If no consent obtained, a motion of withdrawal required. See Arizona Rule 9(B)(2).

### XIII. Excusing Conflicts Checks for Limited Services Programs

#### A. Should lawyers providing short-term limited services be excused from checking conflicts when they have no knowledge of a conflict of interest?

1. Stimulates *pro bono* involvement by lawyers who cannot practically check conflicts with their firm's clients.
2. Causes no harm to client who has no further interaction with the lawyer. See ABA Model Rule 6.5.

#### B. What is the proper scope of the rule?

1. MR 6.5 is limited to lawyers working in nonprofit and court-annexed service

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## ABA Model Rules of Professional Conduct

### Client-Lawyer Relationship

#### Rule 1.1 Competence

##### **Comment**

##### **Thoroughness and Preparation**

[5] Competent handling of a particular matter includes inquiry into and analysis of the factual and legal elements of the problem, and use of methods and procedures meeting the standards of competent practitioners. It also includes adequate preparation. The required attention and preparation are determined in part by what is at stake; major litigation and complex transactions ordinarily require more extensive treatment than matters of lesser complexity and consequence. An agreement between the lawyer and the client regarding the scope of the representation may limit the matters for which the lawyer is responsible. See Rule 1.2(c).

### Client-Lawyer Relationship

#### Rule 1.2: Scope of Representation And Allocation Of Authority Between Client And Lawyer

(c) A lawyer may limit the scope of the representation if the limitation is reasonable under the circumstances and the client gives informed consent.

##### **Comment**

##### **Agreements Limiting Scope of Representation**

[6] The scope of services to be provided by a lawyer may be limited by agreement with the client or by the terms under which the lawyer's services are made available to the client. When a lawyer has been retained by an insurer to represent an insured, for example, the representation may be limited to matters related to the insurance coverage. A limited representation may be appropriate because the client has limited objectives for the representation. In addition, the terms upon which representation is undertaken may exclude specific means that might otherwise be used to accomplish the client's objectives. Such limitations may exclude actions that the client thinks are too costly or that the lawyer regards as repugnant or imprudent.

[7] Although this Rule affords the lawyer and client substantial latitude to limit the representation, the limitation must be reasonable under the circumstances. If, for example, a client's objective is limited to securing general information about the law the client needs in order to handle a common and typically uncomplicated legal problem, the lawyer and client may agree that the lawyer's services will be limited to a brief telephone consultation. Such a limitation, however, would not be reasonable if the time allotted was not sufficient to yield advice upon which the client could rely. Although an agreement for a limited representation does not exempt a lawyer from the duty to provide competent representation, the limitation is a factor to be considered when determining the legal knowledge, skill, thoroughness and

## APPENDIX B: RULES OF ETHICS AND PROCEDURE

preparation reasonably necessary for the representation. See Rule 1.1.

### Public Service

#### Rule 6.5 Nonprofit And Court-Annexed Limited Legal Services Programs

(a) A lawyer who, under the auspices of a program sponsored by a nonprofit organization or court, provides short-term limited legal services to a client without expectation by either the lawyer or the client that the lawyer will provide continuing representation in the matter:

(1) is subject to Rules 1.7 and 1.9(a) only if the lawyer knows that the representation of the client involves a conflict of interest; and

(2) is subject to Rule 1.10 only if the lawyer knows that another lawyer associated with the lawyer in a law firm is disqualified by Rule 1.7 or 1.9(a) with respect to the matter.

(b) Except as provided in paragraph (a)(2), Rule 1.10 is inapplicable to a representation governed by this Rule.

#### **Comment**

[1] Legal services organizations, courts and various nonprofit organizations have established programs through which lawyers provide short-term limited legal services — such as advice or the completion of legal forms - that will assist persons to address their legal problems without further representation by a lawyer. In these programs, such as legal-advice hotlines, advice-only clinics or pro se counseling programs, a client-lawyer relationship is established, but there is no expectation that the lawyer's representation of the client will continue beyond the limited consultation. Such programs are normally operated under circumstances in which it is not feasible for a lawyer to systematically screen for conflicts of interest as is generally required before undertaking a representation. See, e.g., Rules 1.7, 1.9 and 1.10.

[2] A lawyer who provides short-term limited legal services pursuant to this Rule must secure the client's informed consent to the limited scope of the representation. See Rule 1.2(c). If a short-term limited representation would not be reasonable under the circumstances, the lawyer may offer advice to the client but must also advise the client of the need for further assistance of counsel. Except as provided in this Rule, the Rules of Professional Conduct, including Rules 1.6 and 1.9(c), are applicable to the limited representation.

[3] Because a lawyer who is representing a client in the circumstances addressed by this Rule ordinarily is not able to check systematically for conflicts of interest, paragraph (a) requires compliance with Rules 1.7 or 1.9(a) only if the lawyer knows that the representation presents a conflict of interest for the lawyer, and with Rule 1.10 only if the lawyer knows that another lawyer in the lawyer's firm is disqualified by Rules 1.7 or 1.9(a) in the matter.

[4] Because the limited nature of the services significantly reduces the risk of conflicts of interest with other matters being handled by the lawyer's firm, paragraph (b) provides that Rule 1.10 is inapplicable to a representation governed by this Rule except as provided by paragraph (a)(2).

## APPENDIX B: RULES OF ETHICS AND PROCEDURE

Paragraph (a)(2) requires the participating lawyer to comply with Rule 1.10 when the lawyer knows that the lawyer's firm is disqualified by Rules 1.7 or 1.9(a). By virtue of paragraph (b), however, a lawyer's participation in a short-term limited legal services program will not preclude the lawyer's firm from undertaking or continuing the representation of a client with interests adverse to a client being represented under the program's auspices. Nor will the personal disqualification of a lawyer participating in the program be imputed to other lawyers participating in the program.

[5] If, after commencing a short-term limited representation in accordance with this Rule, a lawyer undertakes to represent the client in the matter on an ongoing basis, Rules 1.7, 1.9(a) and 1.10 become applicable.

### **Alabama Rules of Professional Conduct**

#### **Rule 1.1: Competence**

A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness, and preparation reasonably necessary for the representation. A lawyer and client may agree, pursuant to Rule 1.2(c), to limit the scope of the representation with respect to a matter. In such circumstances, competence means the knowledge, skill, thoroughness, and preparation reasonably necessary for such limited representation.

#### **Rule 1.2: Scope of Representation**

(c) A lawyer may limit the objectives of the representation if the limitation is reasonable under the circumstances and the client gives informed consent.

(1) The client's informed consent must be confirmed in writing unless:

(i) the representation of the client consists solely of telephone consultation;

(ii) the representation is provided by a lawyer employed by a nonprofit legal-services program or participating in a pro bono program approved by the Alabama State Bar pursuant to Rule 6.6 and the lawyer's representation consists solely of providing information and advice or the preparation of legal documents; or

(iii) the court appoints the attorney for a limited purpose that is set forth in the appointment order.

(2) if the client gives informed consent in writing signed by the client, there shall be a presumption that:

(i) the representation is limited to the attorney and the services described in the writing; and



## APPENDIX B: RULES OF ETHICS AND PROCEDURE

(ii) the attorney does not represent the client generally or in matters other than those identified in the writing.

(d) A lawyer shall not counsel a client to engage, or assist a client, in conduct that the lawyer knows is criminal or fraudulent, but a lawyer may discuss the legal consequences of any proposed course of conduct with a client and may counsel or assist a client to make a good faith effort to determine the validity, scope, meaning or application of the law.

(e) When a lawyer knows that a client expects assistance not permitted by the Rules of Professional Conduct or other law, the lawyer shall consult with the client regarding the relevant limitations on the lawyer's conduct.

### **Comment**

The objectives or scope of services provided by a lawyer may be limited by agreement with the client or by the terms under which the lawyer's services are made available to the client. For example, a retainer may be for a specifically defined purpose. Representation provided through a legal aid agency may be subject to limitations on the types of cases the agency handles. When a lawyer has been retained by an insurer to represent an insured, the representation may be limited to matters related to the insurance coverage. The terms upon which representation is undertaken may exclude specific objectives or means. Such limitations may exclude objectives or means that the lawyer regards as repugnant or imprudent.

An agreement concerning the scope of representation must accord with the Rules of Professional Conduct and other law. Thus, the client may not be asked to agree to representation so limited in scope as to violate Rule 1.1, or to surrender the right to terminate the lawyer's services or the right to settle litigation that the lawyer might wish to continue.

### **Rule 4.2: Communication with Person Represented by Counsel**

(b) A person to whom limited-scope representation is being provided or has been provided in accordance with Rule 1.2(c) is considered to be unrepresented for purposes of this rule unless the opposing lawyer has been provided with a written notice of the limited-scope representation. If such notice is provided, the opposing lawyer shall not communicate with the person regarding matters designated in the notice of limited-scope representation without consent or authorization as provided by Rule 4.2(a).

### **Rule 4.3: Dealing with Unrepresented Person**

(b) A person to whom limited-scope representation is being provided or has been provided in accordance with Rule 1.2(c) is considered to be unrepresented for purposes of this rule unless the opposing lawyer has been provided with a written notice of the limited-scope representation. If such notice is provided, the person is considered to be unrepresented regarding matters not designated in the notice of limited-scope representation.

## APPENDIX B: RULES OF ETHICS AND PROCEDURE

### **Rule 6.5: Nonprofit and Court-Annexed Limited Legal Services Programs**

(a) A lawyer who, under the auspices of a program sponsored by a nonprofit organization or a court, provides short-term limited legal services to a client without expectation by either the lawyer or the client that the lawyer will provide continuing representation in the matter:

(1) is subject to Rules 1.7 and 1.9(a) only if the lawyer knows that the representation of the client to whom the lawyer is providing short-term limited legal services involves a conflict of interest, and

(2) is subject to Rule 1.10 only if the lawyer knows that another lawyer associated with the lawyer in a law firm is disqualified by Rule 1.7 or 1.9(a) with respect to the matter.

(b) Except as provided in paragraph (a)(2), Rule 1.10 is inapplicable to representation governed by this rule.

### **Alabama Rules of Civil Procedure**

#### **Rule 11: Signing of Pleadings, Motions, or Other Papers**

(b) Limited-scope representation. An attorney may draft or help to draft a pleading, motion, or other paper filed by an otherwise self represented person. The attorney need not sign that pleading, motion, or other paper but shall include a notation at the end stating: "This document was prepared with the assistance of a licensed Alabama lawyer pursuant to Rule 1.2(c), Alabama Rules of Professional Conduct." In providing such drafting assistance, the attorney may rely on the otherwise self represented person's representation of the facts, unless the attorney has reason to believe that such representation is false or materially insufficient.

#### **Rule 87: Limited-Scope Representation**

(a) *Permitted*. In accordance with Rule 1.2(c) of the Alabama Rules of Professional Conduct, an attorney may provide limited-scope representation to a person involved in a court proceeding.

(b) *Notice*. If specifically so stated in a notice of limited-scope representation filed and served prior to or simultaneously with the initiation of a proceeding, an attorney's role may be limited as set forth in the notice.

(c) *Termination*. The attorney's role terminates without the necessity of leave of court upon the attorney's filing a notice of completion of limited-scope representation with a certification of service on the client.

(d) *Service*. Service on an attorney providing limited-scope representation is required only for matters within the scope of the representation as set forth in the notice.

**Alaska Rules of Professional Conduct**

**Rule 1.2: Scope of Representation**

(c) A lawyer may limit the scope of the representation if the limitation is reasonable under the circumstances and the client consents after consultation.

(1) If a written fee agreement is required by Rule 1.5, the agreement shall describe the limitation on the representation.

(2) The lawyer shall discuss with the client whether a written notice of representation should be provided to other interested parties.

(3) An otherwise unrepresented person to whom limited representation is being provided or has been provided in accordance with this rule is considered to be unrepresented for purposes of Rules 4.2 and 4.3 unless the opposing lawyer knows of or has been provided with:

(A) a written notice stating that the lawyer is to communicate only with the limited representation lawyer as to the subject matter of the limited representation; or

(B) a written notice of the time period during which the lawyer is to communicate only with the limited representation lawyer concerning the subject matter of the limited representation.

**Comment**

[6] The objectives or scope of services provided by a lawyer may be limited by agreement or by the terms under which the lawyer's services are made available to the client. For example, a retainer may be for a specifically defined purpose. Representation provided through a legal aid agency may be subject to limitations on the types of cases the agency handles. When a lawyer has been retained by an insurer to represent an insured, the representation may be limited to matters related to the insurance coverage. The terms upon which representation is undertaken may exclude specific objectives or means. Such limitations may exclude objectives or means that the lawyer regards as repugnant or imprudent.

[7] Although this Rule affords the lawyer and client substantial latitude to limit the representation, the limitation must be reasonable under the circumstances. An agreement for a limited representation does not exempt a lawyer from the duty to provide competent representation, although the limitation is a factor to be considered when determining the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation. See Rule 1.1.

[8] All agreements concerning a lawyer's representation of a client must accord with the Rules of Professional Conduct and other law. See, e.g., Rules 1.1, 1.8 and 5.6 and COMMENT to Rule 1.3, paragraph 3.

**Rule 6.5: Nonprofit and Court-Annexed Limited Legal Services Programs**

(a) A lawyer who, under the auspices of a program sponsored by a nonprofit organization or court, provides short-term limited legal services to a client without expectation by either the lawyer or the client that the lawyer will provide continuing representation in the matter:

(1) is subject to Rules 1.7 and 1.9(a) only if the lawyer knows that the representation of the client involves a conflict of interest; and

(2) is subject to Rule 1.10 only if the lawyer knows that another lawyer associated with the lawyer in a law firm is disqualified by Rule 1.7 or 1.9(a) with respect to the matter.

(b) Except as provided in paragraph (a)(2), Rule 1.10 is inapplicable to a representation governed by this Rule.

(SCO 1680 effective April 15, 2009)

**Comment**

[1] Legal services organizations, courts and various nonprofit organizations have established programs through which lawyers provide short-term limited legal services – such as advice or the completion of legal forms – that will assist persons to address their legal problems without further representation by a lawyer. In these programs, such as legal-advice hotlines, advice-only clinics, or pro se counseling programs, a client-lawyer relationship is established, but there is no expectation that the lawyer's representation of the client will continue beyond the limited consultation. Such programs are normally operated under circumstances in which it is not feasible for a lawyer to systematically screen for conflicts of interest as is generally required before undertaking a representation. See, e.g., Rules 1.7, 1.9, and 1.10.

[2] A lawyer who provides short-term limited legal services pursuant to this Rule must secure the client's informed consent to the limited scope of the representation. See Rule 1.2(c). If a short-term limited representation would not be reasonable under the circumstances, the lawyer may offer advice to the client but must also advise the client of the need for further assistance of counsel. Except as provided in this Rule, the Rules of Professional Conduct, including Rules 1.6 and 1.9(c), are applicable to the limited representation.

[3] Because a lawyer who is representing a client in the circumstances addressed by this Rule ordinarily is not able to check systematically for conflicts of interest, paragraph (a) requires compliance with Rules 1.7 or 1.9(a) only if the lawyer knows that the representation presents a conflict of interest for the lawyer, and with Rule 1.10 only if the lawyer knows that another lawyer in the lawyer's firm is disqualified by Rules 1.7 or 1.9(a) in the matter.

[4] Because the limited nature of the services significantly reduces the risk of conflicts of interest with other matters being handled by the lawyer's firm, paragraph (b) provides that Rule 1.10 is inapplicable to a representation governed by this Rule except as provided by paragraph (a)(2). Paragraph (a)(2) requires the participating lawyer to comply with Rule 1.10 when the lawyer

## APPENDIX B: RULES OF ETHICS AND PROCEDURE

knows that the lawyer's firm is disqualified by Rules 1.7 or 1.9(a). By virtue of paragraph (b), however, a lawyer's participation in a short-term limited legal services program will not preclude the lawyer's firm from undertaking or continuing the representation of a client with interests adverse to a client being represented under the program's auspices. Nor will the personal disqualification of a lawyer participating in the program be imputed to other lawyers participating in the program.

[5] If, after commencing a short-term limited representation in accordance with this Rule, a lawyer undertakes to represent the client in the matter on an ongoing basis, Rules 1.7, 1.9(a), and 1.10 become applicable.

### **Alaska Rules of Civil Procedure**

#### **Rule 81: Attorneys**

(d) Limited Appearance By Counsel. A party in a non-criminal case may appear through an attorney for limited purposes during the course of an action, including, but not limited to, depositions, hearings, discovery, and motion practice, if the following conditions are satisfied:

(1) The attorney files and serves an entry of appearance with the court before or during the initial action or proceeding that expressly states that the appearance is limited, and all parties of record are served with the limited entry of appearance; and

(2) The entry of appearance identifies the limitation by date, time period, or subject matter.

(e) Withdrawal of Attorney.

(1) An attorney who has appeared for a party in an action or proceeding may be permitted to withdraw as counsel for such party only as follows:

(A) For good cause shown, upon motion and notice of hearing served upon the party in accordance with Rule 77 and after the withdrawing attorney provides

(i) to the client a list of pending pretrial or post-trial deadlines, appellate deadlines, motion deadlines, and hearing dates and times; and

(ii) to the court the last known address and telephone number of the attorneys client and a certification that the attorney has complied with (e)(1)(A)(i) of this rule; or

(B) Where the party has other counsel ready to be substituted for the attorney who wishes to withdraw; or

(C) Where the party expressly consents in open court or in writing to the withdrawal of the party's attorney, the party has provided in writing or on the record a current service address and telephone number, and the attorney who wishes to withdraw has provided to the client a list of

## APPENDIX B: RULES OF ETHICS AND PROCEDURE

pending pretrial or post-trial deadlines, appellate deadlines, motion deadlines, and hearing dates and times; or

(D) In accordance with the limitations set forth in any limited entry of appearance filed pursuant to Civil Rule 81(d). An attorney may withdraw under this subparagraph by filing a notice with the court, served on all parties of record, stating that the attorney's limited representation has concluded; certifying that the attorney has taken all actions necessitated by the limited representation; and providing to the court a current service address and telephone number and to the client a list of pending pretrial or post-trial deadlines, appellate deadlines, motion deadlines, and hearing dates and times. Upon the filing of such notice, the withdrawal shall be effective, without court action or approval.

### **Arizona Rules of Professional Conduct**

#### **Rule 1.2: Scope of Representation and Allocation of Authority between Client and Lawyer**

(c) A lawyer may limit the scope of the representation if the limitation is reasonable under the circumstances and the client gives informed consent.

#### **Comment**

[6] The scope of services to be provided by a lawyer may be limited by agreement with the client or by the terms under which the lawyer's services are made available to the client. Representation provided through a legal aid agency may be subject to limitations on the types of cases the agency handles. When a lawyer has been retained by an insurer to represent an insured, for example, the representation may be limited to matters related to the insurance coverage. A limited representation may be appropriate because the client has limited objectives for the representation. In addition, the terms upon which representation is undertaken may exclude specific means that might otherwise be used to accomplish the client's objectives. Such limitations may exclude actions that the client thinks are too costly or that the lawyer regards as repugnant or imprudent.

[7] Although this Rule affords the lawyer and client substantial latitude to limit the representation, the limitation must be reasonable under the circumstances. If, for example, a client's objective is limited to securing general information about the law the client needs in order to handle a common and typically uncomplicated legal problem, the lawyer and client may agree that the lawyer's services will be limited to a brief telephone consultation. Such a limitation, however, would not be reasonable if the time allotted was not sufficient to yield advice upon which the client could rely. Although an agreement for a limited representation does not exempt a lawyer from the duty to provide competent representation, the limitation is a factor to be considered when determining the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation. See ER 1.1.

[8] Although paragraph (c) does not require that the client's informed consent to a limited representation be in writing, a specification of the scope of representation will normally be a

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necessary part of the lawyer's written communication of the rate or basis of the lawyer's fee as required by ER 1.5(b). See ER 1.0(e) for the definition of "informed consent".

[9] All agreements concerning a lawyer's representation of a client must accord with the Rules of Professional Conduct and other law. See, e.g., ERs 1.1, 1.8 and 5.6.

### **Rule 1.5: Fees**

(b) The scope of the representation and the basis or rate of the fee and expenses for which the client will be responsible shall be communicated to the client in writing, before or within a reasonable time after commencing the representation, except when the lawyer will charge a regularly represented client on the same basis or rate. Any changes in the basis or rate of the fee or expenses shall also be communicated in writing before the fees or expenses to be billed at higher rates are actually incurred. The requirements of this subsection shall not apply to:

- (1) court-appointed lawyers who are paid by a court or other governmental entity, and
- (2) lawyers who provide pro bono short-term limited legal services to a client pursuant to ER 6.5.

### **Rule 4.2: Communication with Person Represented by Counsel**

In representing a client, a lawyer shall not communicate about the subject of the representation with a party the lawyer knows to be represented by another lawyer in the matter, unless the lawyer has the consent of the other lawyer or is authorized by law to do so.

#### **Comment**

[4] A person to whom limited-scope representation is being provided or has been provided in accordance with ER 1.2 (c) is considered to be unrepresented for the purposes of this rule unless the opposing party or lawyer knows of the limited-scope representation and the identity of the lawyer providing limited representation. With the consent of the client, a lawyer providing limited-scope representation should consider informing the opposing party or lawyer of the limited-scope representation with instructions as to when opposing counsel may communicate directly with the client. Such instructions may include, for example, whom the opposing counsel should contact on specific matters, to whom and where opposing counsel should send pleadings, correspondence and other notices, and whether the lawyer performing limited-scope services is authorized to accept service on the client's behalf.

[2013 Amendment]

### **Rule 4.3: Dealing with Unrepresented Person**

In dealing on behalf of a client with a person who is not represented by counsel, a lawyer shall not state or imply that the lawyer is disinterested. When the lawyer knows or reasonably should know that the unrepresented person misunderstands the lawyer's role in the matter, the lawyer shall make reasonable efforts to correct the misunderstanding. The lawyer shall not give legal advice to an unrepresented person, other than the advice to secure counsel, if the lawyer knows

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or reasonably should know that the interests of such a person are or have a reasonable possibility of being in conflict with the interests of the client.

### **Comment**

[3] A person to whom limited-scope representation is being provided or has been provided in accordance with ER 1.2 (c) is considered to be unrepresented for the purposes of this rule unless the opposing party or lawyer knows of the limited-scope representation and the identity of the lawyer providing limited representation. With the consent of the client, a lawyer providing limited-scope representation should consider informing the opposing party or lawyer of the limited-scope representation with instructions as to when opposing counsel may communicate directly with the client. Such instructions may include, for example, whom the opposing counsel should contact on specific matters, to whom and where opposing counsel should send pleadings, correspondence and other notices, and whether the lawyer performing limited-scope services is authorized to accept service on the client's behalf.

[2013 Amendment]

### **Rule 6.5: Nonprofit and Court-Annexed Limited Legal Service Programs**

(a) A lawyer who, under the auspices of a program sponsored by a nonprofit organization or court, provides short-term limited legal services to a client without expectation by either the lawyer or the client that the lawyer will provide continuing representation in the matter:

(1) is subject to ERs 1.7 and 1.9(a) only if the lawyer knows that the representation of the client involves a conflict of interest; and

(2) is subject to ER 1.10 only if the lawyer knows that another lawyer associated with the lawyer in a law firm is disqualified by ERs 1.7 or 1.9(a) with respect to the matter.

(b) Except as provided in paragraph (a)(2), ER 1.10 is inapplicable to a representation governed by this Rule.

### **Comment**

[1] Legal service organizations, courts and various nonprofit organizations have established programs through which lawyers provide short-term limited legal services – such as advice or the completion of legal forms – that will assist persons to address their legal problems without further representation by a lawyer. In these programs, such as legal-advice hotlines, advice-only clinics or pro se counseling programs, a client-lawyer relationship is established, but there is no expectation that the lawyer's representation of the client will continue beyond the limited consultation. Such programs are normally operated under circumstances in which it is not feasible for a lawyer to systematically screen for conflicts of interest as is generally required before undertaking a representation. See, e.g., ERs 1.7, 1.9 and 1.10.



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[2] A lawyer who provides short-term limited legal services pursuant to this Rule must secure the client's informed consent to the limited scope of the representation. See ER 1.2(c). If a short-term limited representation would not be reasonable under the circumstances, the lawyer may offer advice to the client but must also advise the client of the need for further assistance of counsel. Except as provided in this Rule, the Rules of Professional Conduct, including ERs 1.6 and 1.9(c), are applicable to the limited representation.

[3] Because a lawyer who is representing a client in the circumstances addressed by this Rule ordinarily is not able to check systematically for conflicts of interest, paragraph (a) requires compliance with ERs 1.7 or 1.9(a) only if the lawyer knows that the representation presents a conflict of interest for the lawyer, and with ER 1.10 only if the lawyer knows that another lawyer in the lawyer's firm is disqualified by ERs 1.7 or 1.9(a) in the matter.

[4] Because the limited nature of the services significantly reduces the risk of conflicts of interest with the other matters being handled by the lawyer's firm, paragraph (b) provides that ER 1.10 is inapplicable to a representation governed by this Rule except as provided by paragraph (a)(2). Paragraph (a)(2) requires the participating lawyer to comply with ER 1.10 when the lawyer knows that the lawyer's firm is disqualified by ERs 1.7 or 1.9(a). By virtue of paragraph (b), however, a lawyer's participation in a short-term limited legal services program will not preclude the lawyer's firm from undertaking or continuing the representation of a client with interests adverse to a client being represented under the program's auspices. Nor will the personal disqualification of a lawyer participating in the program be imputed to other lawyers participating in the program.

[5] If, after commencing a short-term limited representation in accordance with this Rule, a lawyer undertakes to represent the client in the matter on an ongoing basis, ERs 1.7, 1.9(a) and 1.10 become applicable.

### Arizona Rules of Civil Procedure

#### Rule 5.1: Duties of Counsel

**(c) Limited Appearance.** In accordance with ER 1.2, Arizona Rules of Professional Conduct, an attorney may undertake limited representation of a person involved in a court proceeding.

(1) An attorney may make a limited appearance by filing and serving a Notice of Limited Scope Representation. The notice shall:

(A) state that the attorney and the party have a written agreement that the attorney will provide limited scope representation to the party for the purpose of representing the party in such an action; and

(B) specify the matters, hearings, or issues with regard to which the attorney will represent the party.

(2) Service on an attorney making a limited appearance on behalf of a party shall constitute effective service on that party under Rule 5(c) with respect to all matters in the action, but shall not extend the attorney's responsibility for representing the party beyond the specific matters, hearings, or issues for which the attorney has appeared.

## APPENDIX B: RULES OF ETHICS AND PROCEDURE

(3) Upon an attorney's completion of the representation specified in the Notice of Limited Scope Representation, the attorney may withdraw from the action as follows:

(A) **With Consent.** If the client consents to withdrawal, the attorney may withdraw from the action by filing a Notice of Withdrawal with Consent, signed by both the attorney and the client, stating: (i) the attorney has completed the representation specified in the Notice of Limited Scope Representation and will no longer be representing the party; and (ii) the last known address and telephone number of the party who will no longer be represented. The attorney shall serve a copy of the notice on the party who will no longer be represented and on all other parties. The attorney's withdrawal from the action shall be effective upon the filing and service of the Notice of Withdrawal with Consent.

(B) **Without Consent.** If the client does not consent to withdrawal or to sign a Notice of Withdrawal with Consent, the attorney may file a motion to withdraw, which shall be served upon the client and all other parties, along with a proposed form of order.

(i) If no objection is filed within ten (10) days from the date the motion is served on the client, the court shall sign the order unless it determines that good cause exists to hold a hearing on whether the attorney has completed the limited scope representation for which the attorney has appeared. If the court signs the order, the withdrawing attorney shall serve a copy of the order on the client. The withdrawing attorney also shall promptly serve a written notice of the entry of such order, together with the name, last known address, and telephone number of the client, on all other parties.

(ii) If an objection is filed within ten (10) days of the service of the motion, the court shall conduct a hearing to determine whether the attorney has completed the limited scope representation for which the attorney appeared.

### **Rule 5.2: Limited Scope Representation in Vulnerable Adult Exploitation Actions Brought under A.R.S. § 46-451, et seq.**

**(a) Limited Appearance.** An attorney may make a limited appearance on behalf of a claimant in a vulnerable adult exploitation action brought under A.R.S. § 46-451, *et seq.*, by filing and serving a Notice of Limited Scope Representation in the form prescribed in Rule 84, Form 8. The notice shall:

(1) state that the attorney and the party have a written agreement that the attorney will provide limited scope representation to the party for the purpose of representing the party in such an action; and

(2) specify the matters, hearings or issues with regard to which the attorney will represent the party.

**(b) Service; Limits on Scope of Appearance.** Service on an attorney making a limited appearance on behalf of a party shall constitute effective service on that party under Rule 5(c) with respect to all matters in the action, but shall not extend the attorney's responsibility for representing the party beyond the specific matters, hearings or issues for which the attorney has appeared. Nothing in this Rule shall limit an attorney's ability to provide limited services to a client without appearing of record in any judicial proceedings.

## APPENDIX B: RULES OF ETHICS AND PROCEDURE

**(c) Withdrawal.** Upon an attorney's completion of the representation specified in the Notice of Limited Scope Representation, the attorney may withdraw from the action as follows:

(1) *With Consent.* If the client consents to withdrawal, the attorney may withdraw from the action by filing a Notice of Withdrawal with Consent, signed by both the attorney and the client, stating: (i) the attorney has completed the representation specified in the Notice of Limited Scope Representation and will no longer be representing the party; and (ii) the last known address and telephone number of the party who will no longer be represented. The attorney shall serve a copy of the notice on the party who will no longer be represented and on all other parties. The attorney's withdrawal from the action shall be effective upon the filing and service of the Notice of Withdrawal with Consent.

(2) *Without Consent.* If the client does not consent to withdrawal or sign a Notice of Withdrawal with Consent, the attorney may file a motion to withdraw, which shall be served upon the client and all other parties, along with a proposed form of order.

(i) If no objection is filed within ten (10) days from the date the motion is served on the client, the court shall sign the order unless it determines that good cause exists to hold a hearing on whether the attorney has completed the limited scope representation for which the attorney has appeared. If the court signs the order, the withdrawing attorney shall serve a copy of the order on the client. The withdrawing attorney also shall promptly serve a written notice of the entry of such order, together with the name, last known address and telephone number of the client, on all other parties.

(ii) If an objection is filed within ten (10) days of the service of the motion, the court shall conduct a hearing to determine whether the attorney has completed the limited scope representation for which the attorney appeared.

**(d) Experimental Rule.** This rule shall be deemed experimental in nature and shall be reviewed in approximately four years by a committee to be appointed by the Supreme Court.

(Added Sept. 16, 2008, effective Jan. 1, 2009)

### **Rule 11(a): Signing of pleadings, motions and other papers; sanctions**

Every pleading, motion, and other paper of a party represented by an attorney shall be signed by at least one attorney of record in the attorney's individual name, whose address shall be stated. A party who is not represented by an attorney shall sign the party's pleading, motion, or other paper and state the party's address. Except when otherwise specifically provided by rule or statute, pleadings need not be verified or accompanied by affidavit. The rule in equity that the averments of an answer under oath must be overcome by the testimony of two witnesses or of one witness sustained by corroborating circumstances is abolished. The signature of an attorney or party constitutes a certificate by the signer that the signer has read the pleading, motion, or other paper; that to the best of the signer's knowledge, information, and belief formed after reasonable inquiry it is well grounded in fact and is warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law; and that it is not interposed for any

## APPENDIX B: RULES OF ETHICS AND PROCEDURE

improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation. If a pleading, motion, or other paper is not signed, it shall be stricken unless it is signed promptly after the omission is called to the attention of the pleader or movant. If a pleading, motion or other paper is signed in violation of this rule, the court, upon motion or upon its own initiative, shall impose upon the person who signed it, a represented party, or both, an appropriate sanction, which may include an order to pay to the other party or parties the amount of the reasonable expenses incurred because of the filing of the pleading, including a reasonable attorney's fee. An attorney may help to draft a pleading, motion or document filed by an otherwise self-represented person, and the attorney need not sign that pleading, motion, or document. In providing such drafting assistance, the attorney may rely on the otherwise self-represented person's representation of facts, unless the attorney has reason to believe that such representations are false or materially insufficient, in which instance the attorney shall make an independent reasonable inquiry into the facts.

### **Arizona Rules of Family Law Procedure**

#### **Rule 9: Duties of Counsel**

##### **B. Limited Scope Representation: Appearance and Withdrawal.**

This provision shall be deemed experimental in nature and shall expire three (3) calendar years from the initial effective date of these rules unless otherwise extended.

1. *Limited Appearance.* An attorney may make a limited appearance subject to E.R.1.2, *Arizona Rules of Professional Conduct*, by filing a Notice of Limited Scope Representation as prescribed in Rule 97, Form 1, stating that the attorney and the party have a written agreement that the attorney will provide limited scope representation to the party and specifying the matter or issues with regard to which the attorney will represent the party. Service on an attorney who has made a limited appearance for a party shall be valid, to the extent permitted by statute and Rule 43(C), in all matters in the case but shall not extend the attorney's responsibility for representation of the client beyond the specific matter for which the attorney has appeared. Nothing in this rule shall limit an attorney's ability to provide limited services to a client without appearing of record in any judicial proceedings.

2. *Withdrawal and Substitution.* In addition to the provisions for withdrawal of counsel pursuant to paragraph A of this rule, an attorney who has made a limited appearance in an action shall be permitted to withdraw, or be substituted, as attorney of record in any pending action as set forth in this rule.

a. *With Consent.* Upon the attorney's completion of the task specified in the Notice of Limited Scope Representation, the attorney shall file a Notice of Withdrawal of Attorney with Consent, signed by both the attorney and the party, stating that the attorney will no longer be representing the party, and, unless protected pursuant to Rule 7, stating the last known address and telephone number of the party who will no longer be represented, and shall lodge a form of order to be signed by the court. The attorney shall provide a copy of the notice to the party who will no longer be represented and to all other parties or their attorneys, if they are represented by counsel.

## APPENDIX B: RULES OF ETHICS AND PROCEDURE

b. *Without Consent.* Notwithstanding paragraph A, an attorney who has completed the task specified in the Notice of Limited Scope Representation may use the procedure in this rule to request that the attorney be withdrawn as counsel in the case in which the attorney has appeared before the court as attorney of record and the client has not signed a Notice of Withdrawal with Consent. Such request shall be made by motion and shall be served upon the client and all other parties or their attorneys, along with a proposed form of order. If no objection is filed within ten (10) days from the date the motion is served on the client, the court shall sign the order. After the order is signed, the attorney shall serve a copy of the signed order on the client. If an objection is filed within ten (10) days of service of the motion, the court may conduct a hearing to determine whether the task for which the attorney appeared has been completed.

APPENDIX B: RULES OF ETHICS AND PROCEDURE

**Rule 97, FORM 1: NOTICE OF LIMITED SCOPE REPRESENTATION**

FORM 1: NOTICE OF LIMITED SCOPE REPRESENTATION

Name: \_\_\_\_\_  
Mailing Address: \_\_\_\_\_  
City, State, Zip Code: \_\_\_\_\_  
Daytime Phone Number: \_\_\_\_\_  
Evening Phone Number: \_\_\_\_\_  
Representing:  Self  Petitioner  Respondent  
State Bar Number: \_\_\_\_\_

ARIZONA SUPERIOR COURT, COUNTY OF \_\_\_\_\_

Case No. \_\_\_\_\_  
\_\_\_\_\_  
Petitioner/Plaintiff ATLAS No. \_\_\_\_\_  
\_\_\_\_\_  
Respondent/Defendant NOTICE OF LIMITED SCOPE REPRESENTATION

COMES NOW the undersigned attorney and enters a Notice of Limited Appearance for  Petitioner  Respondent \_\_\_\_\_, pursuant to ARFLP 27.

1. Counsel's appearance in this matter shall be limited in scope to the following matter(s): (Select all that are applicable, and provide detailed description of services, including any scheduled appearances, as needed.)

- Protective Orders
  - Order of Protection
  - Injunction Against Harassment
  - Injunction Against Workplace Harassment
- Voluntary acknowledgment of paternity
- Establishment of Child Support (IV-D)
- Rule 38(b) motion (specify) \_\_\_\_\_
- U.C.C.J.E.A. Hearing \_\_\_\_\_
- Temporary Orders (Pre-Decree) (specify any limitations) \_\_\_\_\_
- Accelerated or Expedited Petition (Pre-Decree) \_\_\_\_\_
- Resolution Management Conference
- Arbitration
- Mediation
- Other ADR Process (specify) \_\_\_\_\_
- Settlement Conference

APPENDIX B: RULES OF ETHICS AND PROCEDURE

Case No. \_\_\_\_\_

- Expedited Services Conference (specify type, e.g. child support establishment, enforcement, or modifications; custody or parenting time enforcement or modification; or other) \_\_\_\_\_
- Enforcement of Decree or Order (specify, as follows):
  - Child support \_\_\_\_\_
  - Custody & parenting time \_\_\_\_\_
  - \_\_\_\_\_
  - Spousal maintenance \_\_\_\_\_
  - Property/debt issues \_\_\_\_\_
  - Other: \_\_\_\_\_
  - \_\_\_\_\_
- Modification of Decree or Order (specify as follows):
  - Child support \_\_\_\_\_
  - Custody & parenting time \_\_\_\_\_
  - \_\_\_\_\_
  - Spousal maintenance \_\_\_\_\_
  - Other: \_\_\_\_\_
  - \_\_\_\_\_
- Emergency Petition (Post-Decree) \_\_\_\_\_
- Qualified Domestic Relations Order \_\_\_\_\_
- Filing of Foreign Decree \_\_\_\_\_
- Warrant to take Physical Custody \_\_\_\_\_
- Child Custody or Parenting Time by a Non-parent \_\_\_\_\_
- Other motion and hearing thereon, specifically: \_\_\_\_\_
- Attend Deposition(s) of (names) \_\_\_\_\_
- Conduct the following discovery: \_\_\_\_\_
- \_\_\_\_\_
- Other: \_\_\_\_\_
- \_\_\_\_\_

APPENDIX B: RULES OF ETHICS AND PROCEDURE

Case No. \_\_\_\_\_

- 2. Counsel named above is attorney of record and available for service of process in accordance with Rule 27, ARFLP. Service on counsel shall be valid, to the extent permitted by statute and Rule 43(C), in all matters in the case but shall not extend the counsel's responsibility for representation of the client beyond the specific matter for which the attorney has appeared. For service directly upon the party, the party's name, address and phone number are listed below.

Name: \_\_\_\_\_  
 Address: \_\_\_\_\_  
 City, State Zip Code: \_\_\_\_\_  
 Telephone: \_\_\_\_\_

- 3. The opposing party, or his/her counsel [ ] may [ ] may not directly contact the party represented by the undersigned attorney regarding matters outside the scope of this limited representation without first consulting the undersigned attorney.
- 4. Counsel's representation of client will terminate at the conclusion of the hearing noted above, if shown, or at the conclusion of the matter noted above, upon the filing of a Notice of Withdrawal of Attorney, pursuant to Rule 27, ARFLP.
- 5. This accurately sets forth the terms of the written agreement between counsel and the party for limited scope legal representation.

\_\_\_\_\_  
Date

\_\_\_\_\_  
Attorney

I have read and approve of this notice.

\_\_\_\_\_  
Date

\_\_\_\_\_  
Client

ORIGINAL of the foregoing filed with the Clerk of the Superior Court;  
COPIES of the foregoing mailed/delivered this \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, to:

The Honorable \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

By: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Attorney for \_\_\_\_\_



**Arkansas Rules of Professional Conduct**

**Rule 1.2: Scope of Representation and Allocation of Authority between Client and Lawyer**

(c) A lawyer may limit the scope of the representation if the limitation is reasonable under the circumstances and the client gives informed consent

**Comment**

[6] The scope of services to be provided by a lawyer may be limited by agreement with the client or by the terms under which the lawyer's services are made available to the client. When a lawyer has been retained by an insurer to represent an insured, for example, the representation may be limited to matters related to the insurance coverage. A limited representation may be appropriate because the client has limited objectives for the representation. In addition, the terms upon which representation is undertaken may exclude specific means that might otherwise be used to accomplish the client's objectives. Such limitations may exclude actions that the client thinks are too costly or that the lawyer regards as repugnant or imprudent.

[7] Although this Rule affords the lawyer and client substantial latitude to limit the representation, the limitation must be reasonable under the circumstances. If, for example, a client's objective is limited to securing general information about the law the client needs in order to handle a common and typically uncomplicated legal problem, the lawyer and client may agree that the lawyer's services will be limited to a brief telephone consultation. Such a limitation, however, would not be reasonable if the time allotted was not sufficient to yield advice upon which the client could rely. Although an agreement for a limited representation does not exempt a lawyer from the duty to provide competent representation, the limitation is a factor to be considered when determining the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation. See Rule 1.1.

**Rule 6.5: Nonprofit and Court-Annexed Limited Legal Services Programs**

(a) A lawyer who, under the auspices of a program sponsored by a nonprofit organization or court, provides short-term limited legal services to a client without expectation by either the lawyer or the client that the lawyer will provide continuing representation in the matter:

(1) is subject to Rules 1.7 and 1.9(a) only if the lawyer knows that the representation of the client involves a conflict of interest; and

(2) is subject to Rule 1.10 only if the lawyer knows that another lawyer associated with the lawyer in a law firm is disqualified by Rule 1.7 or 1.9(a) with respect to the matter.

(b) Except as provided in paragraph (a)(2), Rule 1.10 is inapplicable to a representation governed by this Rule.

## APPENDIX B: RULES OF ETHICS AND PROCEDURE

### Comment

[1] Legal services organizations, courts and various nonprofit organizations have established programs through which lawyers provide short-term limited legal services such as advice or the completion of legal forms - that will assist persons to address their legal problems without further representation by a lawyer. In these programs, such as legal-advice hotlines, advice-only clinics or pro se counseling programs, a client-lawyer relationship is established, but there is no expectation that the lawyer's representation of the client will continue beyond the limited consultation. Such programs are normally operated under circumstances in which it is not feasible for a lawyer to systematically screen for conflicts of interest as is generally required before undertaking a representation. See, e.g., Rules 1.7, 1.9 and 1.10.

[2] A lawyer who provides short-term limited legal services pursuant to this Rule must secure the client's informed consent to the limited scope of the representation. See Rule 1.2(c). If a short-term limited representation would not be reasonable under the circumstances, the lawyer may offer advice to the client but must also advise the client of the need for further assistance of counsel. Except as provided in this Rule, the Rules of Professional Conduct, including Rules 1.6 and 1.9(c), are applicable to the limited representation.

[3] Because a lawyer who is representing a client in the circumstances addressed by this Rule ordinarily is not able to check systematically for conflicts of interest, paragraph (a) requires compliance with Rules 1.7 or 1.9(a) only if the lawyer knows that the representation presents a conflict of interest for the lawyer, and with Rule 1.10 only if the lawyer knows that another lawyer in the lawyer's firm is disqualified by Rules 1.7 or 1.9(a) in the matter.

[4] Because the limited nature of the services significantly reduces the risk of conflicts of interest with other matters being handled by the lawyer's firm, paragraph (b) provides that Rule 1.10 is inapplicable to a representation governed by this Rule except as provided by paragraph (a)(2). Paragraph (a)(2) requires the participating lawyer to comply with Rule 1.10 when the lawyer knows that the lawyer's firm is disqualified by Rules 1.7 or 1.9(a). By virtue of paragraph (b), however, a lawyer's participation in a short-term limited legal services program will not preclude the lawyer's firm from undertaking or continuing the representation of a client with interests adverse to a client being represented under the program's auspices. Nor will the personal disqualification of a lawyer participating in the program be imputed to other lawyers participating in the program.

[5] If, after commencing a short-term limited representation in accordance with this Rule, a lawyer undertakes to represent the client in the matter on an ongoing basis, Rules 1.7, 1.9(a) and 1.10 become applicable.

### **California Rules of Professional Conduct**

#### **Rule 1-650 Limited Legal Services Programs**

(A) A member who, under the auspices of a program sponsored by a court, government agency, bar association, law school, or nonprofit organization, provides short-term limited legal services

## APPENDIX B: RULES OF ETHICS AND PROCEDURE

to a client without expectation by either the member or the client that the member will provide continuing representation in the matter:

(1) is subject to rule 3-310 only if the member knows that the representation of the client involves a conflict of interest; and

(2) has an imputed conflict of interest only if the member knows that another lawyer associated with the member in a law firm would have a conflict of interest under rule 3-310 with respect to the matter.

(B) Except as provided in paragraph (A)(2), a conflict of interest that arises from a member's participation in a program under paragraph (A) will not be imputed to the member's law firm.

(C) The personal disqualification of a lawyer participating in the program will not be imputed to other lawyers participating in the program.

### *Discussion:*

[1] Courts, government agencies, bar associations, law schools and various nonprofit organizations have established programs through which lawyers provide short-term limited legal services - such as advice or the completion of legal forms that will assist persons in addressing their legal problems without further representation by a lawyer. In these programs, such as legal-advice hotlines, advice-only clinics or pro se counseling programs, whenever a lawyer-client relationship is established, there is no expectation that the lawyer's representation of the client will continue beyond that limited consultation. Such programs are normally operated under circumstances in which it is not feasible for a lawyer to systematically screen for conflicts of interest as is generally required before undertaking a representation.

[2] A member who provides short-term limited legal services pursuant to rule 1-650 must secure the client's informed consent to the limited scope of the representation. If a short-term limited representation would not be reasonable under the circumstances, the member may offer advice to the client but must also advise the client of the need for further assistance of counsel. See rule 3-110. Except as provided in this rule 1-650, the Rules of Professional Conduct and the State Bar Act, including the member's duty of confidentiality under Business and Professions Code § 6068(e)(1), are applicable to the limited representation. (Added by order of the Supreme Court, operative August 28, 2009.)

[3] A member who is representing a client in the circumstances addressed by rule 1-650 ordinarily is not able to check systematically for conflicts of interest. Therefore, paragraph (A)(1) requires compliance with rule 3-310 only if the member knows that the representation presents a conflict of interest for the member. In addition, paragraph (A)(2) imputes conflicts of interest to the member only if the member knows that another lawyer in the member's law firm would be disqualified under rule 3-310.

[4] Because the limited nature of the services significantly reduces the risk of conflicts of interest with other matters being handled by the member's law firm, paragraph (B) provides that imputed conflicts of interest are inapplicable to a representation governed by this rule except as provided

## APPENDIX B: RULES OF ETHICS AND PROCEDURE

by paragraph (A)(2). Paragraph (A)(2) imputes conflicts of interest to the participating member when the member knows that any lawyer in the member's firm would be disqualified under rule 3-310. By virtue of paragraph (B), moreover, a member's participation in a short-term limited legal services program will not be imputed to the member's law firm or preclude the member's law firm from undertaking or continuing the representation of a client with interests adverse to a client being represented under the program's auspices. Nor will the personal disqualification of a lawyer participating in the program be imputed to other lawyers participating in the program.

[5] If, after commencing a short-term limited representation in accordance with rule 1-650, a member undertakes to represent the client in the matter on an ongoing basis, rule 3-310 and all other rules become applicable. (Added by order of the Supreme Court, operative August 28, 2009.)

### **California Civil Rules**

#### **Civil Rule 3.35: Definition of Limited Scope Representation; application of rules**

(a) Definition. "Limited scope representation" is a relationship between an attorney and a person seeking legal services in which they have agreed that the scope of the legal services will be limited to specific tasks that the attorney will perform for the person.

(b) Application. Rules 3.35 through 3.37 apply to limited scope representation in civil cases, except in family law cases. Rules 5.70 and 5.71 apply to limited scope representation in family law cases.

(c) Types of limited scope representation. These rules recognize two types of limited scope representation:

(1) *Noticed representation*. Rule 3.36 provides procedures for cases in which an attorney and a party notify the court and other parties of the limited scope representation.

(2) *Undisclosed representation*. Rule 3.37 applies to cases in which the limited scope representation is not disclosed.

#### **Civil Rule 3.36: Notice of limited scope representation and application to be relieved as attorney**

##### **(a) Notice of limited scope representation**

A party and an attorney may provide notice of their agreement to limited scope representation by serving and filing a *Notice of Limited Scope Representation* (form MC-950).

## APPENDIX B: RULES OF ETHICS AND PROCEDURE

### **(b) Notice and service of papers**

After the notice in (a) is received and until either a substitution of attorney or an order to be relieved as attorney is filed and served, papers in the case must be served on both the attorney providing the limited scope representation and the client.

### **(c) Procedures to be relieved as counsel on completion of representation**

Notwithstanding rule 3.1362, an attorney who has completed the tasks specified in the *Notice of Limited Scope Representation* (form MC-950) may use the procedures in this rule to request that he or she be relieved as attorney in cases in which the attorney has appeared before the court as an attorney of record and the client has not signed a *Substitution of Attorney-Civil* (form MC-050).

### **(d) Application**

An application to be relieved as attorney on completion of limited scope representation under Code of Civil Procedure section 284(2) must be directed to the client and made on the *Application to Be Relieved as Attorney on Completion of Limited Scope Representation* (form MC-955).

### **(e) Filing and service of application**

The application to be relieved as attorney must be filed with the court and served on the client and on all other parties or attorneys for parties in the case. The client must also be served with a blank *Objection to Application to Be Relieved as Attorney on Completion of Limited Scope Representation* (form MC-956).

### **(f) No objection**

If no objection is served and filed with the court within 15 days from the date that the *Application to Be Relieved as Attorney on Completion of Limited Scope Representation* (form MC-955) is served on the client, the attorney making the application must file an updated form MC-955 indicating the lack of objection, along with a proposed *Order on Application to Be Relieved as Attorney on Completion of Limited Scope Representation* (form MC-958). The clerk must then forward the order for judicial signature.

### **(g) Objection**

If an objection to the application is served and filed within 15 days, the clerk must set a hearing date on the *Objection to Application to Be Relieved as Attorney on Completion of Limited Scope Representation* (form MC-956). The hearing must be scheduled no later than 25 days from the date the objection is filed. The clerk must send the notice of the hearing to the parties and the attorney.

## APPENDIX B: RULES OF ETHICS AND PROCEDURE

### **(h) Service of the order**

If no objection is served and filed and the proposed order is signed under (f), the attorney who filed the *Application to Be Relieved as Attorney on Completion of Limited Scope Representation* (form MC-955) must serve a copy of the signed order on the client and on all parties or the attorneys for all parties who have appeared in the case. The court may delay the effective date of the order relieving the attorney until proof of service of a copy of the signed order on the client has been filed with the court.

Rule 3.36 adopted effective January 1, 2007.

### **Civil Rule 3.37: Nondisclosure of attorney assistance in preparation of court documents**

#### **(a) Nondisclosure**

In a civil proceeding, an attorney who contracts with a client to draft or assist in drafting legal documents, but not to make an appearance in the case, is not required to disclose within the text of the documents that he or she was involved in preparing the documents.

Rule 3.37 adopted effective January 1, 2007.

### **California Family and Juvenile Rules**

### **Family and Juvenile Rule 5.70: Nondisclosure of attorney assistance in preparation of court documents**

#### **(a) Nondisclosure**

In a family law proceeding, an attorney who contracts with a client to draft or assist in drafting legal documents, but not to make an appearance in the case, is not required to disclose within the text of the document that he or she was involved in preparing the documents.

#### **(b) Attorney's fees**

If a litigant seeks a court order for attorney's fees incurred as a result of document preparation, the litigant must disclose to the court information required for a proper determination of attorney's fees-including the name of the attorney who assisted in the preparation of the documents, the time involved or other basis for billing, the tasks performed, and the amount billed.

(Subd (b) amended effective January 1, 2007.)

#### **(c) Applicability**

This rule does not apply to an attorney who has made a general appearance or has contracted with his or her client to make an appearance on any issue that is the subject of the pleadings.

**Family and Juvenile Rule 5.71: Application to be relieved as counsel on completion of limited scope representation**

**(a) Applicability of this rule**

Notwithstanding rule 3.1362, an attorney who has completed the tasks specified in the *Notice of Limited Scope Representation* (form FL-950) may use the procedure in this rule to request that the attorney be relieved as counsel in cases in which the attorney has appeared before the court as attorney of record and the client has not signed a *Substitution of Attorney—Civil* (form MC-050).

*(Subd (a) amended effective July 1, 2007.)*

**(b) Notice**

An application to be relieved as counsel on completion of limited scope representation under Code of Civil Procedure section 284(2) must be directed to the client and made on the *Application to Be Relieved as Counsel Upon Completion of Limited Scope Representation* (form FL-955).

*(Subd (b) amended effective January 1, 2007.)*

**(c) Service**

The application must be filed with the court and served on the client and on all other parties and counsel who are of record in the case. The client must also be served with *Objection to Application to Be Relieved as Counsel Upon Completion of Limited Scope Representation* (form FL-956).

*(Subd (c) amended effective January 1, 2007.)*

**(d) No objection**

If no objection is filed within 15 days from the date that the *Application to Be Relieved as Counsel Upon Completion of Limited Scope Representation* (form FL-955) is served upon the client, the attorney making the application must file an updated form FL-955 indicating the lack of objection, along with a proposed *Order on Application to Be Relieved as Counsel Upon Completion of Limited Scope Representation* (form FL-958). The clerk will then forward the file with the proposed order for judicial signature.

**(e) Objection**

If an objection is filed within 15 days, the clerk must set a hearing date on the *Objection to Application to Be Relieved as Counsel Upon Completion of Limited Scope Representation* (form FL-956). The hearing must be scheduled no later than 25 days from the date the objection is filed. The clerk must send the notice of the hearing to the parties and counsel.

## APPENDIX B: RULES OF ETHICS AND PROCEDURE

### **(f) Service of the order**

After the order is signed, a copy of the signed order must be served by the attorney who has filed the *Application to Be Relieved as Counsel Upon Completion of Limited Scope Representation* (form FL-955) on the client and on all parties who have appeared in the case. The court may delay the effective date of the order relieving counsel until proof of service of a copy of the signed order on the client has been filed with the court.

*Rule 5.71 amended effective July 1, 2007; adopted as rule 5.171 effective July 1, 2003; previously renumbered effective January 1, 2004; previously amended effective January 1, 2007*

### **California Judicial Administration Rules**

#### **Rule of Court 10.960: Court self-help centers**

**(a) Scope and application.** This rule applies to all court-based self-help centers whether the services provided by the center are managed by the court or by an entity other than the court.

**(b) Purpose and core court function.** Providing access to justice for self-represented litigants is a priority for California courts. The services provided by court self-help centers facilitate the timely and cost-effective processing of cases involving self-represented litigants and improve the delivery of justice to the public. Court programs, policies, and procedures designed to assist self-represented litigants and effectively manage cases involving self-represented litigants at all stages must be incorporated and budgeted as core court functions.

**(c) Staffing.** Court self-help centers provide assistance to self-represented litigants. A court self-help center must include an attorney and other qualified staff who provide information and education to self-represented litigants about the justice process, and who work within the court to provide for the effective management of cases involving self-represented litigants.

**(d) Neutrality and availability.** The information and education provided by court self-help centers must be neutral and unbiased, and services must be available to all sides of a case.

**(e) Guidelines and procedures.** The Administrative Office of the Courts, in collaboration with judges, court executives, attorneys, and other parties with demonstrated interest in services to self-represented litigants, must develop and disseminate guidelines and procedures for the operation of court self-help centers to the trial courts by March 1, 2008. The guidelines and procedures must address the following topics:

- (1) Location and hours of operation;
- (2) Scope of services;
- (3) Attorney qualifications;
- (4) Other staffing qualifications and supervision requirements;
- (5) Language access;
- (6) Contracts with entities other than the court that provide self-help services;
- (7) Use of technology;



## APPENDIX B: RULES OF ETHICS AND PROCEDURE

- (8) Ethics;
- (9) Efficiency of operation; and
- (10) Security.

The Administrative Office of the Courts, in collaboration with judges, court executives, attorneys, and other parties with demonstrated interest in services to self-represented litigants, must review and update the guidelines and procedures at least every three years.

**(f) Budget and funding.** A court must include in its annual budget funding necessary for operation of its self-help center. In analyzing and making recommendations on the allocation of funding for a court self-help center, the Administrative Office of the Courts will consider the degree to which individual courts have been successful in meeting the guidelines and procedures for the operation of the self-help center.

*Rule 10.960 adopted effective January 1, 2008.*

### **Colorado Rules of Professional Conduct**

#### **Rule 1.2: Scope of Representation and Allocation of Authority Between Client and Lawyer**

(c) A lawyer may limit the scope or objectives, or both, of the representation if the limitation is reasonable under the circumstances and the client gives informed consent. A lawyer may provide limited representation to pro se parties as permitted by C.R.C.P. 11(b) and C.R.C.P. 311(b).

#### **Comment**

[6] The scope of services to be provided by a lawyer may be limited by agreement with the client or by the terms under which the lawyer's services are made available to the client. When a lawyer has been retained by an insurer to represent an insured, for example, the representation may be limited to matters related to the insurance coverage. A limited representation may be appropriate because the client has limited objectives for the representation. In addition, the terms upon which representation is undertaken may exclude specific means that might otherwise be used to accomplish the client's objectives. Such limitations may exclude actions that the client thinks are too costly or that the lawyer regards as repugnant or imprudent.

[7] Although this Rule affords the lawyer and client substantial latitude to limit the representation, the limitation must be reasonable under the circumstances. If, for example, a client's objective is limited to securing general information about the law the client needs in order to handle a common and typically uncomplicated legal problem, the lawyer and client may agree that the lawyer's services will be limited to a brief telephone consultation. Such a limitation, however, would not be reasonable if the time allotted was not sufficient to yield advice upon which the client could rely. Although an agreement for a limited representation does not exempt a lawyer from the duty to provide competent representation, the limitation is a factor to be considered when determining the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation. See Rule 1.1.

## APPENDIX B: RULES OF ETHICS AND PROCEDURE

[8] All agreements concerning a lawyer's representation of a client must accord with the Rules of Professional Conduct and other law. See, e.g., Rules 1.1, 1.8 and 5.6.

### **Rule 4.2: Communication with Person Represented by Counsel**

In representing a client, a lawyer shall not communicate about the subject of the representation with a person the lawyer knows to be represented by another lawyer in the matter, unless the lawyer has the consent of the other lawyer or is authorized to do so by law or a court order.

#### **Comment**

[9A] A pro se party to whom limited representation has been provided in accordance with C.R.C.P. 11(b) or C.R.C.P. 311(b), and Rule 1.2, is considered to be unrepresented -for purposes of this Rule unless the lawyer has knowledge to the contrary.

### **Rule 4.3: Dealing with Unrepresented Person**

In dealing on behalf of a client with a person who is not represented by counsel, a lawyer shall not state or imply that the lawyer is disinterested. When the lawyer knows or reasonably should know that the unrepresented person misunderstands the lawyer's role in the matter, the lawyer shall make reasonable efforts to correct the misunderstanding. The lawyer shall not give legal advice to an unrepresented person, other than the advice to secure counsel, if the lawyer knows or reasonably should know that the interests of such a person are or have a reasonable possibility of being in conflict with the interests of the client.

[2A] The lawyer must comply with the requirements of this Rule for pro se parties to whom limited representation has been provided, in accordance with C.R.C.P. 11(b), C.R.C.P. 311(b), Rule 1.2, and Rule 4.2. Such parties are considered to be unrepresented for purposes of this Rule.

### **Rule 6.5: Nonprofit and Court-Annexed Limited Legal Services Programs**

(a) A lawyer who, under the auspices of a program sponsored by a nonprofit organization or court, provides short-term limited legal services to a client without expectation by either the lawyer or the client that the lawyer will provide continuing representation in the matter:

(1) is subject to Rules 1.7 and 1.9(a) only if the lawyer knows that the representation of the client involves a conflict of interest; and

(2) is subject to Rule 1.10 only if the lawyer knows that another lawyer associated with the lawyer in a law firm is disqualified by Rule 1.7 or 1.9(a) with respect to the matter.

(b) Except as provided in paragraph (a)(2), Rule 1.10 is inapplicable to a representation governed by this Rule.

## APPENDIX B: RULES OF ETHICS AND PROCEDURE

### Comment

[1] Legal services organizations, courts and various nonprofit organizations have established programs through which lawyers provide short-term limited legal services – such as advice or the completion of legal forms – that will assist persons to address their legal problems without further representation by a lawyer. In these programs, such as legal-advice hotlines, advice-only clinics or pro se counseling programs, a client-lawyer relationship is established, but there is no expectation that the lawyer's representation of the client will continue beyond the limited consultation. Such programs are normally operated under circumstances in which it is not feasible for a lawyer to systematically screen for conflicts of interest as is generally required before undertaking a representation. See, e.g., Rules 1.7, 1.9 and 1.10.

[2] A lawyer who provides short-term limited legal services pursuant to this Rule must secure the client's informed consent to the limited scope of the representation. See Rule 1.2(c). If a short-term limited representation would not be reasonable under the circumstances, the lawyer may offer advice to the client but must also advise the client of the need for further assistance of counsel. Except as provided in this Rule, the Rules of Professional Conduct, including Rules 1.6 and 1.9(c), are applicable to the limited representation.

[3] Because a lawyer who is representing a client in the circumstances addressed by this Rule ordinarily is not able to check systematically for conflicts of interest, paragraph (a) requires compliance with Rules 1.7 or 1.9(a) only if the lawyer knows that the representation presents a conflict of interest for the lawyer, and with Rule 1.10 only if the lawyer knows that another lawyer in the lawyer's firm is disqualified by Rules 1.7 or 1.9(a) in the matter.

[4] Because the limited nature of the services significantly reduces the risk of conflicts of interest with other matters being handled by the lawyer's firm, paragraph (b) provides that Rule 1.10 is inapplicable to a representation governed by this Rule except as provided by paragraph (a)(2). Paragraph (a)(2) requires the participating lawyer to comply with Rule 1.10 when the lawyer knows that the lawyer's firm is disqualified by Rules 1.7 or 1.9(a). By virtue of paragraph (b), however, a lawyer's participation in a short-term limited legal services program will not preclude the lawyer's firm from undertaking or continuing the representation of a client with interests adverse to a client being represented under the program's auspices. Nor will the personal disqualification of a lawyer participating in the program be imputed to other lawyers participating in the program.

[5] If, after commencing a short-term limited representation in accordance with this Rule, a lawyer undertakes to represent the client in the matter on an ongoing basis, Rules 1.7, 1.9(a) and 1.10 become applicable.

(a) A lawyer who, under the auspices of a program sponsored by a nonprofit organization or court, provides short-term limited legal services to a client without expectation by either the lawyer or the client that the lawyer will provide continuing representation in the matter:

(1) is subject to Rules 1.7 and 1.9(a) only if the lawyer knows that the representation of the client involves a conflict of interest; and

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(2) is subject to Rule 1.10 only if the lawyer knows that another lawyer associated with the lawyer in a law firm is disqualified by Rule 1.7 or 1.9(a) with respect to the matter.

(b) Except as provided in paragraph (a)(2), Rule 1.10 is inapplicable to a representation governed by this Rule.

### Colorado Rules of Civil Procedure

#### Rule 11: Signing of Pleadings

**(b) Limited Representation.** An attorney may undertake to provide limited representation in accordance with Colo.RPC 1.2 to a pro se party involved in a court proceeding. Pleadings or papers filed by the pro se party that were prepared with the drafting assistance of the attorney shall include the attorney's name, address, telephone number and registration number. The attorney shall advise the pro se party that such pleading or other paper must contain this statement. In helping to draft the pleading or paper filed by the pro se party, the attorney certifies that, to the best of the attorney's knowledge, information and belief, this pleading or paper is (1) well-grounded in fact based upon a reasonable inquiry of the pro se party by the attorney, (2) is warranted by existing law or a good faith argument for the extension, modification or reversal of existing law, and (3) is not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation. The attorney in providing such drafting assistance may rely on the pro se party's representation of facts, unless the attorney has reason to believe that such representations are false or materially insufficient, in which instance the attorney shall make an independent reasonable inquiry into the facts. Assistance by an attorney to a pro se party in filling out pre-printed and electronically published forms that are issued through the judicial branch for use in court are not subject to the certification and attorney name disclosure requirements of this Rule 11(b).

Limited representation of a pro se party under this Rule 11(b) shall not constitute an entry of appearance by the attorney for purposes of C.R.C.P. 121, section 1-1 or C.R.C.P. 5(b), and does not authorize or require the service of papers upon the attorney. Representation of the pro se party by the attorney at any proceeding before a judge, magistrate, or other judicial officer on behalf of the pro se party constitutes an entry of an appearance pursuant to C.R.C.P. 121, section 1-1. The attorney's violation of this Rule 11(b) may subject the attorney to the sanctions provided in C.R.C.P. 11(a).

**Source:** Entire rule amended and adopted June 17, 1999, effective July 1, 1999.

#### Rule 121: Entry of Appearance and Withdrawal

(5) Notice of Limited Representation Entry of Appearance and Withdrawal.

In accordance with C.R. C.P. 11(b) and C.R.C.P. Rule 311(b), an attorney may undertake to provide limited representation to a pro se party involved in a court proceeding. Upon the request and with the consent of a pro se party, an attorney may make a limited appearance for the pro se

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party in one or more specified proceedings, if the attorney files and serves with the court and the other parties and attorneys (if any) a notice of the limited appearance prior to or simultaneous with the proceeding(s) for which the attorney appears. At the conclusion of such proceeding(s), the attorney's appearance terminates without the necessity of leave of court, upon the attorney filing a notice of completion of limited appearance. Service on an attorney who makes a limited appearance for a party shall be valid only in connection with the specific proceeding(s) for which the attorney appears.

### **Comment**

The purpose of section 1-1(5) is to implement Colorado Rules of Civil Procedure 11(b) and 311(b), which authorize limited representation of a pro se party either on a pro bono or fee basis, in accordance with Colorado Rule of Professional Conduct 1.2. This provision provides assurance that an attorney who makes a limited appearance for a pro se party in a specified case proceeding(s), at the request of and with the consent of the pro se party, can withdraw from the case upon filing a notice of completion of the limited appearance, without leave of court.

(adopted by the Court en banc October 20, 2011)

### **Rule of County Court Civil Procedure 311: Signing of Pleadings**

**(b) Limited representation.** An attorney may undertake to provide limited representation in accordance with Colo. RPC 1.2 to a pro se party involved in a court proceeding. Pleadings or papers filed by the pro se party that were prepared with the drafting assistance of the attorney shall include the attorney's name, address, telephone number and registration number. The attorney shall advise the pro se party that such pleading or other paper must contain this statement. In helping to draft the pleading or paper filed by the pro se party, the attorney certifies that to the best of the attorney's knowledge, information and belief, this pleading or paper is (1) well-grounded in fact based upon a reasonable inquiry of the pro se party by the attorney, (2) is warranted by existing law or a good faith argument for the extension, modification or reversal of existing law, and (3) is not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation. The attorney in providing such drafting assistance may rely on the pro se party's representation of facts, unless the attorney has reason to believe that such representations are false or materially insufficient, in which instance the attorney shall make an independent reasonable inquiry into the facts. Assistance by an attorney to a pro se party in filling out pre-printed and electronically published forms that are issued through the judicial branch for use in court are not subject to the certification and attorney name disclosure requirements of this Rule 311(b).

Limited representation of a pro se party under this Rule 311(b) shall not constitute an entry of appearance by the attorney for purposes of C.R.C.P. 121, section 1-1 or C.R.C.P. 305, and does not authorize or require the service of papers upon the attorney. Representation of the pro se party by the attorney at any proceeding before a judge, magistrate, or other judicial officer on behalf of the pro se party constitutes an entry of an appearance pursuant to C.R.C.P. 121, section 1-1. The attorney's violation of this Rule 311(b) may subject the attorney to the sanctions provided in C.R.C.P. 311(a).

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Source: Entire rule amended July 22, 1993, effective January 1, 1994; entire rule amended and adopted June 17, 1999, effective July 1, 1999

### **Colorado Appellate Rules**

#### **Rule 5: Entry of Appearance and Withdrawal**

(e) Notice of Limited Representation Entry of Appearance and Withdrawal. An attorney may undertake to provide limited representation to a pro se party involved in a civil appellate proceeding. Upon the request and with the consent of a pro se party, an attorney may make a limited appearance for the pro se party to file a notice of appeal and designation of record in the court of appeals or the supreme court, to file or oppose a petition or cross-petition for a writ of certiorari in the supreme court, to respond to an order to show cause issued by the supreme court or the court of appeals, or to participate in one or more specified motion proceedings in either court, if the attorney files and serves with the court and the other parties and attorneys (if any) a notice of the limited appearance prior to or simultaneous with the proceeding(s) for which the attorney appears. At the conclusion of such proceeding(s), the attorney's appearance terminates without the necessity of leave of court, upon the attorney filing a notice of completion of limited appearance in the appellate court in which the attorney appeared, a copy of which may be filed in any other court, except that an attorney filing a notice of appeal or petition or cross-petition for writ of certiorari is obligated, absent leave of court, to respond to any issues regarding the appellate court's jurisdiction. Service on an attorney who makes a limited appearance for a party shall be valid only in connection with the specific proceedings(s) for which the attorney appears. The provisions of this C.A.R. 5(e) shall not apply to an attorney who has filed an opening or answer brief pursuant to C.A.R. 31.

(f) Termination of Representation. When an attorney has entered an appearance, other than a limited appearance pursuant to C.A.R. 5(e), on behalf of a party in an appellate court without having previously represented that party in the matter in any other court, the attorney's representation of the party shall terminate at the conclusion of the proceedings in the appellate court in which the attorney has appeared, unless otherwise directed by the appellate court or agreed to by the attorney and the party represented. Counsel may file a notice of such termination of representation in any other court.

#### **Comment**

The purpose of C.A.R. 5(e) is to establish a procedure similar to that set forth in Colorado Rule of Civil Procedure 121 Section 1-1(5). This procedure provides assurance that an attorney who makes a limited appearance for a pro se party in a specified appellate case proceeding(s), at the request of and with the consent of the pro se party, can withdraw from the case upon filing a notice of completion of the limited appearance, without leave of court. The purpose of C.A.R. 5(f) is to make clear that when an attorney appears for a party, whom he or she has not previously represented, in an appellate court and the proceedings in that court have concluded, the attorney is not obligated to represent the party in any other proceeding on remand or in any review of the appellate court's decision by any other court. Nothing in this provision would prevent the attorney from entering a limited or general appearance on behalf of the party in

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another court (for example, on a writ of certiorari to the supreme court), if agreed to by the attorney and the party.

[Adopted by the Court, En Banc, October 11, 2012, effective immediately.]

### **Connecticut Rules of Professional Conduct**

#### **Rule 1.2: Scope of Representation and Allocation of Authority between Client and Lawyer**

(c) A lawyer may limit the scope of the representation if the limitation is reasonable under the circumstances and the client gives informed consent. Such informed consent shall not be required when a client cannot be located despite reasonable efforts where the lawyer is retained to represent a client by a third party which is obligated by contract to provide the client with a defense.

#### **Comment**

**Agreements Limiting Scope of Representation.** The scope of services to be provided by a lawyer may be limited by agreement with the client or by the terms under which the lawyer's services are made available to the client. For example, when a lawyer has been retained by an insurer to represent an insured, the representation may be limited to matters related to the insurance coverage. A limited representation may be appropriate because the client has limited objectives for the representation. In addition, the terms upon which representation is undertaken may exclude specific means that might otherwise be used to accomplish the client's objectives. Such limitations may exclude actions that the client thinks are too costly or that the lawyer regards as repugnant or imprudent. Nothing in Rule 1.2 shall be construed to authorize limited appearances before any tribunal unless otherwise authorized by law or rule.

Although this Rule affords the lawyer and client substantial latitude to limit the scope of representation, the limitation must be reasonable under the circumstances. If, for example, a client's objective is limited to securing general information about the law the client needs in order to handle a common and typically uncomplicated legal problem, the lawyer and client may agree that the lawyer's services will be limited to a brief telephone consultation. Such a limitation, however, would not be reasonable if the time allotted was not sufficient to yield advice upon which the client could rely. Although an agreement for a limited representation does not exempt a lawyer from the duty to provide competent representation, the limitation is a factor to be considered when determining the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation. See Rule 1.1.

All agreements concerning a lawyer's representation of a client must accord with the Rules of Professional Conduct and other law. See, e.g., Rules 1.1, 1.8 and 5.6.

#### **Rule 1.5: Fees**

(b) The scope of the representation, the basis or rate of the fee and expenses for which the client will be responsible, shall be communicated to the client, in writing, before or within a reasonable

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time after commencing the representation, except when the lawyer will charge a regularly represented client on the same basis or rate. Any changes in the basis or rate of the fee or expenses shall also be communicated to the client in writing before the fees or expenses to be billed at higher rates are actually incurred. In any representation in which the lawyer and the client agree that the lawyer will file a limited appearance, the limited appearance engagement agreement shall also include the following: identification of the proceeding in which the lawyer will file the limited appearance; identification of the court events for which the lawyer will appear on behalf of the client; and notification to the client that after the limited appearance services have been completed, the lawyer will file a certificate of completion of limited appearance with the court, which will serve to terminate the lawyer's obligation to the client in the matter, and as to which the client will have no right to object. Any change in the scope of the representation requires the client's informed consent, shall be confirmed to the client in writing, and shall require the lawyer to file a new limited appearance with the court reflecting the change(s) in the scope of representation. This subsection shall not apply to public defenders or in situations where the lawyer will be paid by the court or a state agency.

### **Rule 1.16: Declining or Terminating Representation**

- (a) Except as stated in subsection (c), a lawyer shall not represent a client or, where representation has commenced, shall withdraw from the representation of a client if:
- (1) The representation will result in violation of the Rules of Professional Conduct or other law;
  - (2) The lawyer's physical or mental condition materially impairs the lawyer's ability to represent the client; or
  - (3) The lawyer is discharged.
- (b) Except as stated in subsection (c), a lawyer may withdraw from representing a client if:
- (1) withdrawal can be accomplished without material adverse effect on the interests of the client;
  - (2) the client persists in a course of action involving the lawyer's services that the lawyer reasonably believes is criminal or fraudulent;
  - (3) the client has used the lawyer's services to perpetrate a crime or fraud;
  - (4) the client insists upon taking action that the lawyer considers repugnant or with which the lawyer has a fundamental disagreement;
  - (5) the client fails substantially to fulfill an obligation to the lawyer regarding the lawyer's services and has been given reasonable warning that the lawyer will withdraw unless the obligation is fulfilled;
  - (6) the representation will result in an unreasonable financial burden on the lawyer or has been rendered unreasonably difficult by the client; or
  - (7) other good cause for withdrawal exists.
- (c) A lawyer must comply with applicable law requiring notice to or permission of a tribunal when terminating a representation. When ordered to do so by a tribunal, a lawyer shall continue representation notwithstanding good cause for terminating the representation.
- (d) Upon termination of representation, a lawyer shall take steps to the extent reasonably practicable to protect a client's interests, such as giving reasonable notice to the client, allowing time for employment of other counsel, surrendering papers and property to which the client is entitled and refunding any advance payment of the fee that has not been earned. The lawyer may retain papers relating to the client to the extent permitted by other law. If the representation of the client is terminated either by the lawyer withdrawing from representation or by the client



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discharging the lawyer, the lawyer shall confirm the termination in writing to the client before or within a reasonable time after the termination of the representation.

### **Comment**

**Withdrawal of Limited Appearance.** When the lawyer has filed a limited appearance under Practice Book Section 3-8(b) and the lawyer has completed the representation described in the limited appearance, the lawyer is not required to obtain permission of the tribunal to terminate the representation before filing the certificate of completion.

### **Rule 4.2: Communication with Person Represented by Counsel**

In representing a client, a lawyer shall not communicate about the subject of the representation with a party the lawyer knows to be represented by another lawyer in the matter, unless the lawyer has the consent of the other lawyer or is authorized by law to do so. An otherwise unrepresented party for whom a limited appearance has been filed pursuant to Practice Book Section 3-8 (b) is considered to be unrepresented for purposes of this Rule as to anything other than the subject matter of the limited appearance. When a limited appearance has been filed for the party, and served on the other lawyer, or the other lawyer is otherwise notified that a limited appearance has been filed or will be filed, that lawyer may directly communicate with the party only about matters outside the scope of the limited appearance without consulting with the party's limited appearance lawyer.

### **Rule 4.3: Dealing with Unrepresented Person**

In dealing on behalf of a client with a person who is not represented by counsel, in whole or in part, a lawyer shall not state or imply that the lawyer is disinterested. When the lawyer knows or reasonably should know that the unrepresented person misunderstands the lawyer's role in the matter, the lawyer shall make reasonable efforts to correct the misunderstanding. The lawyer shall not give legal advice to an unrepresented person, other than the advice to secure counsel, if the lawyer knows or reasonably should know that the interests of such a person are or have a reasonable possibility of being in conflict with the interests of the client.

### **Rule 6.5: Nonprofit and Court-Annexed Limited Legal Services Programs**

(a) A lawyer who, under the auspices of a program sponsored by a nonprofit organization or court, provides short-term limited legal services to a client without expectation by either the lawyer or the client that the lawyer will provide continuing representation in the matter:

(1) is subject to Rules 1.7 and 1.9 (a) only if the lawyer knows that the representation of the client involves a conflict of interest; and

(2) is subject to Rule 1.10 only if the lawyer knows that another lawyer associated with the lawyer in a law firm is disqualified by Rule 1.7 or 1.9(a) with respect to the matter.

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(b) A lawyer who provides short-term limited legal services pursuant to this Rule must secure the client's informed consent to the limited scope of the representation. See Rule 1.2(c). If a short-term limited representation would not be reasonable under the circumstances, the lawyer may offer advice to the client but must also advise the client of the need for further assistance of counsel. Except as provided in this Rule, the Rules of Professional Conduct, including Rules 1.6 and 1.9 (c) are applicable to the limited representation.

(c) Except as provided in subsection (a) (2), Rule 1.10 is inapplicable to a representation governed by this Rule.

### **Comment**

Legal services organizations, courts and various nonprofit organizations have established programs through which lawyers provide short-term limited legal services— such as advice or the completion of legal forms—that will assist persons to address their legal problems without further representation by a lawyer. In these programs, such as legal advice hotlines, advice only clinics or self-represented party counseling programs, a client-lawyer relationship is established, but there is no expectation that the lawyer's representation of the client will continue beyond the limited consultation. Such programs are normally operated under circumstances in which it is not feasible for a lawyer to systematically screen for conflicts of interest as is generally required before undertaking a representation. See, e.g., Rules 1.7, 1.9 and 1.10.

Because a lawyer who is representing a client in the circumstances addressed by this Rule ordinarily is not able to check systematically for conflicts of interest, subsection (a) requires compliance with Rules 1.7 or 1.9 (a) only if the lawyer knows that the representation presents a conflict of interest for the lawyer, and with Rule 1.10 only if the lawyer knows that another lawyer in the lawyer's firm is disqualified by Rules 1.7 or 1.9 (a) in the matter.

Because the limited nature of the services significantly reduces the risk of conflicts of interest with other matters being handled by the lawyer's firm, subsection (b) provides that Rule 1.10 is inapplicable to a representation governed by this Rule except as provided by subsection (a) (2). Subsection (a) (2) requires the participating lawyer to comply with Rule 1.10 when the lawyer knows that the lawyer's firm is disqualified by Rules 1.7 or 1.9 (a). By virtue of subsection (b), however, a lawyer's participation in a short-term limited legal services program will not preclude the lawyer's firm from undertaking or continuing the representation of a client with interests adverse to a client being represented under the program's auspices. Nor will the personal disqualification of a lawyer participating in the program be imputed to other lawyers participating in the program.

If, after commencing a short-term limited representation in accordance with this Rule, a lawyer undertakes to represent the client in the matter on an ongoing basis, Rules 1.7, 1.9 (a) and 1.10 become applicable.

TECHNICALCHANGE: In 2012, references to “pro se” have been replaced with “self-represented.”

**Delaware Rules of Professional Conduct**

**Rule 1.2: Scope of Representation**

(c) A lawyer may limit the scope of the representation if the limitation is reasonable under the circumstances and the client gives informed consent.

**Comment**

[6] *Agreements limiting scope of representation.* -- The scope of services to be provided by a lawyer may be limited by agreement with the client or by the terms under which the lawyer's services are made available to the client. When a lawyer has been retained by an insurer to represent an insured, for example, the representation may be limited to matters related to the insurance coverage. A limited representation may be appropriate because the client has limited objectives for the representation. In addition, the terms upon which representation is undertaken may exclude specific means that might otherwise be used to accomplish the client's objectives. Such limitations may exclude actions that the client thinks are too costly or that the lawyer regards as repugnant or imprudent.

[7] Although this Rule affords the lawyer and client substantial latitude to limit the representation, the limitation must be reasonable under the circumstances. If, for example, a client's objective is limited to securing general information about the law the client needs in order to handle a common and typically uncomplicated legal problem, the lawyer and client may agree that the lawyer's services will be limited to a brief telephone consultation. Such a limitation, however, would not be reasonable if the time allotted was not sufficient to yield advice upon which the client could rely. Although an agreement for a limited representation does not exempt a lawyer from the duty to provide competent representation, the limitation is a factor to be considered when determining the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation. See Rule 1.1.

[8] All agreements concerning a lawyer's representation of a client must accord with the Rules of Professional Conduct and other law. See, e.g., Rules 1.1, 1.8 and 5.6.

**Rule 6.5: Non-profit and court-annexed limited legal-service programs**

(a) A lawyer who, under the auspices of a program sponsored by a nonprofit organization or court, provides short-term limited legal services to a client without expectation by either the lawyer or the client that the lawyer will provide continuing representation in the matter:

(1) is subject to Rules 1.7 and 1.9(a) only if the lawyer knows that the representation of the client involves a conflict of interest; and

(2) is subject to Rule 1.10 only if the lawyer knows that another lawyer associated with the lawyer in a law firm is disqualified by Rule 1.7 or 1.9(a) with respect to the matter.

(b) Except as provided in paragraph (a)(2), Rule 1.10 is inapplicable to a representation governed by this Rule.

**Delaware Family Court Rules of Civil Procedure**

**Rule 5: Service and filing of pleadings and other papers.**

**(b)(2) Appearance of attorney: When; how made; withdrawal. --**

(A) An attorney shall appear for the purpose of representing a party by filing a written notice of appearance using a Family Court generated form. The notice of appearance shall specify the matter(s) in which the attorney will represent the party. Once an attorney has filed a notice of appearance in a particular matter, copies of all notices given to the party with regard to that matter shall also be given to the party's counsel. No appearance shall be withdrawn except upon application by the attorney and order of the Court for good cause.

(B) Any appearance by an attorney in accordance with subparagraph (A) shall be limited to representation with respect to the specific petition filed and shall terminate when the time for appeal has elapsed from the final order entered by the Court.

**District of Columbia Rules of Professional Conduct**

**Rule 1.2: Scope of Representation**

(c) A lawyer may limit the objective of the representation if the client gives informed consent.

**Comment**

[4] The objectives or scope of services provided by the lawyer may be limited by agreement with the client or by terms under which the lawyer's services are made available to the client. For example, a retainer may be for a specifically defined purpose. Representation provided through a legal aid agency may be subject to limitations on the types of cases the agency handles. When a lawyer has been retained by an insurer to represent an insured, the representation may be limited to matters related to the insurance coverage. The terms upon which representation is undertaken may exclude specific objectives or means. Such limitations may exclude objectives or means that the lawyer regards as repugnant or imprudent. Rule 1.5(b) requires a lawyer to communicate the scope of the lawyer's representation when the lawyer establishes a new lawyer-client relationship, and it is generally prudent for the lawyer to explain in writing any limits on the objectives or scope of the lawyer's services.

[5] An agreement concerning the scope of representation must accord with the Rules of Professional Conduct and other law. Thus, the client may not be asked to agree to representation so limited in scope as to violate Rule 1.1, or to surrender the right to terminate the lawyer's services or the right to settle litigation that the lawyer might wish to continue.

**Rule 6.5: Nonprofit and Court-Annexed Limited Legal Services Programs**

(a) A lawyer who, under the auspices of a program sponsored by a nonprofit organization or court, provides short-term limited legal services to a client without expectation by either the lawyer or the client that the lawyer will provide continuing representation in the matter:

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(1) is subject to Rules 1.7 and 1.9 only if the lawyer knows that the representation of the client involves a conflict of interest; and

(2) is subject to Rule 1.10 only if the lawyer knows that another lawyer associated with the lawyer in a law firm is disqualified by Rule 1.7 or 1.9 with respect to the matter.

(b) Except as provided in paragraph (a)(2), Rule 1.10 is inapplicable to a representation governed by this rule.

### **Comment**

[1] Legal services organizations, courts, and various nonprofit organizations have established programs through which lawyers provide short-term limited legal services, such as advice or the completion of legal forms, that will assist persons to address their legal problems without further representation by a lawyer. In these programs, such as legal-advice hotlines, advice-only clinics or *pro se* counseling programs, a client-lawyer relationship is established, but there is no expectation that the lawyer's representation of the client will continue beyond the limited consultation. Such programs are normally operated under circumstances in which it is not feasible for a lawyer to systematically screen for conflicts of interest as is generally required before undertaking a representation. *See, e.g.*, Rules 1.7, 1.9 and 1.10. For the purposes of this rule, short-term limited legal services normally do not include appearing before a tribunal on behalf of a client.

[2] A lawyer who provides short-term limited legal services pursuant to this rule must secure the client's informed consent to the limited scope of the representation. *See* Rule 1.2(c). If a short-term limited representation would not be reasonable under the circumstances, the lawyer may offer advice to the client but must also advise the client of the need for further assistance of counsel. Except as provided in this rule, the Rules of Professional Conduct, including Rule 1.6, are applicable to the limited representation.

[3] Because a lawyer who is representing a client in the circumstances addressed by this rule ordinarily is not able to check systematically for conflicts of interest, paragraph (a) requires compliance with Rules 1.7 or 1.9 only if the lawyer knows that the representation presents a conflict of interest for the lawyer, and with Rule 1.10 only if the lawyer knows that another lawyer in the lawyer's firm is disqualified by Rules 1.7 or 1.9 in the matter.

[4] Because the limited nature of the services significantly reduces the risk of conflicts of interest with other matters being handled by the lawyer's firm, paragraph (b) provides that Rule 1.10 is inapplicable to a representation governed by this rule except as provided by paragraph (a)(2). Paragraph (a)(2) requires the participating lawyer to comply with Rule 1.10 when the lawyer knows that the lawyer's firm is disqualified by Rules 1.7 or 1.9. By virtue of paragraph (b), however, a lawyer's participation in a short-term limited legal services program will not preclude the lawyer's firm from undertaking or continuing the representation of a client with interests adverse to a client being represented under the program's auspices. Nor will the

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personal disqualification of a lawyer participating in the program be imputed to other lawyers participating in the program.

[5] If, after commencing a short-term limited representation in accordance with this rule, a lawyer undertakes to represent the client in the matter on an ongoing basis, Rules 1.7, 1.9 and 1.10 become applicable.

[6] This rule serves the public interest by making it easier for lawyers affiliated with firms to provide *pro bono* legal services. Rule 1.10(e) contains a similarly-motivated exception from imputation for attorneys who, while affiliated with a firm, assist the District of Columbia Attorney General with certain matters.

### **Superior Court of the District of Columbia**

#### **Administrative Order 14-10**

#### **Limited Appearances in the Civil Division, Probate Division, Tax Division, Family Court, and Domestic Violence Unit – Supersedes Administrative Order Nos. 08-02, 11-07 and 12-08**

**ORDERED**, that to the extent not inconsistent with the Rules of this Court, an attorney may enter a limited appearance when representing paid or *pro bono* clients in the following divisions and branches of the Superior Court of the District of Columbia: Civil Division, Probate Division, Tax Division, Family Court, and Domestic Violence Unit; and it is further

**ORDERED**, that in accordance with Rule 1.2(c) of the District of Columbia Rules of Professional Conduct, an attorney may enter a limited appearance in a court proceeding including, but not limited to, discovery, motions practice, or hearings; and it is further

**ORDERED**, that limited scope representation is not permitted in a jury trial. Attorneys who accept representation in a matter that continues to a jury trial must withdraw before *voir dire* begins or continue representation through the return of the verdict; and it is further

**ORDERED**, that an attorney's appearance may be limited by date, time period, activity, or subject matter when specifically stated in a Notice of Limited Appearance filed and served prior to or simultaneous with the proceeding(s) for which the attorney appears; and it is further

**ORDERED**, that the attorney's appearance terminates without the necessity of leave of court (1) if the notice of limited appearance specifically states the scope of the appearance by date or time period; or (2) upon the attorney filing a Notice of Completion, which must be served on each of the parties, including the attorney's client; and it is further

**ORDERED**, that (1) service on an attorney who has entered a limited appearance is required only for matters within the scope of the representation as stated in the notice; (2) any such service also must be made on the party; and (3) service on the attorney for matters outside the scope of the limited appearance does not extend the scope of the attorney's representation; and it is further

**ORDERED**, that an attorney may extend a limited appearance only by filing and serving a new notice of limited appearance or a notice of general appearance prior to or simultaneous with the proceeding(s) for which the attorney appears; and it is further

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**ORDERED**, that this Administrative Order shall take effect on the date of this Order and supersedes Administrative Order 08-02: Temporary Appearances for L&T Court – Pilot Project, Administrative Order 11-07: Temporary Appearances for the Paternity and Child Support Branch, and Administrative Order 12-08: Temporary Appearances in the Small Claims and Conciliation Branch and the Civil Actions Branch Collections Calendar – Pilot Project.

**SUPERIOR COURT OF THE DISTRICT OF COLUMBIA**

- CIVIL DIVISION**
- DOMESTIC VIOLENCE UNIT**
- FAMILY COURT**
- PROBATE DIVISION**
- TAX DIVISION**

\_\_\_\_\_  
Plaintiff/Petitioner

v.

Case No. \_\_\_\_\_

\_\_\_\_\_  
Defendant/Respondent

**NOTICE OF LIMITED APPEARANCE**

THE CLERK OF THE COURT will please note that I am entering an appearance limited to (select one and specify):

date: \_\_\_\_\_

time period: \_\_\_\_\_

activity: \_\_\_\_\_

subject matter: \_\_\_\_\_

which will terminate without necessity of leave of court. If the appearance is limited by activity or subject matter, it will terminate upon my filing a Notice of Completion. If the appearance is limited by date or time period, it will terminate without filing a Notice of Completion.

I have informed my client that my appearance is limited and does not extend beyond what is specified above without mutual and informed consent and unless a new Notice of Limited Appearance is filed.

Notices and documents concerning the date, time period, activity, or subject matter described above must be served on me and my client. All other notices and documents must be served only on my client and/or any counsel who has entered an appearance on my client's behalf.

APPENDIX B: RULES OF ETHICS AND PROCEDURE

I hereby certify that the foregoing information is true and correct to the best of my knowledge and belief and that on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, I served a copy of this Notice of Limited Appearance on all parties or their counsel and on my client by hand, first-class mail, or electronically by agreement of the parties, court rule or court order.

_____ Signature	_____ Street Address
_____ Print Name and Bar Number	_____ City, State, ZIP
_____ Phone Number	_____ Email Address
_____ Date	



**SUPERIOR COURT OF THE DISTRICT OF COLUMBIA**

- CIVIL DIVISION**
- DOMESTIC VIOLENCE UNIT**
- FAMILY COURT**
- PROBATE DIVISION**
- TAX DIVISION**

\_\_\_\_\_  
Plaintiff/Petitioner

v.

Case No. \_\_\_\_\_

\_\_\_\_\_  
Defendant/Respondent

**NOTICE OF COMPLETION**

THE CLERK OF THE COURT will please note that as of the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_, I completed the (select one):

- activity
- subject matter

specified in my Notice of Limited Appearance. The filing of this Notice hereby terminates my appearance without necessity of leave of court. I informed my client that my appearance was temporary and will terminate upon the filing of this Notice of Completion.

Any new notices or documents pertaining to this case must be served only on my client and/or any counsel who has entered an appearance on my client's behalf.

I hereby certify that the foregoing information is true and correct to the best of my knowledge and belief and that on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_, I served a copy of this Notice of Completion on all parties or their counsel and on my client by hand, first-class mail, or electronically by agreement of the parties, court rule or court order.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Street Address

\_\_\_\_\_  
Print Name and Bar Number

\_\_\_\_\_  
City, State, ZIP

\_\_\_\_\_  
Phone Number

\_\_\_\_\_  
Email Address

\_\_\_\_\_  
Date

**Florida Rules of Professional Conduct**

**Rule 4-1.2: Objectives and Scope of Representation**

(c) Limitation of Objectives and Scope of Representation. If not prohibited by law or rule, a lawyer and client may agree to limit the objectives or scope of the representation if the limitation is reasonable under the circumstances and the client gives informed consent in writing. If the attorney and client agree to limit the scope of the representation, the lawyer shall advise the client regarding applicability of the rule prohibiting communication with a represented person.

**Comment**

The scope of services to be provided by a lawyer may be limited by agreement with the client or by the terms under which the lawyer's services are made available to the client. When a lawyer has been retained by an insurer to represent an insured, for example, the representation may be limited to matters related to the insurance coverage. A limited representation may be appropriate because the client has limited objectives for the representation. In addition, the terms upon which representation is undertaken may exclude specific means that might otherwise be used to accomplish the client's objectives. Such limitations may exclude actions that the client thinks are too costly or that the lawyer regards as repugnant or imprudent, or which the client regards as financially impractical.

Although this rule affords the lawyer and client substantial latitude to limit the representation if not prohibited by law or rule, the limitation must be reasonable under the circumstances. If, for example, a client's objective is limited to securing general information about the law the client needs in order to handle a common and typically uncomplicated legal problem, the lawyer and client may agree that the lawyer's services will be limited to a brief consultation. Such a limitation, however, would not be reasonable if the time allotted was not sufficient to yield advice upon which the client could rely. In addition, a lawyer and client may agree that the representation will be limited to providing assistance out of court, including providing advice on the operation of the court system and drafting pleadings and responses. If the lawyer assists a pro se litigant by drafting any document to be submitted to a court, the lawyer is not obligated to sign the document. However, the lawyer must indicate "Prepared with the assistance of counsel" on the document to avoid misleading the court which otherwise might be under the impression that the person, who appears to be proceeding pro se, has received no assistance from a lawyer. If not prohibited by law or rule, a lawyer and client may agree that any in-court representation in a family law proceeding be limited as provided for in Family Law Rule of Procedure 12.040. For example, a lawyer and client may agree that the lawyer will represent the client at a hearing regarding child support and not at the final hearing or in any other hearings. For limited in-court representation in family law proceedings, the attorney shall communicate to the client the specific boundaries and limitations of the representation so that the client is able to give informed consent to the representation.

Regardless of the circumstances, a lawyer providing limited representation forms an attorney-client relationship with the litigant, and owes the client all attendant ethical obligations and duties imposed by the Rules Regulating The Florida Bar, including, but not limited to, duties of

## APPENDIX B: RULES OF ETHICS AND PROCEDURE

competence, communication, confidentiality and avoidance of conflicts of interest. Although an agreement for limited representation does not exempt a lawyer from the duty to provide competent representation, the limitation is a factor to be considered when determining the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation. See rule 4-1.1.

An agreement concerning the scope of representation must accord with the Rules of Professional Conduct and law. For example, the client may not be asked to agree to representation so limited in scope as to violate rule 4-1.1 or to surrender the right to terminate the lawyer's services or the right to settle litigation that the lawyer might wish to continue.

### **Rule 4-4.2: Communication with Person Represented by Counsel**

(b) An otherwise unrepresented person to whom limited representation is being provided or has been provided in accordance with Rule Regulating the Florida Bar 4-1.2 is considered to be unrepresented for purposes of this rule unless the opposing lawyer knows of, or has been provided with, a written notice of appearance under which, or a written notice of time period during which, the opposing lawyer is to communicate with the limited representation lawyer as to the subject matter within the limited scope of the representation.

#### **Comment**

This rule does not prohibit communication with a party, or an employee or agent of a party, concerning matters outside the representation. For example, the existence of a controversy between a government agency and a private party, or between 2 organizations, does not prohibit a lawyer for either from communicating with nonlawyer representatives of the other regarding a separate matter. Also, parties to a matter may communicate directly with each other and a lawyer having independent justification for communicating with the other party is permitted to do so. Permitted communications include, for example, the right of a party to a controversy with a government agency to speak with government officials about the matter.

### **Rule 4-4.3: Dealing with Unrepresented Persons**

(b) An otherwise unrepresented person to whom limited representation is being provided or has been provided in accordance with Rule Regulating The Florida Bar 4-1.2 is considered to be unrepresented for purposes of this rule unless the opposing lawyer knows of, or has been provided with, a written notice of appearance under which, or a written notice of time period during which, the opposing lawyer is to communicate with the limited representation lawyer as to the subject matter within the limited scope of the representation.

## **Florida Family Law Rules of Procedure**

### **Rule 12.040: Attorneys**

**(a) Limited Appearance.** An attorney of record for a party, in a family law matter governed by these rules, shall be the attorney of record throughout the same family law matter, unless at the

## APPENDIX B: RULES OF ETHICS AND PROCEDURE

time of appearance the attorney files a notice, signed by the party, specifically limiting the attorney's appearance only to the particular proceeding or matter in which the attorney appears.

### **(b) Withdrawal or Limiting Appearance.**

(1) Prior to the completion of a family law matter or prior to the completion of a limited appearance, an attorney of record, with approval of the court, may withdraw or partially withdraw, thereby limiting the scope of the attorney's original appearance to a particular proceeding or matter. A motion setting forth the reasons must be filed with the court and served upon the client and interested persons.

(2) The attorney shall remain attorney of record until such time as the court enters an order, except as set forth in subdivision (c) below.

**(c) Scope of Representation.** If an attorney appears of record for a particular limited proceeding or matter, as provided by this rule, that attorney shall be deemed "of record" for only that particular proceeding or matter. Any notice of limited appearance filed shall include the name, address and telephone number of the attorney and the name, address and telephone number of the party. At the conclusion of such proceeding or matter, the attorney's role terminates without the necessity of leave of court, upon the attorney filing notice of completion of limited appearance. The notice, which shall be titled "Termination of Limited Appearance," shall include the names and last known addresses of the person(s) represented by the withdrawing attorney.

**(d) Preparation of Pleadings or Other Documents.** A party who files a pleading or other document of record pro se with the assistance of an attorney shall certify that the party has received assistance from an attorney in the preparation of the pleading or other document. The name, address and telephone number of the party shall appear on all pleadings or other documents filed with the court.

**(e) Notice of Limited Appearance.** Any pleading or other document filed by a limited appearance attorney shall state in bold type on the signature page of that pleading or other document: "Attorney for [Petitioner] [Respondent] [attorney's address and telephone number] for the limited purpose of [matter or proceeding]" to be followed by the name of the petitioner or respondent represented and the current address and telephone number of that party.

**(f) Service.** During the attorney's limited appearance, all pleadings or other documents and all notices of hearing shall be served upon both the attorney and the party. If the attorney receives notice of a hearing that is not within the scope of the limited representation, the attorney shall notify the court and the opposing party that the attorney will not attend the court proceeding or hearing because it is outside the scope of the representation.

**Georgia Code of Professional Conduct**

**Rule 1.2: Scope of Representation and Allocation of Authority between Client and Lawyer**

(c) A lawyer may limit the scope and objectives of the representation if the limitation is reasonable under the circumstances and the client gives informed consent.

**Comment**

[6] The scope of services to be provided by a lawyer may be limited by agreement with the client or by the terms under which the lawyer's services are made available to the client. When a lawyer has been retained by an insurer to represent an insured, for example, the representation may be limited to matters related to the insurance coverage. A limited representation may be appropriate because the client has limited objectives for the representation. In addition, the terms upon which representation is undertaken may exclude specific means that might otherwise be used to accomplish the client's objectives. Such limitations may exclude actions that the client thinks are too costly or that the lawyer regards as repugnant or imprudent.

[7] Although this Rule affords the lawyer and the client substantial latitude to limit the representation, the limitation must be reasonable under the circumstances. If, for example, a client's objective is limited to securing general information about the law the client needs in order to handle a common and typically uncomplicated legal problem, the lawyer and client may agree that the lawyer's services will be limited to a brief telephone consultation. Such a limitation, however, would not be reasonable if the time allotted was not sufficient to yield advice upon which the client could rely. Although an agreement for a limited representation does not exempt a lawyer from the duty to provide competent representation, the limitation is a factor to be considered when determining the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation. See Rule 1.1.

[8] All agreements concerning a lawyer's representation of a client must accord with the Rules of Professional Conduct and other law. See, e.g., Rules 1.1, 1.8 and 5.6.

**Hawaii Rules of Professional Conduct**

**Rule 1.2: Scope of Representation**

(c) A lawyer may limit the objectives of the representation if the client consents after consultation

**Comment**

[4] The objectives or scope of services provided by a lawyer may be limited by agreement with the client or by the terms under which the lawyer's services are made available to the client. For example, a retainer may be for a specifically defined purpose. Representation provided through a legal aid agency may be subject to limitations on the types of cases the agency handles. When a lawyer has been retained by an insurer to represent an insured, the representation may be limited

## APPENDIX B: RULES OF ETHICS AND PROCEDURE

to matters related to the insurance coverage. The terms upon which representation is undertaken may exclude specific objectives or means. Such limitations may exclude objectives or means that the lawyer regards as repugnant or imprudent.

[5] An agreement concerning the scope of representation must accord with the Rules of Professional Conduct and other law. Thus, the client may not be asked to agree to representation so limited in scope as to violate Rule 1.1, or to surrender the right to terminate the lawyer's services or the right to settle litigation that the lawyer might wish to continue. This rule does not affect a lawyer's right to withdraw under Rule 1.16.

### **Rule 6.5 Nonprofit and Court-Annexed Limited Legal Services Programs**

(a) A lawyer who, under the auspices of a program sponsored by a nonprofit organization or court, provides short-term limited legal services to a client without expectation by either the lawyer or the client that the lawyer will provide continuing representation in the matter:

(1) is subject to Rules 1.7 and 1.9(a) only if the lawyer knows that the representation of the client involves a conflict of interest; and

(2) is subject to Rule 1.10 only if the lawyer knows that another lawyer associated with the lawyer in a law firm is disqualified by Rule 1.7 or 1.9(a) with respect to the matter.

(b) Except as provided in paragraph (a)(2), Rule 1.10 is inapplicable to a representation governed by this Rule.

### **Comment**

[1] Legal services organizations, courts, and various nonprofit organizations have established

programs through which lawyers provide short-term limited legal services—such as advice or the completion of legal forms—that will assist persons to address their legal problems without further representation by a lawyer. In these programs, such as legal-advice hotlines, advice-only clinics or pro se counseling programs, a lawyer-client relationship is established, but there is no expectation that the lawyer's representation of the client will continue beyond the limited consultation. Such programs are normally operated under circumstances in which it is not feasible for a lawyer to systematically screen for conflicts of interest as is generally required before undertaking a representation. See, e.g., Rules 1.7, 1.9 and 1.10.

[2] A lawyer who provides short-term limited legal services pursuant to this Rule must secure the

client's informed consent to the limited scope of the representation. See Rule 1.2(c). If a short-term limited representation would not be reasonable under the circumstances, the lawyer may offer advice to the client but must also advise the client of the need for further assistance of counsel. Except as provided in this Rule, the Rules of Professional Conduct, including Rules 1.6 and 1.9(c), are applicable to the limited representation.

[3] Because a lawyer who is representing a client in the circumstances addressed by this Rule ordinarily is not able to check systematically for conflicts of interest, paragraph (a) requires compliance with Rules 1.7 or 1.9(a) only if the lawyer knows that the representation presents a conflict of interest for the lawyer, and with Rule 1.10 only if the lawyer knows that another lawyer in the lawyer's firm is disqualified by Rules 1.7 or 1.9(a) in the matter.

## APPENDIX B: RULES OF ETHICS AND PROCEDURE

[4] Because the limited nature of the services significantly reduces the risk of conflicts of interest with other matters being handled by the lawyer's firm, paragraph (b) provides that Rule 1.10 is inapplicable to a representation governed by this Rule except as provided by paragraph (a)(2). Paragraph (a)(2) requires the participating lawyer to comply with Rule 1.10 when the lawyer knows that the lawyer's firm is disqualified by Rules 1.7 or 1.9(a). By virtue of paragraph (b), however, a lawyer's participation in a short-term limited legal services program will not preclude the lawyer's firm from undertaking or continuing the representation of a client with interests adverse to a client being represented under the program's auspices. Nor will the personal disqualification of a lawyer participating in the program be imputed to other lawyers participating in the program.

[5] If, after commencing short-term limited representation in accordance with this Rule, a lawyer undertakes to represent the client in the matter on an ongoing basis, Rules 1.7, 1.9(a) and 1.10 become applicable.

(Added December 13, 2011, effective January 1, 2012.)

### **Revised Code of Judicial Conduct**

#### **Rule 2.2 Comment [4]**

*[4]It is not a violation of this Rule for a judge to make reasonable accommodations to ensure pro se litigants the opportunity to have their matters fairly heard.*

### **Idaho Rules of Professional Conduct**

#### **Rule 1.2(c): Scope of Representation**

A lawyer may limit the scope of the representation if the limitation is reasonable under the circumstances and the client gives informed consent

#### **Comment**

[6] The scope of services to be provided by a lawyer may be limited by agreement with the client or by the terms under which the lawyer's services are made available to the client. When a lawyer has been retained by an insurer to represent an insured, for example, the representation may be limited to matters related to the insurance coverage. A limited representation may be appropriate because the client has limited objectives for the representation. In addition, the terms upon which representation is undertaken may exclude specific means that might otherwise be used to accomplish the client's objectives. Such limitations may exclude actions that the client thinks are too costly or that the lawyer regards as repugnant or imprudent.

[7] Although this Rule affords the lawyer and client substantial latitude to limit the representation, the limitation must be reasonable under the circumstances. If, for example, a client's objective is limited to securing general information about the law the client needs in order to handle a common and typically uncomplicated legal problem, the lawyer and client may agree that the lawyer's services will be limited to a brief telephone consultation. Such a limitation, however, would not be reasonable if the time allotted was not sufficient to yield

## APPENDIX B: RULES OF ETHICS AND PROCEDURE

advice upon which the client could rely. Although an agreement for a limited representation does not exempt a lawyer from the duty to provide competent representation, the limitation is a factor to be considered when determining the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation. See Rule 1.1.

[8] Although paragraph (c) does not require that the client's informed consent to a limited representation be in writing, it is encouraged. See Rule 1.0(e) for the definition of "informed consent."

[9] All agreements concerning a lawyer's representation of a client must accord with the Rules of Professional Conduct and other law. See, e.g., Rules 1.1, 1.8 and 5.6.

### **Rule 6.5: Nonprofit and Court-Annexed Limited Legal Services Programs**

(a) A lawyer who, under the auspices of a program sponsored by a nonprofit organization or court, provides short-term limited legal services to a client without expectation by either the lawyer or the client that the lawyer will provide continuing representation in the matter:

(1) is subject to Rules 1.7 and 1.9(a) only if the lawyer knows that the representation of the client involves a conflict of interest; and

(2) is subject to Rule 1.10 only if the lawyer knows that another lawyer associated with the lawyer in a law firm is disqualified by Rule 1.7 or 1.9(a) with respect to the matter.

(b) Except as provided in paragraph (a)(2), Rule 1.10 is inapplicable to a representation governed by this Rule.

### **Commentary**

[1] Legal services organizations, courts and various nonprofit organizations have established programs through which lawyers provide short-term limited legal services — such as advice or the completion of legal forms - that will assist persons to address their legal problems without further representation by a lawyer. In these programs, such as legal-advice hotlines, advice-only clinics or pro se counseling programs, a client-lawyer relationship is established, but there is no expectation that the lawyer's representation of the client will continue beyond the limited consultation. Such programs are normally operated under circumstances in which it is not feasible for a lawyer to systematically screen for conflicts of interest as is generally required before undertaking a representation. See, e.g., Rules 1.7, 1.9 and 1.10.

[2] A lawyer who provides short-term limited legal services pursuant to this Rule must secure the client's informed consent to the limited scope of the representation. See Rule 1.2(c). If a short-term limited representation would not be reasonable under the circumstances, the lawyer may offer advice to the client but must also advise the client of the need for further assistance of counsel. Except as provided in this Rule, the Rules of Professional Conduct, including Rules 1.6 and 1.9(c), are applicable to the limited representation.



## APPENDIX B: RULES OF ETHICS AND PROCEDURE

[3] Because a lawyer who is representing a client in the circumstances addressed by this Rule ordinarily is not able to check systematically for conflicts of interest, paragraph (a) requires compliance with Rules 1.7 or 1.9(a) only if the lawyer knows that the representation presents a conflict of interest for the lawyer, and with Rule 1.10 only if the lawyer knows that another lawyer in the lawyer's firm is disqualified by Rules 1.7 or 1.9(a) in the matter.

[4] Because the limited nature of the services significantly reduces the risk of conflicts of interest with other matters being handled by the lawyer's firm, paragraph (b) provides that Rule 1.10 is inapplicable to a representation governed by this Rule except as provided by paragraph (a)(2). Paragraph (a)(2) requires the participating lawyer to comply with Rule 1.10 when the lawyer knows that the lawyer's firm is disqualified by Rules 1.7 or 1.9(a). By virtue of paragraph (b), however, a lawyer's participation in a short-term limited legal services program will not preclude the lawyer's firm from undertaking or continuing the representation of a client with interests adverse to a client being represented under the program's auspices. Nor will the personal disqualification of a lawyer participating in the program be imputed to other lawyers participating in the program.

[5] If, after commencing a short-term limited representation in accordance with this Rule, a lawyer undertakes to represent the client in the matter on an ongoing basis, Rules 1.7, 1.9(a) and 1.10 become applicable.

### **Idaho Rules of Civil Procedure**

#### **Rule 11(b)(5): Limited Pro Bono Appearance**

In accordance with the Idaho Rules of Professional Conduct 1.2(c), an attorney may appear to provide pro bono assistance to an otherwise pro se party in one or more individual proceedings in an action. An attorney making a limited pro bono appearance must file and serve on the opposing party a notice of limited appearance prior to or simultaneous with the proceeding or proceedings, specifying all matters that are to be undertaken on behalf of the party. The attorney shall have no authority to act on behalf of the party on any matter not specified in the notice or any properly filed and served amendment thereto. Service on an attorney who has made a limited appearance for a party shall be valid only in connection with the specific proceedings for which the attorney has appeared, including any hearing or trial at which the attorney appeared and any subsequent motions for presentation of orders. Upon the conclusion of the matters specified for the attorney's limited appearance, the attorney shall file a notice of completion of limited appearance with the court. Upon such filing, the attorney's role terminates without the necessity of leave of the court.

### **Idaho Court Administrative Rules**

#### **Rule 53: Court Assistance Services**

(a) Statement of Policy: It is the policy of the Supreme Court to ensure access to the courts by all persons, including those who may not have the benefit of legal representation. The purpose of this rule is to provide a means for assisting persons who do not have legal representation, by

## APPENDIX B: RULES OF ETHICS AND PROCEDURE

authorizing Court Assistance Officers to provide those litigants with educational materials, court approved forms, limited assistance in completing court forms, and information about court procedures so they might better understand the legal requirements of the court system, and to provide referrals to legal, community and social services organizations and resources providing similar assistance.

(b) Definitions: For the purposes of this rule, the following words have the following meanings:

(1) Court Assistance Officer is a person qualified under guidelines adopted by the Supreme Court to provide a full range of court assistance services.

(2) Deputy Clerk is an employee of the District Court Clerk who is assigned the responsibility of providing a limited range of court assistance services under guidelines adopted by the Supreme Court, as part of his or her overall clerical duties.

(3) Project Director is person appointed by the Administrative Director of the Courts to oversee and coordinate the statewide operation of court assistance services.

(c) Court Assistance Services: Full or limited court assistance services shall be provided in every county.

(1) Where feasible, those services should be provided through a court assistance office staffed with a full or part time Court Assistance Officer, who has the training to provide a full range of court assistance services and referrals under guidelines established by the Supreme Court.

(2) Where the appointment of a Court Assistance Officer is not feasible, the District Court Clerk shall appoint a Deputy Clerk to provide limited court assistance services as defined by the Supreme Court's guidelines. The Project Director shall be notified of the assignment, and provide input on the selection if requested.

(d) Assignment of Court Assistance Officers: A Court Assistance Officer may be an employee of the District Court Clerk, or another county employee who is under the direction of the Administrative District Judge or Trial Court Administrator, or an independent contractor retained by the Supreme Court who is under the direction of the Administrative District Judge or Trial Court Administrator. The Administrative District Judge or Trial Court Administrator, the Project Director, and the District Court Clerk shall provide advice and consent in the selection and assignment of Court Assistance Officers under guidelines for minimum qualifications established by the Supreme Court for that position.

(e) Management of Daily Operations: The Administrative Judge or Trial Court Administrator shall be responsible for managing and supervising the day-to-day activities of Court Assistance Officers who have been retained by the Court or are county employees other than deputy clerks. The District Court Clerk shall be responsible for managing and supervising the day-to-day activities of Court Assistance Officers who are employees of the District Court Clerk, and Deputy Clerks who provide limited court assistance services. The Administrative District Judge

## APPENDIX B: RULES OF ETHICS AND PROCEDURE

or Trial Court Administrator, and the Program Director, may, from time to time, provide input on the performance of employees of the District Court Clerk providing court assistance services, which shall be considered by the District Court Clerk, in good faith.

(f) Policy and Rules of Conduct: The Supreme Court shall establish guidelines for court assistance services which specifically define the types of referrals, instructions, forms, educational materials, and information about the court and court processes, which may be provided by a Court Assistance Officer or Deputy Clerk, as well as requirements for education and training of court assistance personnel.

(g) Unauthorized Practice of Law: It is the policy of the Supreme Court to encourage the use of attorneys whenever possible. The materials and assistance provided through court assistance services are not intended as a substitute for legal advice. Services, materials or information provided by Court Assistance Officers or Deputy Clerks providing court assistance services under the guidelines established by the Supreme Court shall not constitute the unauthorized practice of law.

(h) Schedule of Fees: Charges for forms, materials and other services provided under this rule shall not exceed the amounts defined in the following Cost Recovery Fee Schedule, adopted by the Supreme Court pursuant to the authority of section 32-1406, Idaho Code. Fees collected for court assistance services shall be distributed as required by section 32-1406, Idaho Code.

### **Illinois Rules of Professional Conduct**

#### **Rule 1.2: Scope of Representation and Allocation of Authority Between Client and Lawyer**

(c) A lawyer may limit the scope of the representation if the limitation is reasonable under the circumstances and the client gives informed consent.

#### **Comment**

[6] The scope of services to be provided by a lawyer may be limited by agreement with the client or by the terms under which the lawyer's services are made available to the client. When a lawyer has been retained by an insurer to represent an insured, for example, the representation may be limited to matters related to the insurance coverage. A limited representation may be appropriate because the client has limited objectives for the representation. In addition, the terms upon which representation is undertaken may exclude specific means that might otherwise be used to accomplish the client's objectives. Such limitations may exclude actions that the client thinks are too costly or that the lawyer regards as repugnant or imprudent.

[7] Although this Rule affords the lawyer and client substantial latitude to limit the representation, the limitation must be reasonable under the circumstances. If, for example, a client's objective is limited to securing general information about the law the client needs in order to handle a common and typically uncomplicated legal problem, the lawyer and client may agree that the lawyer's services will be limited to a brief telephone consultation. Such a limitation, however, would not be reasonable if the time allotted was not sufficient to yield

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advice upon which the client could rely. Although an agreement for a limited representation does not exempt a lawyer from the duty to provide competent representation, the limitation is a factor to be considered when determining the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation. See Rule 1.1.

[8] All agreements concerning a lawyer's representation of a client must accord with the Rules of Professional Conduct and other law. See, *e.g.*, Rules 1.1, 1.8 and 5.6.

### **Rule 6.5: Nonprofit and Court-Annexed Limited Legal Services Programs**

(a) A lawyer who, under the auspices of a program sponsored by a nonprofit organization or court, provides short-term limited legal services to a client without expectation by either the lawyer or the client that the lawyer will provide continuing representation in the matter:

(1) is subject to Rules 1.7 and 1.9(a) only if the lawyer knows that the representation of the client involves a conflict of interest; and

(2) is subject to Rule 1.10 only if the lawyer knows that another lawyer associated with the lawyer in a law firm is disqualified by Rule 1.7 or 1.9(a) with respect to the matter.

(b) Except as provided in paragraph (a)(2), Rule 1.10 is inapplicable to a representation governed by this Rule.

(Adopted July 1, 2009, effective January 1, 2010.)

### **Comment**

[1] Legal services organizations, courts and various nonprofit organizations have established programs through which lawyers provide short-term limited legal services—such as advice or the completion of legal forms—that will assist persons to address their legal problems without further representation by a lawyer. In these programs, such as legal-advice hotlines, advice-only clinics or pro se counseling programs, a client-lawyer relationship is established, but there is no expectation that the lawyer's representation of the client will continue beyond the limited consultation. Such programs are normally operated under circumstances in which it is not feasible for a lawyer to systematically screen for conflicts of interest as is generally required before undertaking a representation. See, *e.g.*, Rules 1.7, 1.9 and 1.10.

[2] A lawyer who provides short-term limited legal services pursuant to this Rule must secure the client's informed consent to the limited scope of the representation. See Rule 1.2(c). If a short-term limited representation would not be reasonable under the circumstances, the lawyer may offer advice to the client but must also advise the client of the need for further assistance of counsel. Except as provided in this Rule, the Rules of Professional Conduct, including Rules 1.6 and 1.9(c), are applicable to the limited representation.

[3] Because a lawyer who is representing a client in the circumstances addressed by this Rule ordinarily is not able to check systematically for conflicts of interest, paragraph (a) requires compliance with Rules 1.7 or 1.9(a) only if the lawyer knows that the representation presents a

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conflict of interest for the lawyer, and with Rule 1.10 only if the lawyer knows that another lawyer in the lawyer's firm is disqualified by Rules 1.7 or 1.9(a) in the matter.

[4] Because the limited nature of the services significantly reduces the risk of conflicts of interest with other matters being handled by the lawyer's firm, paragraph (b) provides that Rule 1.10 is inapplicable to a representation governed by this Rule except as provided by paragraph (a)(2). Paragraph (a)(2) requires the participating lawyer to comply with Rule 1.10 when the lawyer knows that the lawyer's firm is disqualified by Rules 1.7 or 1.9(a). By virtue of paragraph (b), however, a lawyer's participation in a short-term limited legal services program will not preclude the lawyer's firm from undertaking or continuing the representation of a client with interests adverse to a client being represented under the program's auspices. Nor will the personal disqualification of a lawyer participating in the program be imputed to other lawyers participating in the program.

[5] If, after commencing a short-term limited representation in accordance with this Rule, a lawyer undertakes to represent the client in the matter on an ongoing basis, Rules 1.7, 1.9(a) and 1.10 become applicable.

(Adopted July 1, 2009, effective January 1, 2010)

### **Illinois Supreme Court Rules**

#### **Rule 11: Manner of Serving Documents Other Than Process and Complaint on Parties Not in Default in the Trial and Reviewing Courts**

**(e) Limited Scope Appearance.** After an attorney files a Notice of Limited Scope Appearance in accordance with Rule 13(c)(6), service of all documents shall be made on both the attorney and the party represented on a limited scope basis until:

- (1) the court enters an order allowing the attorney to withdraw under Rule 13(c) or
- (2) the attorney's representation automatically terminates under Rule 13(c)(7)(ii).

#### **Rule 13: Appearances--Time to Plead--Withdrawal**

##### **(c) Appearance and Withdrawal of Attorneys.**

*(6) Limited Scope Appearance.* An attorney may make a limited scope appearance on behalf of a party in a civil proceeding pursuant to Rule of Professional Conduct 1.2(c) when the attorney has entered into a written agreement with that party to provide limited scope representation. The attorney shall file a Notice of Limited Scope Appearance in the form attached to this rule, identifying each aspect of the proceeding to which the limited scope appearance pertains.

An attorney may file a Notice of Limited Scope Appearance more than once in a case. An attorney must file a new Notice of Limited Scope Appearance before any additional aspect of the proceeding in which the attorney intends to appear. A party shall not be required to pay more than one appearance fee in a case.

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### *(7) Withdrawal Following Completion of Limited Scope Representation.*

Upon completing the representation specified in the Notice of Limited Scope Appearance filed pursuant to paragraph (6), the attorney shall withdraw by oral motion or written notice as provided in parts (i)-(ii) of this paragraph. A withdrawal for any reason other than completion of the representation shall be requested by motion under paragraphs (c)(2) and (c)(3).

(i) If the attorney completes the representation at or before a court hearing attended by the party the attorney represents, the attorney may make an oral motion for withdrawal without prior notice to the party the attorney represents or to other parties. The court must grant the motion unless the party objects on the ground that the attorney has not completed the representation. The order granting the withdrawal may require the attorney to give written notice of the order to parties who were neither present nor represented at the hearing. If the party objects that the attorney has not completed the representation, the court must hold an evidentiary hearing on the objection, either immediately or on a specified later date. After hearing the evidence, the court must grant the motion to withdraw unless the court expressly finds that the attorney has not completed the representation specified in the Notice of Limited Scope Appearance.

(ii) An attorney also may withdraw by filing a Notice of Withdrawal of Limited Scope Appearance in the form attached to this rule. The attorney must serve the Notice on the party the attorney represents and must also serve it on other counsel of record and other parties not represented by counsel, unless the court by order excuses service on other counsel and other parties. The attorney must also serve the Notice on the judge then presiding over the case. The attorney must file proof of service in compliance with this paragraph. Within 21 days after the service of the Notice, the party may file an Objection to Withdrawal of Limited Scope Appearance in the form attached to this rule. The party must serve the Objection on the attorney and must also serve it on other counsel of record and other parties not represented by counsel unless the court by order excuses service on other counsel and other parties. If no timely Objection is filed, the attorney's limited scope appearance automatically terminates, without entry of a court order when the 21-day period expires. If a timely Objection is filed, however, the attorney must notice a hearing on the Objection. If the ground for the Objection is that the attorney has not completed the representation specified in the Notice of Limited Scope Appearance, the court must hold an evidentiary hearing. After the requisite hearing, the court must enter an order allowing the attorney to withdraw unless the court expressly finds that the attorney has not completed the representation specified in the Notice of Limited Scope Appearance.

### **Committee Comments** (June 14, 2013)

Paragraph (c)(6) addresses the provision of limited scope representation to clients under Rule of Professional Conduct 1.2(c). The paragraph is not intended to regulate or impede appearances made pursuant to other types of limited engagements by attorneys, who may appear and withdraw as otherwise provided by Rule 13.

An attorney making a limited scope appearance in a civil proceeding must first enter into a written agreement with the party disclosing the limited nature of the representation. The limited appearance is then effected by using the form Notice of Limited Scope Appearance appended to this Rule. Utilizing this standardized form promotes consistency in the filing of limited scope

## APPENDIX B: RULES OF ETHICS AND PROCEDURE

appearances, makes the notices easily recognizable to judges and court personnel, and helps ensure that the scope of the representation is identified with specificity.

A party on whose behalf an attorney has filed a Notice of Limited Scope Appearance remains responsible, either personally or through an attorney who represents the party, for all matters not specifically identified in the Notice of Limited Scope Appearance.

Paragraph (c)(6) does not restrict (1) the number of limited scope appearances an attorney may make in a case, (2) the aspects of the case for which an attorney may file a limited scope appearance such as, for example, specified court proceedings, depositions, or settlement negotiations, or (3) the purposes for which an attorney may file a limited scope appearance. Notwithstanding the absence of numeric or subject matter restrictions on filing limited scope appearances, nothing in the Rule restricts the ability of a court to manage the cases before it, including taking appropriate action in response to client or lawyer abuse of the limited scope representation procedures.

Paragraph (c)(7) provides two alternative ways for an attorney to withdraw when the representation specified in the Notice of Limited Scope Appearance has been completed. The first method—an oral motion—can be used whenever the representation is completed at or before a hearing attended by the party the attorney represents. Prior notice of such a hearing is not required. The attorney should use this method whenever possible, because its use ensures that withdrawal occurs as soon as possible and that the court knows of the withdrawal.

The second method—filing a Notice of Withdrawal of Limited Scope Appearance—enables the attorney to withdraw easily in other situations, without having to make a court appearance, except when there is a genuine dispute about the attorney’s completion of the representation. The Notice must be served on the party represented and on other counsel of record and other parties not represented by counsel unless the court excuses service on other counsel of record and other parties not represented by counsel. The Notice must also be served on the judge then presiding over the case to ensure that the judge is made aware that the limited scope representation has been completed, subject to the client’s right to object. The attorney’s withdrawal is automatic, without entry of a court order, unless the client files a timely Objection to Withdrawal of Limited Scope Appearance.

If the attorney makes an oral motion to withdraw pursuant to paragraph (c)(7)(i), with or without client objection, or if the client files a timely Objection to Withdrawal of Limited Scope Appearance pursuant to paragraph (c)(7)(ii), the court must allow the attorney to withdraw unless the court expressly finds that the attorney has not completed the representation specified in the Notice of Limited Scope Appearance. An evidentiary hearing is required if the client objects to the attorney’s withdrawal based on the attorney’s failure to complete the representation. A nonevidentiary hearing is required if the client objects on a ground other than the attorney’s failure to complete the representation, although the primary function of such a hearing is to explain to the client that such an objection is not well-founded. A court’s refusal to permit withdrawal of a completed limited scope representation, or even its encouragement of the attorney to extend the representation, would disserve the interests of justice by discouraging attorneys from undertaking limited scope representations out of concern that agreements with clients for such representations would not be enforced.

A limited scope appearance under the rule is unrelated to “special and limited” appearances formerly used to object to the lack of personal jurisdiction. The use of such appearances ended with the adoption of Public Act 91-145, which amended section 2-301 of the Code of Civil Procedure (735 ILCS 5/2-301) effective January 1, 2000.

**Form for Limited Scope Appearance in Civil Action**

IN THE CIRCUIT COURT OF THE \_\_\_\_\_ JUDICIAL CIRCUIT  
\_\_\_\_\_ COUNTY, ILLINOIS

(OR, IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS)

_____	)	
Plaintiff/Petitioner	)	
	)	
v.	)	No.
	)	
	)	
_____	)	
Defendant/Respondent	)	

**NOTICE OF LIMITED SCOPE APPEARANCE**

1. The \_\_\_\_\_ attorney,  
and \_\_\_\_\_ the \_\_\_\_\_ Party,  
\_\_\_\_\_ , have entered  
into a written agreement dated \_\_\_\_\_  
the attorney will provide limited  
scope representation to the Party in the above-captioned matter in accordance with Paragraphs 3  
and 4, below.

2. The Party is Plaintiff Petitioner Defendant Respondent in this matter. (Circle one)



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3. The attorney appears pursuant to Supreme Court Rule 13(c)(6). This appearance is limited in scope to the following matter(s) in which the attorney will represent the Party (check and complete all that apply):

In the court proceeding (identify) on the following date: \_\_\_\_\_

And in any continuance of that proceeding

At the trial on the following date: \_\_\_\_\_

And in any continuance of that trial

And until judgment

At the following deposition(s): \_\_\_\_\_

If a family law matter, specify the scope and limits of representation:

\_\_\_\_\_

Other (specify the scope and limits of representation):

\_\_\_\_\_

4. If this appearance does not extend to all matters to be considered at the proceeding(s) above, identify the discrete issues within each proceeding covered by this appearance:

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

5. The attorney may withdraw following completion of the limited scope representation specified in this appearance as follows:

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a. orally move to withdraw at a hearing attended by the Party, at which the Party may object to withdrawal if the Party contends that the limited scope representation specified in this appearance has not been completed; or

b. file a Notice of Withdrawal of Limited Scope Representation in the form attached to Supreme Court Rule 13. If the attorney files such a Notice, the attorney shall serve it upon the Party and upon all counsel of record and other parties not represented by counsel unless the court excuses service upon other counsel and other unrepresented parties, and upon the judge then presiding over this case. The method of service shall be as provided in Supreme Court Rule 11 unless the court orders otherwise. If the Party objects to the withdrawal, the Party may, within 21 days after the date of the attorney's service of the Notice of Withdrawal of Limited Scope Appearance, file an Objection to Withdrawal of Limited Scope Appearance in the form attached to Supreme Court Rule 13. The attorney will provide a copy of the form of Objection to the Party with the attorney's Notice, including instructions for filing and service of an Objection. If the Party timely serves an Objection, the attorney shall notice the matter for hearing to rule on the Objection.

6. Service of pleadings on the attorney and party named above shall be made in accordance with Supreme Court Rule 11(e).

7. By signing below, the Party being represented under this Limited Scope Appearance:

a. agrees to the delivery of all court papers to the addresses specified below; and

b. agrees to inform the court, all counsel of record, and all parties not represented by counsel of any changes to the Party's address information listed below during the limited scope representation.

\_\_\_\_\_

Signature of Attorney

\_\_\_\_\_

Name of Attorney

\_\_\_\_\_

Attorney's Address

\_\_\_\_\_

Attorney's Telephone Number

\_\_\_\_\_

Attorney's E-Mail Address

\_\_\_\_\_

Attorney Number



\_\_\_\_\_ )  
Defendant/Respondent )

**NOTICE OF WITHDRAWAL OF LIMITED SCOPE APPEARANCE**

I withdraw my Notice of Limited Scope Appearance for \_\_\_\_\_ [party], pursuant to Supreme Court Rule 13(c)(7).

I have completed all services within the scope of the Notice of Limited Scope Appearance, and I have completed all acts ordered by the court within the scope of that appearance.

Service of documents upon me under Supreme Court Rule 11(e) will no longer be required upon the later of: (a) 21 days after service of this Notice or, (b) if \_\_\_\_\_ [party] files and serves an Objection to Withdrawal of Limited Scope Appearance within 21 days after service of this Notice, entry of a court order allowing my withdrawal. Service of documents on \_\_\_\_\_[party] continues to be required.

**NOTICE TO \_\_\_\_\_[party]:** You have the right to object to my withdrawal as your lawyer if you believe that I have not finished everything that I had agreed to do. To object, you must:

1. Fill in the blanks in the attached form of Objection to Withdrawal of Limited Scope Appearance, including the Certificate of Service and sign where indicated.
2. File the original Objection with the court by \_\_\_\_\_, \_\_\_\_\_, [date to be filled in by lawyer] which is 21 days after the date that I am filing and serving this Notice.
3. On the same day that you file the Objection with the court, send copies of it to me and to the other persons listed in the Certificate of Service attached to the Objection. Also, check the boxes in the Certificate of Service to show how you sent the copy to each person.

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If you file and serve an Objection within the 21-day period, I will arrange to have a hearing date set by the court. I will send you notice of the date. You must appear at the hearing and explain to the judge why you believe that I have not finished everything that I had agreed to do for you.

\_\_\_\_\_  
Signature of Attorney                      Name of Attorney

\_\_\_\_\_  
Attorney's Address                      Attorney's Telephone Number

\_\_\_\_\_  
Attorney's E-Mail Address              Attorney Number

\_\_\_\_\_  
Date

**Proof of Filing and Service**

I certify that this Notice has been filed with the court on the \_\_\_ day of \_\_\_\_\_, 20\_\_, and on the same day I served this Notice on the following, including the Party that I represented, all counsel of record and parties not represented by counsel, and the judge now presiding over this case, by the method checked below for each.

[List Name and Address of Each]              [Check Method of Service }

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The Honorable \_\_\_\_\_  US Mail, Postage Prepaid  Messenger  
\_\_\_\_\_  
 Personal Delivery  Facsimile  
\_\_\_\_\_  
 Email  
\_\_\_\_\_

[Client] \_\_\_\_\_  US Mail, Postage Prepaid  Messenger  
\_\_\_\_\_  
 Personal Delivery  Facsimile  
\_\_\_\_\_  
 Email  
\_\_\_\_\_

[Repeat Same Information for Each Other Counsel of Record and Unrepresented Party]

\_\_\_\_\_

Signature of Attorney

**Form for Objection To Withdrawal of Limited Scope Appearance**

\*\*\*\*\*

*[To Withdrawing Attorney: On the Copy of This Form Sent to the Client, List the Parties and Addresses in the Certificate of Service and Complete All Parts of the Form Except the Statement of Grounds, the Signature Block Information, the Date of Filing and Service of the Objection, the Client's Method of Service, and the Client's Signatures]*

\*\*\*\*\*

IN THE CIRCUIT COURT OF THE \_\_\_\_\_ JUDICIAL CIRCUIT  
\_\_\_\_\_ COUNTY, ILLINOIS

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(OR, IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS)

_____	)	
Plaintiff/Petitioner	)	
	)	
v.	)	No.
	)	
	)	
_____	)	
Defendant/Respondent	)	

OBJECTION TO WITHDRAWAL OF LIMITED SCOPE APPEARANCE

I, \_\_\_\_\_, object to my attorney’s Notice of Withdrawal of Limited Scope Appearance filed on \_\_\_\_\_.

My attorney has not finished everything he or she had agreed to do in the Notice of Limited Scope Appearance. I understand this is the only basis for me to present a valid objection to my attorney’s notice of withdrawal. The specific services that my attorney has not completed are:

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_.

I understand that my objection will be set for a court hearing and I will be required to appear at that hearing and explain to a judge what services my attorney has not completed that he or she had agreed to do for me.

\_\_\_\_\_

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Signature of Party

Name of Party

\_\_\_\_\_

Party's Address

Party's Telephone Number

\_\_\_\_\_

Party's E-Mail Address

\_\_\_\_\_

Date

**Proof of Filing and Service**

I certify that this Objection has been filed with the court on the \_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, and on the same day I served this Objection on the following by the method checked below for each.

[List Name and Address of Each]

[Check Method of Service]

[Attorney Who Represented Client]

US Mail, Postage Prepaid

\_\_\_\_\_

Messenger

\_\_\_\_\_

Personal Delivery  Facsimile

\_\_\_\_\_

Email



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[Repeat Same Information for Each Other Counsel of Record and Unrepresented Party]

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Signature of Party

### **Rule 137: Signing of Pleadings, Motions and Other Documents—Sanctions**

**(e) Attorney Assistance Not Requiring an Appearance or Signature.** An attorney may assist a self-represented person in drafting or reviewing a pleading, motion, or other paper without making a general or limited scope appearance. Such assistance does not constitute either a general or limited scope appearance by the attorney. The self-represented person shall sign the pleading, motion, or other paper. An attorney providing drafting or reviewing assistance may rely on the self-represented person's representation of facts without further investigation by the attorney, unless the attorney knows that such representations are false.

#### **Committee Comments** (June 14, 2013)

Under Illinois Rule of Professional Conduct 1.2(c), an attorney may limit the scope of a representation if the limitation is reasonable under the circumstances and the client gives informed consent. Such a limited scope representation may include providing advice to a party regarding the drafting of a pleading, motion or other paper, or reviewing a pleading, motion or other paper drafted by a party, without filing a general or limited scope appearance. In such circumstances, an attorney is not required to sign or otherwise note the attorney's involvement and the certification requirements in Rule 137 are inapplicable. Moreover, even if an attorney is identified in connection with such a limited scope representation, the attorney will not be deemed to have made a general or limited scope appearance.

Consistent with the limited scope of services envisioned under this drafting and reviewing function, attorneys may rely on the representation of facts provided by the self-represented person. This rule applies, for example, to an attorney who advises a caller to a legal aid telephone hotline regarding the completion of a form pleading, motion or other paper or an attorney providing information at a pro bono clinic.

All obligations under Rule 137 with respect to signing pleadings and certifications apply fully in those limited scope representations where an attorney has filed a general or limited scope appearance. Drafting a pleading, motion or other paper, or reviewing a pleading, motion or paper drafted by a party does not establish any independent responsibility not already applicable under current law.

**Indiana Rules of Professional Conduct**

**Rule 1.2: Scope of Representation and Allocation of Authority between Client and Lawyer**

- (c) A lawyer may limit the scope and objectives of the representation if the limitation is reasonable under the circumstances and the client gives informed consent.

**Comment**

[6] The scope of services to be provided by a lawyer may be limited by agreement with the client or by the terms under which the lawyer's services are made available to the client. When a lawyer has been retained by an insurer to represent an insured, for example, the representation may be limited to matters related to the insurance coverage. A limited representation may be appropriate because the client has limited objectives for the representation. In addition, the terms upon which representation is undertaken may exclude specific means that might otherwise be used to accomplish the client's objectives. Such limitations may exclude actions that the client thinks are too costly or that the lawyer regards as repugnant, unethical, or imprudent.

[7] Although this Rule affords the lawyer and client substantial latitude to limit the representation, the limitation must be reasonable under the circumstances. If, for example, a client's objective is limited to securing general information about the law the client needs in order to handle a common and typically uncomplicated legal problem, the lawyer and client may agree that the lawyer's services will be limited to a brief telephone consultation. Such a limitation, however, would not be reasonable if the time allotted was not sufficient to yield advice upon which the client could rely. Although an agreement for a limited representation does not exempt a lawyer from the duty to provide competent representation, the limitation is a factor to be considered when determining the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation. See Rule 1.1.

[8] All agreements concerning a lawyer's representation of a client must accord with the Rules of Professional Conduct and other law. See, e.g., Rules 1.1, 1.8 and 5.6.

**Rule 6.5: Nonprofit and Court-Annexed Limited Legal Services Programs**

- (a) A lawyer who, under the auspices of a program sponsored by a nonprofit organization or court, provides short-term limited legal services to a client without expectation by either the lawyer or the client that the lawyer will provide continuing representation in the matter:
- (1) is subject to Rules 1.7 and 1.9(a) only if the lawyer knows that the representation of the client involves a conflict of interest; and
  - (2) is subject to Rule 1.10 only if the lawyer knows that another lawyer associated with the lawyer in a law firm is disqualified by Rule 1.7 or 1.9(a) with respect to the matter.
- (b) Except as provided in paragraph (a)(2), Rule 1.10 is inapplicable to a representation governed by this Rule.

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### Comment

[1] Legal services organizations, courts and various nonprofit organizations have established programs through which lawyers provide short-term limited legal services -- such as advice or the completion of legal forms -- that will assist persons to address their legal problems without further representation by a lawyer. In these programs, such as legal-advice hotlines, advice-only clinics or pro se counseling programs, a client-lawyer relationship is established, but there is no expectation that the lawyer's representation of the client will continue beyond the limited consultation. Such programs are normally operated under circumstances in which it is not feasible for a lawyer to systematically screen for conflicts of interest as is generally required before undertaking a representation. See, e.g., Rules 1.7, 1.9 and 1.10.

[2] A lawyer who provides short-term limited legal services pursuant to this Rule must secure the client's informed consent to the limited scope of the representation. See Rule 1.2(c). If a short-term limited representation would not be reasonable under the circumstances, the lawyer may offer advice to the client but must also advise the client of the need for further assistance of counsel. Except as provided in this Rule, the Rules of Professional Conduct, including Rules 1.6 and 1.9(c), are applicable to the limited representation.

[3] Because a lawyer who is representing a client in the circumstances addressed by this Rule ordinarily is not able to check systematically for conflicts of interest, paragraph (a) requires compliance with Rules 1.7 or 1.9(a) only if the lawyer knows that the representation presents a conflict of interest for the lawyer, and with Rule 1.10 only if the lawyer knows that another lawyer in the lawyer's firm is disqualified by Rules 1.7 or 1.9(a) in the matter.

[4] Because the limited nature of the services significantly reduces the risk of conflicts of interest with other matters being handled by the lawyer's firm, paragraph (b) provides that Rule 1.10 is inapplicable to a representation governed by this Rule except as provided by paragraph (a)(2). Paragraph (a)(2) requires the participating lawyer to comply with Rule 1.10 when the lawyer knows that the lawyer's firm is disqualified by Rules 1.7 or 1.9(a). By virtue of paragraph (b), however, a lawyer's participation in a short-term limited legal services program will not preclude the lawyer's firm from undertaking or continuing the representation of a client with interests adverse to a client being represented under the program's auspices. Nor will the personal disqualification of a lawyer participating in the program be imputed to other lawyers participating in the program.

[5] If, after commencing a short-term limited representation in accordance with this Rule, a lawyer undertakes to represent the client in the matter on an ongoing basis, Rules 1.7, 1.9(a) and 1.10 become applicable.

### Indiana Rules of Trial Procedure

#### Rule 3.1 Appearance

**(I) Temporary or Limited Representation.** If an attorney seeks to represent a party in a proceeding before the court on a temporary basis or a basis that is limited in scope, the attorney shall file a notice of temporary or limited representation. The notice shall contain the information set out in Section (A) (1) and (2) above and a description of the temporary or limited status, including the date the temporary status ends or the scope of the limited representation. The court

## APPENDIX B: RULES OF ETHICS AND PROCEDURE

shall not be required to act on the temporary or limited representation. At the completion of the temporary or limited representation, the attorney shall file a notice of completion of representation with the clerk of the court.

### **Iowa Rules of Professional Conduct**

#### **Rule 32:1.2: Scope of Representation and Allocation of Authority between Client and Lawyer**

(c) A lawyer may limit the scope of the representation if the limitation is reasonable under the circumstances and the client gives informed consent.

(1) The client's informed consent must be confirmed in writing unless:

(i) the representation of the client consists solely of telephone consultation;

(ii) the representation is provided by a lawyer employed by a nonprofit legal services program or participating in a nonprofit court-annexed legal services program and the lawyer's representation consists solely of providing information and advice or the preparation of court-approved legal forms; or

(iii) the court appoints the attorney for a limited purpose that is set forth in the appointment order.

(2) If the client gives informed consent in a writing signed by the client, there shall be the presumption that:

(i) the representation is limited to the attorney and the services described in the writing; and

(ii) the attorney does not represent the client generally or in matters other than those identified in the writing.

#### **Comments**

[6] The scope of services to be provided by a lawyer may be limited by agreement with the client or by the terms under which the lawyer's services are made available to the client. When a lawyer has been retained by an insurer to represent an insured, for example, the representation may be limited to matters related to the insurance coverage. A limited representation may be appropriate because the client has limited objectives for the representation. In addition, the terms upon which representation is undertaken may exclude specific means that might otherwise be used to accomplish the client's objectives. Such limitations may exclude actions that the client thinks are too costly or that the lawyer regards as repugnant or imprudent.

[7] Although this rule affords the lawyer and client substantial latitude to limit the representation, the limitation must be reasonable under the circumstances. If, for example, a client's objective is limited to securing general information about the law the client needs in order to handle a common and typically uncomplicated legal problem, the lawyer and client may agree that the lawyer's services will be limited to a brief telephone consultation. Such a limitation, however, would not be reasonable if the time allotted was not sufficient to yield advice upon which the client could rely. Although an agreement for a limited representation does not exempt a lawyer from the duty to provide competent representation, the limitation is a factor to be considered

## APPENDIX B: RULES OF ETHICS AND PROCEDURE

when determining the legal knowledge, skill, thoroughness, and preparation reasonably necessary for the representation. *See* rule 32:1.1.

[8] All agreements concerning a lawyer's representation of a client must accord with the Iowa Rules of Professional Conduct and other law. *See, e.g.*, rules 32:1.1, 32:1.8, and 32:5.6.

### **Rule 32:4.2: Communication with Person Represented by Counsel**

An otherwise unrepresented person to whom limited representation is being provided or has been provided in accordance with rule 32:1.2(c) is considered to be unrepresented for purposes of this rule unless the opposing lawyer knows of, or has been provided with, a written notice of appearance under which, or a written notice of time period during which, the opposing lawyer is to communicate with the limited-representation lawyer as to the subject matter within the limited scope of representation.

### **Rule 32:6.5: Nonprofit and Court-Annexed Limited Legal Services Programs**

- (a) A lawyer who, under the auspices of a program sponsored by a nonprofit organization or court, provides short-term limited legal services to a client without expectation by either the lawyer or the client that the lawyer will provide continuing representation in the matter:
- (1) is subject to rules 32:1.7 and 32:1.9(a) only if the lawyer knows that the representation of the client involves a conflict of interest; and
  - (2) is subject to rule 32:1.10 only if the lawyer knows that another lawyer associated with the lawyer in a law firm is disqualified by rule 32:1.7 or 32:1.9(a) with respect to the matter.
- (b) Except as provided in paragraph (a)(2), rule 32:1.10 is inapplicable to a representation governed by this rule.

### **Comment**

[1] Legal services organizations, courts, and various nonprofit organizations have established programs through which lawyers provide short-term limited legal services—such as advice or the completion of legal forms—that will assist persons to address their legal problems without further representation by a lawyer. In these programs, such as legal-advice hotlines, advice-only clinics, or pro se counseling programs, a client-lawyer relationship is established, but there is no expectation that the lawyer's representation of the client will continue beyond the limited consultation. Such programs are normally operated under circumstances in which it is not feasible for a lawyer to systematically screen for conflicts of interest as is generally required before undertaking a representation. *See, e.g.*, rules 32:1.7, 32:1.9, and 32:1.10.

[2] A lawyer who provides short-term limited legal services pursuant to this rule must secure the client's informed consent to the limited scope of the representation. *See* rule 32:1.2(c). If a short-term limited representation would not be reasonable under the circumstances, the lawyer may offer advice to the client but must also advise the client of the need for further assistance of counsel. Except as provided in this rule, the Iowa Rules of Professional Conduct, including rules 32:1.6 and 32:1.9(c), are applicable to the limited representation.

[3] Because a lawyer who is representing a client in the circumstances addressed by this rule ordinarily is not able to check systematically for conflicts of interest, paragraph (a) requires

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compliance with rule 32:1.7 or 32:1.9(a) only if the lawyer knows that the representation presents a conflict of interest for the lawyer, and with rule 32:1.10 only if the lawyer knows that another lawyer in the lawyer's firm is disqualified by rule 32:1.7 or 32:1.9(a) in the matter.

[4] Because the limited nature of the services significantly reduces the risk of conflicts of interest with other matters being handled by the lawyer's firm, paragraph (b) provides that rule 32:1.10 is inapplicable to a representation governed by this rule except as provided by paragraph (a)(2). Paragraph (a)(2) requires the participating lawyer to comply with rule 32:1.10 when the lawyer knows that the lawyer's firm is disqualified by rule 32:1.7 or 32:1.9(a). By virtue of paragraph (b), however, a lawyer's participation in a short-term limited legal services program will not preclude the lawyer's firm from undertaking or continuing the representation of a client with interests adverse to a client being represented under the program's auspices. Nor will the personal disqualification of a lawyer participating in the program be imputed to other lawyers participating in the program.

[5] If, after commencing a short-term limited representation in accordance with this rule, a lawyer undertakes to represent the client in the matter on an ongoing basis, rules 32:1.7, 32:1.9(a), and 32:1.10 become applicable.

### **Rule 32:7.2: Advertising**

(g) The following information may be communicated to the public in the manner permitted by this rule, provided it is presented in a dignified style:

- (1) name, including name of law firm, names of professional associates, addresses, telephone numbers, Internet addresses and URLs, and the designation "lawyer," "attorney," "J.D.," "law firm," or the like;
- (2) the following descriptions of practice:
  - (i) "general practice";
  - (ii) "general practice including but not limited to" followed by one or more fields of practice descriptions set forth in rule 32:7.4(a)-(c);
  - (iii) fields of practice, limitation of practice, or specialization, but only to the extent permitted by rule 32:7.4; and
  - (iv) limited representation as authorized by rule 32:1.2(c);
- (3) date and place of birth;
- (4) date and place of admission to the bar of state and federal courts;
- (5) schools attended, with dates of graduation, degrees, and other scholastic distinctions;
- (6) public or quasi-public offices;
- (7) military service;
- (8) legal authorships;
- (9) legal teaching positions;
- (10) memberships, offices, and committee and section assignments in bar associations;
- (11) memberships and offices in legal fraternities and legal societies;
- (12) technical and professional licenses;
- (13) memberships in scientific, technical, and professional associations and societies; and
- (14) foreign language ability.

**Iowa Rules of Civil Procedure**

**Rule 1.404: Appearances**

**(3) Limited appearance.** Pursuant to Iowa R. Prof'l Conduct 32:1.2(c), an attorney's role may be limited to one or more individual proceedings in the action, if specifically stated in a notice of limited appearance filed and served prior to or simultaneously with the proceeding. If the attorney appears at a hearing on behalf of a client pursuant to a limited representation agreement, the attorney shall notify the court of that limitation at the beginning of that hearing.

**(4) Termination of limited appearance.** At the conclusion of a proceeding in which an attorney has appeared pursuant to a limited representation agreement, the attorney's role terminates without the necessity of leave of court upon the attorney's filing a notice of completion of limited appearance. The notice of completion of limited appearance shall state that the attorney was retained to perform a limited service; shall describe the limited service; shall state that the service has been completed; and shall include the personal identification number, address, telephone number and, if available, facsimile transmission number of the client. The attorney shall serve a copy of the notice on the client and all other parties to the action or their attorneys. [Report October 31, 1997, effective January 24, 1998; November 9, 2001, effective February 15, 2002; March 12, 2007, effective May 15, 2007]

**Rule 1.423: Limited Representation Pleadings and Papers**

**1.423(1) Disclosure of limited representation.** Every pleading or paper filed by a pro se party that was prepared with the drafting assistance of an attorney who contracted with the client to limit the scope of representation pursuant to Iowa R. Prof'l Conduct 32:1.2(c) shall state that fact before the signature line at the end of the pleading or paper that was prepared with the attorney's assistance. The attorney shall advise the client that such pleading or other paper must contain this statement. The pleading or paper shall also include the attorney's name, personal identification number, address, telephone number and, if available, facsimile transmission number, but shall not be signed by the attorney. If the drafting assistance was provided as part of services offered by a nonprofit legal services organization or a volunteer component of a nonprofit or court-annexed legal services program, the name, address, telephone number and, if available, facsimile transmission number of the program may be included in lieu of the business address, telephone number, and facsimile transmission number of the drafting attorney.

**1.423(2) Drafting attorney's duty.** In providing drafting assistance to the pro se party, the attorney shall determine, to the best of the attorney's knowledge, information, and belief, that the pleading or paper is well grounded in fact and is warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law, and that it is not filed for any improper purpose, such as to harass or to cause an unnecessary delay or needless increase in the cost of litigation. The attorney providing drafting assistance may rely on the pro se party's representation of facts, unless the attorney has reason to believe that such representation is false or materially insufficient, in which instance the attorney shall make an independent, reasonable inquiry into the facts.

## APPENDIX B: RULES OF ETHICS AND PROCEDURE

**1.423(3) Not an appearance by attorney.** The identification of an attorney who has provided drafting assistance in the preparation of a pleading or paper shall not constitute an entry of appearance by the attorney for purposes of rule 1.404(1) and does not authorize service on the attorney or entitle the attorney to service as provided in rule 1.442. [Report March 12, 2007, effective May 15, 2007]

### **Rule 1.442: Service and Filing of Pleadings and Other Papers**

**1.442(2) How service is made.** Service upon a party represented by an attorney shall be made upon the attorney unless service upon the party is ordered by the court. Service on an attorney who has made a limited appearance for a party shall constitute valid service on the represented party only in connection with the specific proceedings for which the attorney has appeared, including any hearing or trial at which the attorney appeared. Service shall be made by delivering, mailing, or transmitting by fax (facsimile) a copy to the attorney or to the party at the attorney's or party's last known address or, if no address is known, by leaving it with the clerk of court. Delivery within this rule means: handing it to the attorney or to the party; leaving it at the attorney's or party's office; or, if the office is closed or the person to be served has no office, leaving it at the attorney's or party's dwelling house or usual place of abode with some person of suitable age and discretion residing therein. Service by mail is complete upon mailing.

### **Kansas Rules of Professional Conduct**

#### **Rule 1.2: Scope of Representation**

(c) A lawyer may limit the scope of the representation if the limitation is reasonable under the circumstances and the client gives informed consent in writing.

### **Kansas Supreme Court Rules**

#### **Rule 115A Commencement of Actions, Pleadings, and Related Matters; Limited Representation**

(a) Written Consent Required. An attorney may limit the scope of representation if the limitation is reasonable under the circumstances, and the client gives informed consent, confirmed in writing.

(b) Limited Appearance. An attorney, pursuant to this rule, may make a limited appearance on behalf of an otherwise unrepresented party.

(1) Notice of Limited Entry of Appearance Required. An attorney making a limited appearance must file a notice of limited entry of appearance. The notice is sufficient if it is on the judicial council form. The notice must:

(A) state precisely the court proceeding to which the limited appearance pertains; and  
(B) if the appearance does not extend to all issues to be considered at the proceeding, identify the specific issues covered by the appearance.

(2) Scope and Number of Limited Appearances. An attorney may file a notice of limited entry of appearance for one or more court proceedings in a case. At any time-including during a



## APPENDIX B: RULES OF ETHICS AND PROCEDURE

proceeding-an attorney may, with the client's consent, file a new notice of limited entry of appearance.

(3) A Paper Filed In a Limited Appearance.

(A) Statement Required on Signature Page. A pleading, motion, or other paper filed by an attorney making a limited appearance must state in bold type on the signature page of the document: "Attorney for [party] under limited entry of appearance dated \_\_ ."

(B) Filing Outside Scope of Limited Appearance Constitutes General Appearance. If an attorney files a pleading, motion, or other paper that is outside the scope of a limited appearance without filing a new notice of limited entry of appearance, the attorney will be deemed to have entered a general appearance in the case.

(4) Service. When service is required or permitted to be made on a party represented by an attorney making a limited appearance under this rule:

(A) for all matters within the scope of the limited appearance, service must be made on both the attorney and the party;

(B) the party must be served at the party's address stated in the notice of limited entry of appearance, but if the party's address has been made confidential by court order or rule, service on the party must be made in accordance with the court order or rule; and

(C) service on the attorney is not required for matters outside the scope of the limited appearance.

(5) Restrictions on Limited Appearances.

(A) An attorney may not enter a limited appearance for the sole purpose of making evidentiary objections.

(B) An attorney making a limited appearance and the litigant for whom the attorney appears may not argue on the same legal issue during the period of the limited appearance.

(6) Withdrawal.

(A) On Completion of Limited Appearance. On completion of a limited appearance-including completion and filing of an order or journal entry resolving the court proceeding for which the attorney was retained-an attorney must withdraw by filing a notice of withdrawal of limited appearance and serving the notice on the client and parties. The notice must state that the withdrawal is effective unless an objection is filed not later than 14 days after the notice is filed. The notice is sufficient if it is on the judicial council form and-unless otherwise provided by law must include the client's name, address, and telephone number. The attorney must file a notice of withdrawal of limited entry of appearance for each court proceeding for which the attorney has filed a notice of limited appearance. The court may impose sanctions for failure to file a notice of withdrawal under this paragraph.

(B) Before Completion of Limited Appearance. If an attorney wishes to withdraw from a limited appearance before it is completed-including before completion and filing of an order or journal entry documenting the court proceeding for which the attorney was retained-the attorney must comply with Rule 117.

(c) Document Preparation Assistance. An attorney may help a party prepare a pleading, motion, or other paper to be signed and filed in court by the client. The following rules apply:

(1) The attorney or party preparing a pleading, motion, or other paper under this rule must insert at the bottom of the paper the notation "prepared with assistance of a Kansas licensed attorney";

(2) The attorney is not required to sign the paper; and

## APPENDIX B: RULES OF ETHICS AND PROCEDURE

(3) The filing of a pleading, motion, or other paper prepared under this rule does not constitute an appearance by the preparing attorney.

### **Comment**

Making a legal form available to a self-represented litigant to complete for themselves, whether in person, by mail, electronically, or through the Internet (at no cost), is not considered document preparation assistance and is not covered by this rule.

### **U.S. District Court, District of Kansas Local Rules**

#### **Rule 83.5.8: Limited Scope Representation in Civil Cases**

(a) **In General.** A lawyer may limit the scope of representation in civil cases if the limitation is reasonable under the circumstances and the client gives informed consent in writing.

(b) **Procedures.** A lawyer who provides limited representation must comply with Kansas Supreme Court Rule 115A, as later amended or modified, with two exceptions. First, the lawyer must use the federal forms rather than the Kansas State Court forms.

Second, Rule 115A(c) does not apply in the District of Kansas. Any attorney preparing a pleading, motion or other paper for a specific case must enter a limited appearance and sign the document. The Bankruptcy Court may have additional Local Rules that govern its limited scope practice.

(c) **Participation.** The United States District Court for the District of Kansas allows any attorney registered as active to practice before this court to offer limited scope representation.

### **Kentucky Rules of Professional Conduct**

#### **Rule 1.2: Scope of Representation and Allocation of Authority between Client and Lawyer**

(c) A lawyer may limit the scope of the representation if the limitation is reasonable under the circumstances and the client gives informed consent.

### **Comment**

(6) The scope of services to be provided by a lawyer may be limited by agreement with the client or by the terms under which the lawyer's services are made available to the client. When a lawyer has been retained by an insurer to represent an insured, for example, the representation may be limited to matters related to the insurance coverage. A limited representation may be appropriate because the client has limited objectives for the representation. In addition, the terms upon which representation is undertaken may exclude specific means that might otherwise be used to accomplish the client's objectives. Such limitations may exclude actions that the client thinks are too costly or that the lawyer regards as repugnant or imprudent.

(7) Although this Rule affords the lawyer and client substantial latitude to limit the representation, the limitation must be reasonable under the circumstances. If, for example, a client's objective is limited to securing general information about the law the client needs in

## APPENDIX B: RULES OF ETHICS AND PROCEDURE

order to handle a common and typically uncomplicated legal problem, the lawyer and client may agree that the lawyer's services will be limited to a brief telephone consultation. Such a limitation, however, would not be reasonable if the time allotted was not sufficient to yield advice upon which the client could rely. Although an agreement for a limited representation does not exempt a lawyer from the duty to provide competent representation, the limitation is a factor to be considered when determining the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation. See Rule 1.1.

(8) All agreements concerning a lawyer's representation of a client must accord with the Rules of Professional Conduct and other law. See, e.g., Rules 1.1, 1.8 and 5.6.

### **Rule 6.5: Nonprofit and Court-Annexed Limited Legal Services Programs**

(a) A lawyer who, under the auspices of a program sponsored by a nonprofit organization or court, provides short-term limited legal services to a client without expectation by either the lawyer or the client that the lawyer will provide continuing representation in the matter:

(1) is subject to Rules 1.7 and 1.9(a) only if the lawyer knows that the representation of the client involves a conflict of interest; and

(2) is subject to Rule 1.10 only if the lawyer knows that another lawyer associated with the lawyer in a law firm is disqualified by Rule 1.7 or 1.9(a) with respect to the matter.

(b) Except as provided in paragraph (a)(2), Rule 1.10 is inapplicable to a representation governed by this Rule.

HISTORY: Adopted by Order 2009-05, eff. 7-15-09

### **Comment**

(1) Legal services organizations, courts and various nonprofit organizations have established programs through which lawyers provide short-term limited legal services, such as advice or the completion of legal forms, that will assist persons to address their legal problems without further representation by a lawyer. In these programs, such as legal-advice hotlines, advice-only clinics or pro se counseling programs, a client-lawyer relationship is established, but there is no expectation that the lawyer's representation of the client will continue beyond the limited consultation. Such programs are normally operated under circumstances in which it is not feasible for a lawyer to systematically screen for conflicts of interest as is generally required before undertaking a representation. See, e.g., Rules 1.7, 1.9 and 1.10.

(2) A lawyer who provides short-term limited legal services pursuant to this Rule must secure the client's informed consent to the limited scope of the representation. See Rule 1.2(c). If a short-term limited representation would not be reasonable under the circumstances, the lawyer may offer advice to the client but must also advise the client of the need for further assistance of counsel. Except as provided in this Rule, the Rules of Professional Conduct, including Rules 1.6 and 1.9(c), are applicable to the limited representation.

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(3) Because a lawyer who is representing a client in the circumstances addressed by this Rule ordinarily is not able to check systematically for conflicts of interest, paragraph (a) requires compliance with Rules 1.7 or 1.9(a) only if the lawyer knows that the representation presents a conflict of interest for the lawyer, and with Rule 1.10 only if the lawyer knows that another lawyer in the lawyer's firm is disqualified by Rules 1.7 or 1.9(a) in the matter.

(4) Because the limited nature of the services significantly reduces the risk of conflicts of interest with other matters being handled by the lawyer's firm, paragraph (b) provides that Rule 1.10 is inapplicable to a representation governed by this Rule except as provided by paragraph (a)(2). Paragraph (a)(2) requires the participating lawyer to comply with Rule 1.10 when the lawyer knows that the lawyer's firm is disqualified by Rules 1.7 or 1.9(a). By virtue of paragraph (b), however, a lawyer's participation in a short-term limited legal services program will not preclude the lawyer's firm from undertaking or continuing the representation of a client with interests adverse to a client being represented under the program's auspices. Nor will the personal disqualification of a lawyer participating in the program be imputed to other lawyers participating in the program.

(5) If, after commencing a short-term limited representation in accordance with this Rule, a lawyer undertakes to represent the client in the matter on an ongoing basis, Rules 1.7, 1.9(a) and 1.10 become applicable.

### **Louisiana Rules of Professional Conduct**

#### **Rule 1.2: Scope of Representation and Allocation of Authority between Client and Lawyer**

(c) A lawyer may limit the scope of the representation if the limitation is reasonable under the circumstances and the client gives informed consent.

#### **Rule 6.5: Nonprofit and Court-Annexed Limited Legal Services Programs**

(a) A lawyer who, under the auspices of a program sponsored by a nonprofit organization or court, provides short-term limited legal services to a client without expectation by either the lawyer or the client that the lawyer will provide continuing representation in the matter:

(1) is subject to Rules 1.7 and 1.9(a) only if the lawyer knows that the representation of the client involves a conflict of interest; and

(2) is subject to Rule 1.10 only if the lawyer knows that another lawyer associated with the lawyer in a law firm is disqualified by Rule 1.7 or 1.9(a) with respect to the matter.

(b) Except as provided in paragraph (a)(2), Rule 1.10 is inapplicable to a representation governed by this Rule.

**Rules for Louisiana District Courts**

**Rule 9.12 Enrollment as Counsel of Record**

All licensed Louisiana attorneys in good standing may enroll as counsel of record: (1) by oral notice made in open court when all parties or their counsel are present; or (2) by filing a written Notice of Enrollment or a written Notice of Limited Appearance in accordance with La. Code Civ. Proc. art. 853 with the clerk of court, with copies to all other enrolled counsel or self-represented parties and to the court.

A Notice of Limited Appearance shall specifically state the limitation of legal services by subject matter, proceeding, date, or time period in accordance with Rule 1.2(c) of the Rules of Professional Conduct. *See* forms in Appendix 9.12A (family law) and Appendix 9.12B (non-family law).

The applicable Appendix Form 9.12 form shall be filed if an attorney is making a limited appearance, with or prior to the initial pleading or prior to the initial hearing. The Notice shall bear the signatures of both the appearing attorney and the client, unless the client is unavailable to sign at filing. If the Notice does not bear the client's signature, a certificate attesting to the scope of limited enrollment, signed by the client, shall be filed into the record within ten (10) days of the filing of the initial Notice of Limited Appearance.

Any pleading filed by an attorney making a limited appearance shall state in bold type on the signature page of that pleading: "Attorney for limited purpose of [matter or proceeding]."

**Comments**

Attorneys enrolling pro hac vice shall comply with Rule XVII, Section 13 of the Rules of the Louisiana Supreme Court.

Filing the initial petition or first responsive pleading constitutes enrollment, and no further notice of enrollment is needed unless the attorney is making a limited appearance as authorized by Rule 1.2(c) of the Rules of Professional Conduct.

Rule 1.2(c) of the Rules of Professional Conduct allows an attorney to limit the scope of the representation if the limitation is reasonable and the client gives informed consent. See also Rule 1.0(e) of the Rules of Professional Conduct.

The use of standard forms for limited appearances makes the notices easily recognizable to judge, court staff, opposing parties and the client. The form notices require the attorney to identify the scope of a limited representation with specificity.

**Maine Rules of Professional Conduct**

**Rule 1.2: Scope of Representation and Allocation of Authority between Client and Lawyer**

(c) A lawyer may limit the scope of representation if the limitation is reasonable under the circumstances and the client provides informed consent after consultation. If, after consultation, the client consents, an attorney may enter a limited appearance on behalf of an otherwise unrepresented party involved in a court proceeding. A lawyer who signs a complaint, counterclaim, cross-claim or any amendment thereto that is filed with the court, may not thereafter limit representation as provided in this rule, without leave of court.

(d) A lawyer, who under the auspices of a non-profit organization or a court-annexed program provides limited representation to a client without expectation of either the lawyer or the client that the lawyer will provide continuing representation in the matter, is subject to the requirements of Rules 1.7, 1.9, 1.10 and 1.11 only if the lawyer is aware that the representation of the client involves a conflict-of-interest.

**Comment**

*Agreements Limiting Scope of Representation*

[6] Both lawyer and client have authority and responsibility to determine the objectives and means of representation. The scope of services to be provided by a lawyer may be limited by agreement with the client. In situations where the lawyer will not be providing limited representation in court, the limited representation agreement must be reasonable under the circumstances. If, for example, a client's objective is limited to securing general information about the law and the client's needs in order to handle a common and typically uncomplicated legal problem, the lawyer and the client may agree that the lawyer's services will be limited to a brief telephone consultation or office visit. Such a limitation, however, will not be reasonable if the time allotted was not sufficient to yield advice upon which the client can rely. Although an agreement for limited representation does not exempt a lawyer from the duty to provide competent representation, the limitation is a factor to be considered when determining the legal knowledge, skill, thoroughness, and preparation reasonably necessary for the representation. A lawyer's advice may be based upon the scope of the representation agreed upon by the lawyer and client, and the client's representation of the facts.

[6A] While a writing memorializing the agreement is not required, to the extent a writing can be obtained, it is a better practice to do so for both the lawyer and the client.

[6B] In situations involving limited representation in court of an otherwise unrepresented party, an agreement outlining the scope of representation is required, and a written memorandum of the scope of representation is recommended. A lawyer providing limited representation in court proceedings should include in the consultation with the client an explanation of the risks and benefits of the limited representation. A general form of the agreement is attached for reference.

## APPENDIX B: RULES OF ETHICS AND PROCEDURE

[6C] An attorney reasonably may rely on the information provided by the limited representation client. This rule does not reduce an attorney's obligation to provide competent representation, but makes clear the preparation for the legal matter is limited along with the scope of the representation.

[7] Rule 1.2(c) allows the client and lawyer to agree to the parameters, including time limitations, on the scope of representation, and allows the attorney to withdraw from pending litigation or otherwise terminate representation in accordance with the agreement with the client, or when permitted by the court as set forth in 1.2(c). Although this Rule affords the lawyer and client substantial latitude to limit the representation, the limitation must be reasonable under the circumstances. If, for example, a client's objective is limited to securing general information about a common and typically uncomplicated legal problem, the lawyer and client may agree that the lawyer's services will be limited to a brief telephone consultation. Such a limitation, however, would not be reasonable if the time allotted was not sufficient to yield advice upon which the client could rely. Although an agreement for a limited representation does not exempt a lawyer from the duty to provide competent representation, the limitation is a factor to be considered when determining the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation. See Rule 1.1.

[7A] Legal service organizations, courts, and various non-profit organizations have established programs through which lawyers provide limited legal services—typically advice—that will assist persons with limited means to address their legal problems without further representation by a lawyer. In these programs, such as legal advice hotlines, advice-only clinics, lawyer for the day programs in criminal or civil matters, or *pro se* counseling programs, an attorney-client relationship is established, but there is no expectation that the lawyer's representation of the client will continue beyond the limited consultation. It is the purpose of this Rule to provide guidance to lawyers about their professional responsibilities when serving a client in this capacity.

[7B] The phrase “is aware” as used in Rule 1.2(d) should be distinguished from the term “knows” as defined in Rule 1.0: Definitions and Terminology. “Knows,” according to the definition, means actual knowledge of the fact in question, which may be inferred from circumstances. In contrast, “is aware” allows a lawyer, in the limited circumstances described in Rule 1.2(d), to represent clients without risk of a violation of Rules 1.7, 1.9, 1.10 and 1.11, if the lawyer knows, based on reasonable recollection and information provided by the client in the ordinary course of the consultation, that the representation does not present a conflict-of-interest. In such a case, knowledge may not be inferred from circumstances. This is because a lawyer who is representing a client in the circumstances addressed by Rule 1.2(d) is not able to check systematically for conflicts. A conflict-of-interest that would otherwise be imputed to a lawyer because of the lawyer's association with a firm will not preclude the lawyer from representing a client in a limited services program. Nor will the lawyer's participation in such a program preclude the lawyer's firm from undertaking or continuing the representation of clients with interests adverse to a client being represented under the program's auspices.

[8] All agreements concerning a lawyer's representation of a client must accord with the Rules of Professional Conduct and other law. See, e.g., Rules 1.1, 1.8 and 5.6.

## APPENDIX B: RULES OF ETHICS AND PROCEDURE

### LIMITED REPRESENTATION AGREEMENT

(Used in conjunction with Rule 1.2 the following form shall be sufficient to satisfy the rule. The authorization of this form shall not prevent the use of other forms consistent with this rule.)

To Be Executed in Duplicate

Date: \_\_\_\_\_, 20\_\_

1. The client, \_\_\_\_\_, retains the attorney, \_\_\_\_\_, to perform limited legal services in the following matter: \_\_v\_\_.
2. The client seeks the following services from the attorney (indicate by writing "yes" or "no"):
  - a. \_\_\_\_\_ Legal advice: office visits, telephone calls, fax, mail, e-mail;
  - b. \_\_\_\_\_ Advice about availability of alternative means to resolving the dispute, including mediation and arbitration;
  - c. \_\_\_\_\_ Evaluation of client self-diagnosis of the case and advising client about legal rights and responsibilities;
  - d. \_\_\_\_\_ Guidance and procedural information for filing or serving documents;
  - e. \_\_\_\_\_ Review pleadings and other documents prepared by client;
  - f. \_\_\_\_\_ Suggest documents to be prepared;
  - g. \_\_\_\_\_ Draft pleadings, motions, and other documents;
  - h. \_\_\_\_\_ Factual investigation: contacting witnesses, public record searches, in depth interview of client;
  - i. \_\_\_\_\_ Assistance with computer support programs;
  - j. \_\_\_\_\_ Legal research and analysis;
  - k. \_\_\_\_\_ Evaluate settlement options;
  - l. \_\_\_\_\_ Discovery: interrogatories, depositions, requests for document production;
  - m. \_\_\_\_\_ Planning for negotiations;
  - n. \_\_\_\_\_ Planning for court appearances;
  - o. \_\_\_\_\_ standby telephone assistance during negotiations or settlement conferences;



## APPENDIX B: RULES OF ETHICS AND PROCEDURE

- p. \_\_\_\_ Referring client to expert witnesses, special masters, or other counsel;
- q. \_\_\_\_ Counseling client about an appeal;
- r. \_\_\_\_ Procedural assistance with an appeal and assisting with substantive legal argument in an appeal;
- s. \_\_\_\_ Provide preventive planning and/or schedule legal check-ups;
- t. \_\_\_\_ Other:

1. The client shall pay the attorney for those limited services as follows:

a. Hourly Fee: The current hourly fee charged by the attorney or the attorney's law firm for services under this agreement are as follows:

i. Attorney:

ii. Associate:

iii. Paralegal:

iv. Law Clerk:

Unless a different fee arrangement is established in clause b.) of this paragraph, the hourly fee shall be payable at the time of the service. Time will be charged in increments of one-tenth of an hour, rounded off for each particular activity to the nearest one-tenth of an hour.

b. Payment from Deposit:

For a continuing consulting role, client will pay to attorney a deposit of \$\_\_\_\_\_, to be received by attorney on or before \_\_\_\_\_, and to be applied against attorney fees and costs incurred by client. This amount will be deposited by attorney in attorney trust account. Client authorizes attorney to withdraw funds from the trust account to pay attorney fees and costs as they are incurred by client. The deposit is refundable. If, at the termination of services under this agreement, the total amount incurred by client for attorney fees and costs is less than the amount of the deposit, the difference will be refunded to client. Any balance due shall be paid within thirty days of the termination of services.

c. Costs:

Client shall pay attorney out-of-pocket costs incurred in connection with this agreement, including long distance telephone and fax costs, photocopy expense and postage. All costs payable to third parties in connection with client case, including filing fees, investigation fees, deposition fees, and the like shall be paid directly by client. Attorney shall not advance costs to third parties on client behalf.

## APPENDIX B: RULES OF ETHICS AND PROCEDURE

1. The client understands that the attorney will exercise his or her best judgment while performing the limited legal services set out above, but also recognizes:
  - a. the attorney is not promising any particular outcome.
  - b. the attorney has not made any independent investigation of the facts and is relying entirely on the client limited disclosure of the facts given the duration of the limited services provided, and
  - c. the attorney has no further obligation to the client after completing the above described limited legal services unless and until both attorney and client enter into another written representation agreement.
1. If any dispute between client and attorney arises under this agreement concerning the payment of fees, the client and attorney shall submit the dispute for fee arbitration in accordance with Rule 9(e)-(k) of the Maine Bar Rules. This arbitration shall be binding upon both parties to this agreement.

WE HAVE EACH READ THE ABOVE AGREEMENT BEFORE SIGNING IT.

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Signature of client

---

Signature of attorney

### **Rule 1.16: Declining or Terminating Representation**

(c) A lawyer must comply with applicable law and rules requiring notice to or permission of a tribunal when terminating a representation. When ordered to do so by a tribunal, a lawyer shall continue representation notwithstanding good cause for terminating the representation. This subsection (c) does not apply to the automatic withdrawal of a lawyer upon completion of a limited representation made pursuant to Rule 1.2.

### **Rule 4.2: Communications with Person Represented by Counsel and Limited Representation**

(b) An otherwise unrepresented party to whom limited representation is being provided or has been provided in accordance with Rule 1.2(c) is considered to be unrepresented for purposes of this Rule, except to the extent the limited representation attorney provides other counsel written notice of a time period within which other counsel shall communicate only with the limited representation attorney.

**Rule 6.5: Nonprofit and Court-Annexed Limited Legal Services and Programs**

(a) A lawyer who, under the auspices of a program sponsored by a nonprofit organization or court, provides short-term limited legal services to a client without expectation by either the lawyer or the client that the lawyer will provide continuing representation in the matter:

(1) is subject to Rules 1.7 and 1.9(a) only if the lawyer is aware that the representation of the client involves a conflict-of-interest; and

(2) is subject to Rule 1.10 only if the lawyer is aware that another lawyer associated with the lawyer in a law firm is disqualified by Rule 1.7 or 1.9(a) with respect to the matter.

(b) Except as provided in paragraph (a)(2), Rule 1.10 is inapplicable to a representation governed by this Rule.

**Comment**

[1] Legal services organizations, courts and various nonprofit organizations have established programs through which lawyers provide short-term limited legal services—such as advice or the completion of legal forms—that will assist persons to address their legal problems without further representation by a lawyer. In these programs, such as legal-advice hotlines, advice-only clinics or pro se counseling programs, a client-lawyer relationship is established, but there is no expectation that the lawyer’s representation of the client will continue beyond the limited consultation. Such programs are normally operated under circumstances in which it is not feasible for a lawyer to systematically screen for conflicts of interest as is generally required before undertaking a representation. See, e.g., Rules 1.7, 1.9 and 1.10.

[2] A lawyer who provides short-term limited legal services pursuant to this Rule must secure the client’s informed consent to the limited scope of the representation. See Rule 1.2(c). If a short-term limited representation would not be reasonable under the circumstances, the lawyer may offer advice to the client but must also advise the client of the need for further assistance of counsel. Except as provided in this Rule, the Rules of Professional Conduct, including Rules 1.6 and 1.9(c), are applicable to the limited representation.

[3] Because a lawyer who is representing a client in the circumstances addressed by this Rule ordinarily is not able to check systematically for conflicts of interest, paragraph (a) requires compliance with Rules 1.7 or 1.9(a) only if the lawyer knows that the representation presents a conflict-of-interest for the lawyer, and with Rule 1.10 only if the lawyer knows that another lawyer in the lawyer’s firm is disqualified by Rules 1.7 or 1.9(a) in the matter.

[4] Because the limited nature of the services significantly reduces the risk of conflicts of interest with other matters being handled by the lawyer’s firm, paragraph (b) provides that Rule 1.10 is inapplicable to a representation governed by this Rule except as provided by paragraph (a)(2). Paragraph (a)(2) requires the participating lawyer to comply with Rule 1.10 when the lawyer knows that the lawyer’s firm is disqualified by Rules 1.7 or 1.9(a). By virtue of paragraph (b), however, a lawyer’s participation in a short-term limited legal services program will not preclude

## APPENDIX B: RULES OF ETHICS AND PROCEDURE

the lawyer's firm from undertaking or continuing the representation of a client with interests adverse to a client being represented under the program's auspices. Nor will the personal disqualification of a lawyer participating in the program be imputed to other lawyers participating in the program.

[5] If, after commencing a short-term limited representation in accordance with this Rule, a lawyer undertakes to represent the client in the matter on an ongoing basis, Rules 1.7, 1.9(a) and 1.10 become applicable.

[6] The phrase "is aware" as used in paragraphs (a) (1) and (2) should be distinguished from the term "knows" as defined in Rule 1.0: Terminology. "Knows," according to the definition, means actual knowledge of the fact in question, which may be inferred from circumstances. In contrast, "is aware" allows a lawyer, in the limited circumstances described in this Rule, to represent clients without risk of a violation of Rules 1.7, 1.9, 1.10 and 1.11, if the lawyer knows, based on reasonable recollection and information provided by the client in the ordinary course of the consultation, that the representation presents a conflict-of-interest. In such a case, knowledge may not be inferred from circumstances. This is because a lawyer who is representing a client in the circumstances addressed by this Rule is not able to check systematically for conflicts. A conflict-of-interest that would otherwise be imputed to a lawyer because of the lawyer's association with a firm will not preclude the lawyer from representing a client in a limited services program. Nor will the lawyer's participation in such a program preclude the lawyer's firm from undertaking or continuing the representation of clients with interests adverse to a client being represented under the program's auspices.

### **Maine Rules of Civil Procedure**

#### **Rule 5: Service and Filing of Pleadings and Other Papers**

**(b) Same: How Made.** Whenever under these rules service is required or permitted to be made upon a party represented by an attorney, the service shall be made upon the attorney unless service upon the party personally is ordered by the court. When an attorney has filed a limited appearance under Rule 11(b), service upon the attorney is not required. Service upon an attorney who has ceased to represent a party is a sufficient compliance with this subdivision until written notice of change of attorneys has been served upon the other parties. Service upon an attorney or upon a party shall be made by delivering a copy to the attorney or to the party or by mailing it to the last known address or, if no address is known, by leaving it with the clerk of the court. Delivery of a copy within this rule means: handing it to the attorney or to the party; or leaving it at the office of the attorney or of the party with the person in charge thereof; or, if there is no one in charge, leaving it in a conspicuous place therein, or, if the office is closed or the person to be served has no office, leaving it at the person's dwelling house or usual place of abode with some person of suitable age and discretion then residing therein. Service by mail is complete upon mailing.

**Rule 11: Signing of Pleadings and Motions; Sanctions**

**(b) Limited Appearance of Attorneys.** To the extent permitted by the Maine Bar Rules, an attorney may file a limited appearance on behalf of an otherwise unrepresented litigant. The appearance shall state precisely the scope of the limited representation. The requirements of subdivision (a) shall apply to every pleading and motion signed by the attorney. An attorney filing a pleading or motion outside the scope of the limited representation shall be deemed to have entered an appearance for the purposes of the filing.

**Rule 89: Withdrawal of Attorneys; Visiting Lawyers; Temporary Practice with Limited Legal Services Organizations**

**(a) Withdrawal of Attorneys.** An attorney may withdraw from a case in which the attorney appears as sole counsel for a client, by serving notice of withdrawal on the client and all other parties and filing the notice, provided that (1) such notice is accompanied by notice of the appearance of other counsel, (2) there are no motions pending before the court, and (3) no trial date has been set. Unless these conditions are met, the attorney may withdraw from the case only by leave of court. A motion for leave to withdraw shall state the last known address of the client and shall be served on the client in accordance with Rule 5. This subdivision shall not apply to a limited appearance filed under Rule 11(b) unless the attorney seeks to withdraw from the limited appearance itself.

**Maryland Rules of Professional Conduct**

**Rule 1.2: Scope of Representation and Allocation of Authority between Client and Lawyer**

(c) A lawyer may limit the scope of the representation if the limitation is reasonable under the circumstances and the client gives informed consent.

**Rule 6.5: Nonprofit and Court-Annexed Limited Legal Services Programs**

(a) A lawyer who, under the auspices of a program sponsored by a nonprofit organization or court, provides short-term limited legal services to a client without expectation by either the lawyer or the client that the lawyer will provide continuing representation in the matter:

(1) is subject to Rules 1.7 and 1.9(a) only if the lawyer knows that the representation of the client involves a conflict of interest; and

(2) is subject to Rule 1.10 only if the lawyer knows that another lawyer associated with the lawyer in a law firm is disqualified by Rule 1.7 or 1.9(a) with respect to the matter.

(b) Except as provided in paragraph (a)(2), Rule 1.10 is inapplicable to a representation governed by this Rule

**Massachusetts Rules of Professional Conduct**

**Rule 1.2: Scope of Representation**

(c) A lawyer may limit the objectives of the representation if the client consents after consultation.

**Comment**

[4] The objectives or scope of services provided by a lawyer may be limited by agreement with the client or by the terms under which the lawyer's services are made available to the client. For example, a retainer may be for a specifically defined purpose. Representation provided through a legal aid agency may be subject to limitations on the types of cases the agency handles. When a lawyer has been retained by an insurer to represent an insured, the representation may be limited to matters related to the insurance coverage. The terms upon which representation is undertaken may exclude specific objectives or means. Such limitations may exclude objectives or means that the lawyer regards as repugnant or imprudent.

[5] An agreement concerning the scope of representation must accord with the Rules of Professional Conduct and other law. Thus, the client may not be asked to agree to representation so limited in scope as to violate Rule 1.1, or to surrender the right to terminate the lawyer's services or the right to settle litigation that the lawyer might wish to continue.

**Rule 6.5: Nonprofit and Court-Annexed Limited Legal Services Programs**

(a) A lawyer who, under the auspices of a program sponsored by a nonprofit organization or court, provides short-term limited legal services to a client without expectation by either the lawyer or the client that the lawyer will provide continuing representation in the matter:

(1) is not subject to Rule 1.5(b);

(2) is subject to Rules 1.7 and 1.9(a) only if the lawyer knows that the representation of the client involves a conflict of interest; and

(3) is subject to Rule 1.10 only if the lawyer knows that another lawyer associated with the lawyer in a law firm is disqualified by Rule 1.7 or 1.9(a) with respect to the matter.

(b) Except as provided in paragraph (a)(3), Rule 1.10 is inapplicable to a representation governed by this Rule.

**Comment**

[1] Legal services organizations, courts and various nonprofit organizations have established programs through which lawyers provide short-term limited legal services -- such as advice or the completion of legal forms -- that will assist persons to address their legal problems without further representation by a lawyer. In these programs, such as legal-advice hotlines, advice-only

## APPENDIX B: RULES OF ETHICS AND PROCEDURE

clinics or pro se counseling programs, a client-lawyer relationship is established, but there is no expectation that the lawyer's representation of the client will continue beyond the limited consultation. Such programs are normally operated under circumstances in which it is not feasible for a lawyer to systematically screen for conflicts of interest as is generally required before undertaking a representation. See, e.g., Rules 1.7, 1.9 and 1.10.

[2] A lawyer who provides short-term limited legal services pursuant to this Rule must secure the client's informed consent to the limited scope of the representation. See Rule 1.2(c). If a short-term limited representation would not be reasonable under the circumstances, the lawyer may offer advice to the client but must also advise the client of the need for further assistance of counsel. Except as provided in this Rule, the Rules of Professional Conduct, including Rules 1.6 and 1.9(c), are applicable to the limited representation.

[3] Because a lawyer who is representing a client in the circumstances addressed by this Rule ordinarily is not able to check systematically for conflicts of interest, paragraph (a) requires compliance with Rules 1.7 or 1.9(a) only if the lawyer knows that the representation presents a conflict of interest for the lawyer, and with Rule 1.10 only if the lawyer knows that another lawyer in the lawyer's firm is disqualified by Rules 1.7 or 1.9(a) in the matter.

[4] Because the limited nature of the services significantly reduces the risk of conflicts of interest with other matters being handled by the lawyer's firm, paragraph (b) provides that Rule 1.10 is inapplicable to a representation governed by this Rule except as provided by paragraph (a)(2). Paragraph (a)(2) requires the participating lawyer to comply with Rule 1.10 when the lawyer knows that the lawyer's firm is disqualified by Rules 1.7 or 1.9(a). By virtue of paragraph (b), however, a lawyer's participation in a short-term limited legal services program will not preclude the lawyer's firm from undertaking or continuing the representation of a client with interests adverse to a client being represented under the program's auspices. Nor will the personal disqualification of a lawyer participating in the program be imputed to other lawyers participating in the program.

[5] If, after commencing a short-term limited representation in accordance with this Rule, a lawyer undertakes to represent the client in the matter on an ongoing basis, Rules 1.7, 1.9(a) and 1.10 become applicable.

### **Massachusetts Supreme Judicial Court Order**

#### ***In Re: Limited Assistance Representation***

#### **ORDER**

Limited Assistance Representation may be implemented in any Department of the Trial Court in such Divisions and in connection with such matters as each Trial Court Department Chief Justice, in his or her discretion and with the approval of the Chief Justice for Administration and Management, may prescribe. Notwithstanding any provision to the contrary in any Rule of Court or Standing Order, it is hereby **ORDERED** that the following procedures shall apply with respect to Limited Assistance Representation.

## APPENDIX B: RULES OF ETHICS AND PROCEDURE

### 1. Limited Assistance Representation.

A qualified attorney may limit the scope of his or her representation of a client if the limitation is reasonable under the circumstances and the client gives informed consent.

An attorney shall not be deemed a "qualified attorney" unless he or she completes an information session on Limited Assistance Representation approved by the Chief Justice of the Trial Court Department in which the attorney seeks to represent a client on a limited basis.

### 2. Limited Appearance.

An attorney making a limited appearance on behalf of an otherwise unrepresented party shall file a Notice of Limited Appearance in the form attached to this Order. The Notice shall state precisely the court event to which the limited appearance pertains, and, if the appearance does not extend to all issues to be considered at the event, the Notice shall identify the discrete issues within the event covered by the appearance. An attorney may not enter a limited appearance for the sole purpose of making evidentiary objections. Nor shall a limited appearance allow both an attorney and a litigant to argue on the same legal issue during the period of the limited appearance. An attorney may file a Notice of Limited Appearance for more than one court event in a case. At any time, including during an event, an attorney may file a new Notice of Limited Appearance with the agreement of the client.

A pleading, motion or other document filed by an attorney making a limited appearance shall comply with Rule 11(a), Mass. R.Civ.P., and/or cognate Departmental Rules, and shall state in bold type on the signature page of the document: "**Attorney of [party] for the limited purpose of [court event].**" An attorney filing a pleading, motion or other document outside the scope of the limited appearance shall be deemed to have entered a general appearance, unless the attorney files a new Notice of Limited Appearance with the pleading, motion or other document.

Upon the completion of the representation within the scope of a limited appearance, an attorney shall withdraw by filing a Notice of Withdrawal of Limited Appearance in the form attached to this Order, which notice shall include the client's name, address and telephone number, unless otherwise provided by law. The attorney must file a Notice of Withdrawal of Limited Appearance for each court event for which the attorney has filed a Notice of Limited Appearance. The court may impose sanctions for failure to file such notice.

### 3. Service.

Whenever service is required or permitted to be made upon a party represented by an attorney making a limited appearance, for all matters within the scope of the limited appearance, the service shall be made upon both the attorney and the party. Service upon a party shall be at the address listed for the party in the Notice of Limited Appearance. If the party's address has been impounded by court order or rule, service of process on the party shall be made in accordance with the court order or rule. Service upon an attorney making a limited appearance shall not be required for matters outside the scope of the limited appearance.



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### 4. Assistance in the preparation of documents.

An attorney may assist a client in preparing a pleading, motion or other document to be signed and filed in court by the client, a practice sometimes referred to as "ghostwriting."

In such cases, the attorney shall insert the notation "prepared with assistance of counsel" on any pleading, motion or other document prepared by the attorney. The attorney is not required to sign the pleading, motion or document, and the filing of such pleading, motion or document shall not constitute an appearance by the attorney.

### **Michigan Rules of Professional Conduct**

#### **Rule 1.2: Scope of Representation**

(b) A lawyer may limit the objectives of the representation if the client consents after consultation.

#### **Comment**

The objectives or scope of services provided by a lawyer may be limited by agreement with the client or by the terms under which the lawyer's services are made available to the client. For example, a retainer may be for a specifically defined purpose. Representation provided through a legal-aid agency may be subject to limitations on the types of cases the agency handles. When a lawyer has been retained by an insurer to represent an insured, the representation may be limited to matters related to the insurance coverage. The terms upon which representation is undertaken may exclude specific objectives or means. Such limitations may exclude objectives or means that the lawyer regards as repugnant or imprudent.

An agreement concerning the scope of representation must accord with the Rules of Professional Conduct and other law. Thus, the client may not be asked to agree to representation so limited in scope as to violate Rule 1.1, or to surrender the right to terminate the lawyer's services or the right to settle litigation that the lawyer might wish to continue.

#### **Rule 6.6: Nonprofit and Court-Annexed Limited Legal Services Programs**

(a) A lawyer who, under the auspices of a program sponsored by a nonprofit organization or court, provides short-term limited legal services to a client without expectation by either the lawyer or the client that the lawyer will provide continuing representation in the matter:

(1) is subject to Rules 1.7 and 1.9(a) only if the lawyer knows that the representation of the client involves a conflict of interest; and

(2) is subject to Rule 1.10 only if the lawyer knows that another lawyer associated with the lawyer in a law firm is disqualified by Rule 1.7 or 1.9(a) with respect to the matter.

(b) Except as provided in paragraph (a)(2), Rule 1.10 is inapplicable to a representation governed by this Rule.

## APPENDIX B: RULES OF ETHICS AND PROCEDURE

### Comment

[1] Legal services organizations, courts and various nonprofit organizations have established programs through which lawyers provide short-term limited legal services -- such as advice or the completion of legal forms -- that will assist persons to address their legal problems without further representation by a lawyer. In these programs, such as legal-advice hotlines, advice-only clinics or pro se counseling programs, a client-lawyer relationship is established, but there is no expectation that the lawyer's representation of the client will continue beyond the limited consultation. Such programs are normally operated under circumstances in which it is not feasible for a lawyer to systematically screen for conflicts of interest as is generally required before undertaking a representation. See, e.g., Rules 1.7, 1.9 and 1.10.

[2] A lawyer who provides short-term limited legal services pursuant to this Rule must secure the client's informed consent to the limited scope of the representation. See Rule 1.2(c). If a short-term limited representation would not be reasonable under the circumstances, the lawyer may offer advice to the client but must also advise the client of the need for further assistance of counsel. Except as provided in this Rule, the Rules of Professional Conduct, including Rules 1.6 and 1.9(c), are applicable to the limited representation.

[3] Because a lawyer who is representing a client in the circumstances addressed by this Rule ordinarily is not able to check systematically for conflicts of interest, paragraph (a) requires compliance with Rules 1.7 or 1.9(a) only if the lawyer knows that the representation presents a conflict of interest for the lawyer, and with Rule 1.10 only if the lawyer knows that another lawyer in the lawyer's firm is disqualified by Rules 1.7 or 1.9(a) in the matter.

[4] Because the limited nature of the services significantly reduces the risk of conflicts of interest with other matters being handled by the lawyer's firm, paragraph (b) provides that Rule 1.10 is inapplicable to a representation governed by this Rule except as provided by paragraph (a)(2). Paragraph (a)(2) requires the participating lawyer to comply with Rule 1.10 when the lawyer knows that the lawyer's firm is disqualified by Rules 1.7 or 1.9(a). By virtue of paragraph (b), however, a lawyer's participation in a short-term limited legal services program will not preclude the lawyer's firm from undertaking or continuing the representation of a client with interests adverse to a client being represented under the program's auspices. Nor will the personal disqualification of a lawyer participating in the program be imputed to other lawyers participating in the program.

[5] If, after commencing a short-term limited representation in accordance with this Rule, a lawyer undertakes to represent the client in the matter on an ongoing basis, Rules 1.7, 1.9(a) and 1.10 become applicable.

### **Minnesota Rules of Professional Conduct**

#### **Rule 1.2: Scope of Representation and Allocation of Authority between Client and Lawyer**

(c) A lawyer may limit the scope of the representation if the limitation is reasonable under the circumstances and the client gives informed consent.

## APPENDIX B: RULES OF ETHICS AND PROCEDURE

### Comment

[6] The objectives or scope of services to be provided by a lawyer may be limited by agreement with the client or by the terms under which the lawyer's services are made available to the client. When a lawyer has been retained by an insurer to represent an insured, for example, the representation may be limited to matters related to the insurance coverage. A limited representation may be appropriate because the client has limited objectives for the representation. In addition, the terms upon which representation is undertaken may exclude specific means that might otherwise be used to accomplish the client's objectives. Such limitations may exclude actions that the client thinks are too costly or that the lawyer regards as repugnant or imprudent.

[7] Although this rule affords the lawyer and client substantial latitude to limit the representation, the limitation must be reasonable under the circumstances. If, for example, a client's objective is limited to securing general information about the law the client needs in order to handle a common and typically uncomplicated legal problem, the lawyer and client may agree that the lawyer's services will be limited to a brief telephone consultation. Such a limitation, however, would not be reasonable if the time allotted was not sufficient to yield advice upon which the client could rely. Although an agreement for a limited representation does not exempt a lawyer from the duty to provide competent representation, the limitation is a factor to be considered when determining the legal knowledge, skill, thoroughness, and preparation reasonably necessary for the representation. See Rule 1.1.

[8] All agreements concerning a lawyer's representation of a client must accord with the Rules of Professional Conduct and other law. See, e.g., Rules 1.1, 1.8 and 5.6.

### **Rule 6.5: Pro Bono Limited Legal Services Programs**

(a) A lawyer who, under the auspices of a program offering pro bono legal services, provides short-term limited legal services to a client without expectation by either the lawyer or the client that the lawyer will provide continuing representation in the matter:

(1) is subject to Rules 1.7 and 1.9(a) only if the lawyer knows that the representation of the client involves a conflict of interest; and

(2) is subject to Rule 1.10 only if the lawyer knows that another lawyer associated with the lawyer in a law firm is disqualified by Rule 1.7 or 1.9(a) with respect to the matter.

(b) Except as provided in paragraph (a)(2), Rule 1.10 is inapplicable to a representation governed by this rule.

### Comment

[1] Legal services organizations, courts and various organizations have established programs through which lawyers provide short-term limited legal services — such as advice or the completion of legal forms — that will assist persons to address their legal problems without further representation by a lawyer. In these programs, such as legal-advice hotlines, advice-only

## APPENDIX B: RULES OF ETHICS AND PROCEDURE

clinics or pro se counseling programs, a client-lawyer relationship is established, but there is no expectation that the lawyer's representation of the client will continue beyond the limited consultation. Such programs are normally operated under circumstances in which it is not feasible for a lawyer to systematically screen for conflicts of interest as is generally required before undertaking a representation. See, e.g., Rules 1.7, 1.9 and 1.10.

[2] A lawyer who provides short-term limited legal services pursuant to this rule must secure the client's informed consent to the limited scope of the representation. See Rule 1.2(c). If a short-term limited representation would not be reasonable under the circumstances, the lawyer may offer advice to the client but must also advise the client of the need for further assistance of counsel. Except as provided in 103 this rule, the Rules of Professional Conduct, including Rules 1.6 and 1.9(c), are applicable to the limited representation.

[3] Because a lawyer who is representing a client in the circumstances addressed by this rule ordinarily is not able to check systematically for conflicts of interest, paragraph (a) requires compliance with Rule 1.7 or 1.9(a) only if the lawyer knows that the representation presents a conflict of interest for the lawyer, and with Rule 1.10 only if the lawyer knows that another lawyer in the lawyer's firm is disqualified by Rule 1.7 or 1.9(a) in the matter.

[4] Because the limited nature of the services significantly reduces the risk of conflicts of interest with other matters being handled by the lawyer's firm, paragraph (b) provides that Rule 1.10 is inapplicable to a representation governed by this rule except as provided by paragraph (a)(2). Paragraph (a)(2) requires the participating lawyer to comply with Rule 1.10 when the lawyer knows that the lawyer's firm is disqualified by Rule 1.7 or 1.9(a). By virtue of paragraph (b), however, a lawyer's participation in a short-term limited legal services program will not preclude the lawyer's firm from undertaking or continuing the representation of a client with interests adverse to a client being represented under the program's auspices. Nor will the personal disqualification of a lawyer participating in the program be imputed to other lawyers participating in the program.

[5] If, after commencing a short-term limited representation in accordance with this rule, a lawyer undertakes to represent the client in the matter on an ongoing basis, Rules 1.7, 1.9(a) and 1.10 become applicable.

### **Minnesota General Rules of Practice for the District Courts**

#### **Rule 110: Authority for Self-Help Programs**

110.01. A District Court for any county may establish a Self-Help Program to facilitate access to the courts. The purpose of a Self-Help Program is to assist Self-Represented Litigants, within the bounds of this rule, to achieve fair and efficient resolution of their cases, and to minimize the delays and inefficient use of court resources that result from misuse of the court system by litigants who are not represented by lawyers. There is a compelling state interest in resolving cases efficiently and fairly, regardless of the financial resources of the parties.

## APPENDIX B: RULES OF ETHICS AND PROCEDURE

### **110.02 Staffing**

The Self-Help Program may be staffed by lawyer and non-lawyer personnel, and volunteers under the supervision of regular personnel. Self-Help Personnel act at the direction of the district court judges to further the business of the court.

(Added effective January 1, 2004.)

### **110.03 Definitions**

(a) “Self-Represented Litigant” means any individual who seeks information to file, pursue, or respond to a case without the assistance of a lawyer authorized to practice before the court.

(b) “Self-Help Personnel” means lawyer and non-lawyer personnel and volunteers under the direction of paid staff in a Self-Help Program who are performing the limited role under this rule. “Self-Help Personnel” does not include lawyers who are providing legal services to only one party as part of a legal services program that may operate alongside or in conjunction with a Self-Help Program.

(c) “Self-Help Program” means a program of any name established and operating under the authority of this rule.

(Added effective January 1, 2004.)

### **110.04 Role of Self-Help Personnel**

**(a) Required Acts.** Self-Help Personnel shall

- (1) Educate Self-Represented Litigants about available pro bono legal services, low cost legal services, legal aid programs, lawyer referral services and legal resources provided by state and local law libraries;
- (2) Encourage Self-Represented Litigants to obtain legal advice;
- (3) Provide information about mediation services;
- (4) Provide services on the assumption that the information provided by the litigant is true; and
- (5) Provide the same services and information to all parties to an action, if requested.

**(b) Permitted, but Not Required, Acts.** Self-Help Personnel may, but are not required to:

- (1) provide forms and instructions;
- (2) assist in the completion of forms;
- (3) provide information about court process, practice and procedure;
- (4) offer educational sessions and materials on all case types, such as sessions and materials on marriage dissolution;
- (5) answer general questions about family law and other issues and how to proceed with such matters;

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- (6) explain options within and outside of the court system;
- (7) assist in calculating guidelines child support based on information provided by the Self-Represented Litigant;
- (8) assist with preparation of court orders under the direction of the court; and
- (9) provide other services consistent with the intent of this rule and the direction of the court, including programs in partnership with other agencies and organizations.

**(c) Prohibited Acts.** Self-Help Personnel may not:

- (1) represent litigants in court;
- (2) perform legal research for litigants;
- (3) deny a litigant's access to the court;
- (4) lead litigants to believe that they are representing them as lawyers in any capacity or induce the public to rely on them for personal legal advice;
- (5) recommend one option over another option;
- (6) offer legal strategy or personalized legal advice;
- (7) tell a litigant anything she or he would not repeat in the presence of the opposing party;
- (8) investigate facts pertaining to a litigants case, except to help the litigant obtain public records; or
- (9) disclose information in violation of statute, rule, or case law.

(Added effective January 1, 2004.)

### **110.05 Disclosure**

Self-Help Programs shall provide conspicuous notice that:

- (a) no attorney-client relationship exists between Self-Help Personnel and Self-Represented Litigants;
- (b) communications with Self-Help Personnel are neither privileged nor confidential;
- (c) Self-Help Personnel must remain neutral and may provide services to the other party; and
- (d) Self-Help personnel are not responsible for the outcome of the case.

Program materials should advise litigants to consult with their own attorney if they desire personalized advice or strategy, confidential conversations with an attorney, or if they wish to be represented by an attorney in court.

(Added effective January 1, 2004.)

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### **110.06 Unauthorized Practice of Law**

The performance of services by Self-Help Personnel in accordance with this rule shall not constitute the unauthorized practice of law.

(Added effective January 1, 2004.)

### **110.07 No Attorney-Client Privilege or Confidentiality**

Except as provided in Rule 110.09, information given by a Self-Represented Litigant to court administration staff or Self-Help Personnel is neither confidential nor privileged. No attorney-client relationship exists between Self-Help Personnel and a Self-Represented Litigant. Notwithstanding the foregoing, Self-Help Personnel who are also lawyers and are permitted to practice law outside the role of Self-Help Personnel under this rule must abide by all applicable Rules of Professional Conduct regarding confidentiality and conflicts of interest.

(Added effective January 1, 2004.)

### **110.08 Conflict**

Notwithstanding ethics rules that govern attorneys, certified legal interns, and other persons working under the supervision of an attorney, there shall be no conflict of interest when Self-Help Personnel provide services to both parties, provided, however, that Self-Help Personnel who are also lawyers and are permitted to practice law outside the role of Self-Help Personnel under this rule, must abide by all applicable Rules of Professional Conduct regarding conflicts of interest. (Added effective January 1, 2004.)

### **110.09 Access to Records**

All records made or received in connection with the official business of a Self-Help Program relating to the address, telephone number or residence of a Self-Represented Litigant are not accessible to the public or the other party. (Added effective January 1, 2004.)

### **Advisory Committee Comment—2003 Adoption**

Rule 110 is a new rule adopted in 2003 on the recommendation of a pro se implementation committee to facilitate access to and use of the courts by pro se litigants. It is modeled after similar family law provisions in other jurisdictions. See, e.g., Ca. Fam. Code §§ 10000–100015 (West 2003); Fla. Fam. L. R. P. 12.750 (West 2003); Or. Rev. Stat. § 3.428 (2003); Wash. Rev. Code § 26.12.240 (2003); Wash. R. Gen. GR 27 (West 2003).

The rule defines and communicates to interested parties the role of Self-Help Personnel. Definition of roles is important because of the potential for confusion.

Rule 110.03(b) intentionally limits the definition of Self-Help Personnel to exclude lawyers who provide services to one party, as is commonly done by legal service program attorneys. Because of this definition, Rule 110.07 does not limit the creation of an attorney-client relationship in such attorney-client relationships. Rules 110.07-.08 recognize that Self-Help Personnel who are otherwise engaged in or authorized to engage in the practice of law may have obligations to

## APPENDIX B: RULES OF ETHICS AND PROCEDURE

clients outside the Self-Help Program that can affect their relationships to Self-Represented Litigants within the Self-Help Program.

### **Mississippi Rules of Professional Conduct**

#### **Rule 1.2: Scope of Representation**

(c) A lawyer may limit the objectives or scope of the representation if the limitation is reasonable under the circumstances and the client gives informed consent.

#### **Comment**

**Services Limited in Objectives or Means.** The objectives or scope of services provided by a lawyer may be limited by agreement with the client or by the terms under which the lawyer's services are made available to the client. For example, a retainer may be for a specifically defined purpose. Representation provided through a legal aid agency may be subject to limitations on the types of cases the agency handles. When a lawyer has been retained by an insurer to represent an insured, the representation may be limited to matters related to the insurance coverage.

A limited representation may be appropriate because the client has limited objectives for the representation. In addition, the terms upon which representation is undertaken may exclude specific means that might otherwise be used to accomplish the client's objectives. Such limitations may exclude actions that the client thinks are too costly or that the lawyer regards as repugnant or imprudent.

Limited scope representation is an important means of providing access to justice for all persons regardless of financial resources. Lawyers are encouraged to offer limited services when appropriate, particularly when a client's financial resources are insufficient to secure full scope of services. For example, lawyers may provide counsel and advice and may draft letters or pleadings.

Lawyers may assist clients in preparation for litigation with or without appearing as counsel of record. Within litigation, lawyers may limit representation to attend a hearing on a discrete matter, such as a deposition or hearing, or to a specific issue in litigation.

Although this Rule affords the lawyer and client substantial latitude to limit the representation, the limitation must be reasonable under the circumstances. If, for example, a client's objective is limited to securing general information about the law the client needs in order to handle a common and typically uncomplicated legal problem, the lawyer and client may agree that the lawyer's services will be limited to a brief telephone consultation. Such a limitation, however, would not be reasonable if the time allotted was not sufficient to yield advice upon which the client could rely. Although an agreement for a limited representation does not exempt a lawyer from the duty to provide competent representation, the limitation is a factor to be considered when determining the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation.



**Rule 6.5: Nonprofit and Court-Annexed Limited Legal Services Programs**

(a) A lawyer who, under the auspices of a program sponsored by a nonprofit organization or court, provides short-term limited pro bono legal services to a client without expectation by either the lawyer or the client that the lawyer will provide continuing representation in the matter:

(1) is subject to Rules 1.7 and 1.9(a) only if the lawyer knows that the representation of the client involves a conflict of interest; and

(2) is subject to Rule 1.10 only if the lawyer knows that another lawyer associated with the lawyer in a law firm is disqualified by Rule 1.7 or 1.9(a) with respect to the matter.

(b) Except as provided in paragraph (a)(2), Rule 1.10 is inapplicable to a representation governed by this Rule.

**Comment**

[1] Legal services organizations, courts and various nonprofit organizations have established programs through which lawyers provide short-term limited legal services—such as advice or the completion of legal forms—that will assist persons to address their legal problems without further representation by a lawyer. In these programs, such as legal-advice hotlines, advice-only clinics or pro se counseling programs, a client-lawyer relationship is established, but there is no expectation that the lawyer's representation of the client will continue beyond the limited consultation. Such programs are normally operated under circumstances in which it is not feasible for a lawyer to systematically screen for conflicts of interest as is generally required before undertaking a representation. See, e.g., Rules 1.7, 1.9 and 1.10.

[2] A lawyer who provides short-term limited legal services pursuant to this Rule must secure the client's informed consent to the limited scope of the representation. See Rule 1.2(c). If a short-term limited representation would not be reasonable under the circumstances, the lawyer may offer advice to the client but must also advise the client of the need for further assistance of counsel. Except as provided in this Rule, the Rules of Professional Conduct, including the duty of confidentiality set out in Rule 1.6 and 1.9(b) are applicable to the limited representation.

[3] Because a lawyer who is representing a client in the circumstances addressed by this Rule ordinarily is not able to check systematically for conflicts of interest, paragraph (a) requires compliance with Rules 1.7 or 1.9(a) only if the lawyer knows that the representation presents a conflict of interest for the lawyer, and with Rule 1.10 only if the lawyer knows that another lawyer in the lawyer's firm is disqualified by Rules 1.7 or 1.9(a) in the matter.

[4] Because the limited nature of the services significantly reduces the risk of conflicts of interest with other matters being handled by the lawyer's firm, paragraph (b) provides that Rule 1.10 is inapplicable to a representation governed by this Rule except as provided by paragraph (a)(2). Paragraph (a)(2) requires the participating lawyer to comply with Rule 1.10 when the lawyer

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knows that the lawyer's firm is disqualified by Rules 1.7 or 1.9(a). By virtue of paragraph (b), however, a lawyer's participation in a short-term limited legal services program will not preclude the lawyer's firm from undertaking or continuing the representation of a client with interests adverse to a client being represented under the program's auspices. The lawyer participating in the pro bono representation is disqualified from continued representation of the pro bono client or from participating in his firm's representation of a client with interests adverse to the pro bono client. However, his personal disqualification will not be imputed to other lawyers in his firm.

[5] If, after commencing a short-term limited representation in accordance with this Rule, a lawyer undertakes to represent the client in the matter on an ongoing basis, Rules 1.7, 1.9(a) and 1.10 become applicable

### **Missouri Rules of Professional Conduct**

#### **Rule 1.2: Scope of Representation**

(c) A lawyer may limit the scope of representation if the client gives informed consent in a writing signed by the client to the essential terms of the representation and the lawyer's limited role. Use of a written notice and consent form substantially similar to that contained in the comment to this Rule 4-1.2 creates the presumptions:

- (1) the representation is limited to the lawyer and the services described in the form, and
- (2) the lawyer does not represent the client generally or in any matters other than those identified in the form.

(d) The requirement of a writing signed by the client does not apply to:

- (1) an initial consultation with any lawyer, or
- (2) pro bono services provided through a nonprofit organization, a court-annexed program, a bar association, or an accredited law school,
- (3) services provided by a not-for-profit organization funded in whole or in part by the Legal Services Corporation established by 42 USC Sec. 2996b.

(e) An otherwise unrepresented party to whom limited representation is being provided or has been provided is considered to be unrepresented for purposes of communication under Rule 4-4.2 and Rule 4-4.3 except to the extent the lawyer acting within the scope of limited representation provides other counsel with a written notice of a time period within which other counsel shall communicate only with the lawyer of the party who is otherwise self-represented.

## **Comment**

### **Scope of Representation**

[1] Both lawyer and client have authority and responsibility in the objectives and means of representation. The client has ultimate authority to determine the purposes to be served by legal representation, within the limits imposed by law and the lawyer's professional obligations. Within those limits, a client also has a right to consult with the lawyer about the means to be used in pursuing those objectives. At the same time, a lawyer is not required to pursue objectives or employ means simply because a client may wish that the lawyer do so. A clear distinction between objectives and means sometimes cannot be drawn, and in many cases the client-lawyer relationship partakes of a joint undertaking. In questions of means, the lawyer should assume responsibility for technical and legal tactical issues, but should defer to the client regarding such questions as the expense to be incurred and concern for third persons who might be adversely affected. Law defining the lawyer's scope of authority in litigation varies among jurisdictions.

[2] A lawyer may assist a self-represented litigant on a limited basis without undertaking the full representation of the client on all issues related to the legal matter for which the lawyer is engaged. Any doubt about the scope of representation should be resolved in a manner that promotes the interests of justice and those of the client and opposing party. Use of a written agreement for limited representation is required, except as provided in this Rule 4-1.2. If a written agreement is not required by Rule 4-1.2, the better practice is for the attorney to memorialize in writing the contact and services provided. The initial consultation ends when the lawyer and the client agree that the lawyer will or will not undertake the representation. A lawyer may provide legal advice during an initial consultation. The lawyer shall explain to the client the risks and benefits of limited representation during consultation on limiting the scope of representation. An agreement for limited representation does not exempt a lawyer from the duty to provide competent representation; however, the limitation of the scope of representation is a factor to be considered when determining the legal knowledge, skill, thoroughness, and preparation reasonably necessary for the representation as required in Rule 41.1.

The following is a notice and consent to limited representation form that is appropriate:

### **Notice and Consent to Limited Representation**

To help you with your legal matters, you, the client, and \_\_\_\_\_, the lawyer, agree that the lawyer will limit the representation to helping you with a certain legal matter for a short time or for a particular purpose.

The lawyer must act in your best interest and give you competent help. When a lawyer and you agree that the lawyer will provide limited help:

- The lawyer DOES NOT HAVE TO GIVE MORE HELP than the lawyer and you agreed; and
  - The lawyer DOES NOT HAVE TO HELP WITH ANY OTHER PART of your legal matter.
- While performing the limited legal services, the lawyer:

## APPENDIX B: RULES OF ETHICS AND PROCEDURE

- Is not promising any particular outcome; and
- Is relying entirely on your disclosure of facts and will not make any independent investigation unless expressly agreed to in writing in this document.

If short-term limited representation is not reasonable, a lawyer may give advice, but will also tell you of the need to get more or other legal counsel.

I, the lawyer, agree to help you by performing the following limited services listed below and no other service, unless we revise this agreement in writing.

[INSTRUCTIONS: Check every item either **Yes** or **No** - do not leave any item blank. Delete all text that does not apply.]:

**Y N**

- a) \_\_\_ \_\_\_ Give legal advice through office visits, telephone calls, facsimile (fax), mail or e-mail
- b) \_\_\_ \_\_\_ Advise about alternate means of resolving the matter including mediation and arbitration
- c) \_\_\_ \_\_\_ Evaluate the client's self-diagnosis of the case and advise about legal rights and responsibilities.
- d) \_\_\_ \_\_\_ Review pleadings and other documents prepared by you, the client
- e) \_\_\_ \_\_\_ Provide guidance and procedural information regarding filing and serving documents
- f) \_\_\_ \_\_\_ Suggest documents to be prepared
- g) \_\_\_ \_\_\_ Draft pleadings, motions and other documents
- h) \_\_\_ \_\_\_ Perform factual investigation including contacting witnesses, public record searches, in-depth interview of you, the client
- i) \_\_\_ \_\_\_ Perform legal research and analysis
- j) \_\_\_ \_\_\_ Evaluate settlement options
- k) \_\_\_ \_\_\_ Perform discovery by interrogatories, deposition and requests for admissions
- l) \_\_\_ \_\_\_ Plan for negotiations
- m) \_\_\_ \_\_\_ Plan for court appearances

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n) \_\_\_ \_\_\_ Provide standby telephone assistance during negotiations or settlement conferences

o) \_\_\_ \_\_\_ Refer you, the client, to expert witnesses, special masters or other attorneys

p) \_\_\_ \_\_\_ Provide procedural assistance with an appeal

q) \_\_\_ \_\_\_ Provide substantive legal arguments in an appeal

r) \_\_\_ \_\_\_ Appear in court for the limited purpose of \_\_\_\_\_

\_\_\_\_\_

s) \_\_\_ \_\_\_ Other: \_\_\_\_\_

I will charge to the Client the following costs: \_\_\_\_\_

\_\_\_\_\_

I will charge to the Client the following fee for my limited legal representation:

\_\_\_\_\_

\_\_\_\_\_ Date: \_\_\_\_\_

[Type Lawyer's name)

**CLIENT'S CONSENT**

I have read this Notice and Consent form and I understand it. I agree that the legal services listed above are the ONLY legal services to be provided by the lawyer. I understand and agree that the lawyer who is helping me with these services is not my lawyer for any other purpose and does not have to give me more legal help. If the lawyer is giving me advice or is helping me with legal or other documents, I understand the lawyer will stop helping me when the services listed above have been completed. The address I give below is my permanent address where I can be reached. I understand that it is important that the court handling my case and other parties to the case be able to reach me at the address after the lawyer ends the limited representation. I therefore agree that I will inform the Court and other parties of any change in my permanent address.

In exchange for the Lawyer's limited representation, I agree to pay the attorney's fee and costs described above.

Sign your name: \_\_\_\_\_

Print your name: \_\_\_\_\_

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Print your address: \_\_\_\_\_

Phone number: \_\_\_\_\_ FAX: \_\_\_\_\_

Message Phone: \_\_\_\_\_ Name: \_\_\_\_\_

Email address: \_\_\_\_\_

### **Rule 1.16: Declining or Terminating Representation**

(c) A lawyer must comply with applicable law requiring notice to or permission of a tribunal when terminating a representation unless the lawyer has filed a notice of termination of limited appearance. Except when such notice is filed, a lawyer shall continue representation when ordered to do so by a tribunal notwithstanding good cause for terminating the representation.

### **Rule 6.5: Nonprofit and Court-annexed Limited Legal Services Programs**

(a) A lawyer who, under the auspices of a program sponsored by a nonprofit organization or court, provides short-term limited legal services to a client without expectation by either the lawyer or the client that the lawyer will provide continuing representation in the matter:

(1) is subject to Rules 4-1.7 and 4-1.9(a) only if the lawyer knows that the representation of the client involves a conflict of interest; and

(2) is subject to Rule 4-1.10 only if the lawyer knows that another lawyer associated with the lawyer in a law firm is disqualified by Rules 4-1.7 or 4-1.9(a) with respect to the matter.

(b) Except as provided in Rule 4-6.5(a)(2), Rule 4-1.10 is inapplicable to a representation governed by this Rule 4-6.5.

### **Comment**

[1] Legal services organizations, courts, and various nonprofit organizations have established programs through which lawyers provide short-term limited legal services — such as advice or the completion of legal forms - that will assist persons to address their legal problems without further representation by a lawyer. In these programs, such as legal-advice hotlines, advice-only clinics, or pro se counseling programs, a client-lawyer relationship is established, but there is no expectation that the lawyer's representation of the client will continue beyond the limited consultation. Such programs are normally operated under circumstances in which it is not feasible for a lawyer to systematically screen for conflicts of interest as is generally required before undertaking a representation. See, e.g., Rules 4-1.7, 4-1.9, and 4-1.10.

[2] A lawyer who provides short-term limited legal services pursuant to this Rule 4-6.5 must secure the client's informed consent to the limited scope of the representation. See Rule 4-1.2(c). If a short-term limited representation would not be reasonable under the circumstances, the

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lawyer may offer advice to the client but must also advise the client of the need for further assistance of counsel. Except as provided in this Rule 4-6.5, the Rules of Professional Conduct, including Rules 4-1.6 and 4-1.9(c), are applicable to the limited representation.

[3] Because a lawyer who is representing a client in the circumstances addressed by this Rule 4-6.5 ordinarily is not able to check systematically for conflicts of interest, Rule 4-6.5(a) requires compliance with Rules 4-1.7 or 4-1.9(a), only if the lawyer knows that the representation presents a conflict of interest for the lawyer, and with Rule 4-1.10, only if the lawyer knows that another lawyer in the lawyer's firm is disqualified by Rules 4-1.7 or 4-1.9(a) in the matter.

[4] Because the limited nature of the services significantly reduces the risk of conflicts of interest with other matters being handled by the lawyer's firm, Rule 4-6.5(b) provides that Rule 4-1.10 is inapplicable to a representation governed by this Rule 4-6.5 except as provided by Rule 4-6.5(a)(2). Rule 4-6.5(a)(2) requires the participating lawyer to comply with Rule 4-1.10 when the lawyer knows that the lawyer's firm is disqualified by Rules 4-1.7 or 4-1.9(a). By virtue of Rule 4-6.5(b), however, a lawyer's participation in a short-term limited legal services program will not preclude the lawyer's firm from undertaking or continuing the representation of a client with interests adverse to a client being represented under the program's auspices. Nor will the personal disqualification of a lawyer participating in the program be imputed to other lawyers participating in the program.

[5] If, after commencing a short-term limited representation in accordance with this Rule 4-6.5, a lawyer undertakes to represent the client in the matter on an ongoing basis, Rules 4-1.7, 4-1.9(a), and 4-1.10 become applicable.

(Adopted July 1, 2007, eff. July 1, 2007)

### **Missouri Rules of Civil Procedure**

#### **Rule 43.01: Service of Pleadings and Other Papers**

(b) Service on Attorney. Whenever under these rules or any of the statutes of this state service is required or permitted to be made upon a party represented by an attorney of record, the service shall be made upon the attorney unless service upon the party is ordered by the court. When a party is represented by more than one attorney, service may be made upon any such attorney. If an attorney has filed a notice of limited appearance for an otherwise self-represented person, service shall be made on the self-represented person and not on the attorney unless the attorney acting within the scope of limited representation serves the other party or the other party's attorney with a copy of the notice of limited appearance setting forth a time period within which service shall be upon the attorney.

#### **Rule 55.03: Signing of Pleadings, Motions and Other Papers; Appearance and Withdrawal of Counsel; Representations to Court; Sanctions**

(a) Signature Required. Every pleading, motion and other filing shall be signed by at least one attorney of record in the attorney's individual name or, if the party is not represented by an

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attorney, shall be signed by the party. An attorney who assists in the preparation of a pleading, motion, or other filing for an otherwise self-represented person is not required to sign the document. Every filing made electronically must add a certificate verifying that the original was signed by the attorney or party shown as the filer. The original signed filing must be maintained by the filer for a period of not less than the maximum allowable time to complete the appellate process.

Each filing shall state the filer's address, Missouri bar number, if applicable, telephone number, facsimile number, and electronic mail address, if any.

An unsigned filing or an electronic filing without the required certification shall be stricken unless the omission is corrected promptly after being called to the attention of the attorney or party filing same.

(b) **Appearance and Withdrawal of Counsel.** An attorney who appears in a case shall be considered as representing the parties for whom the attorney appears for all purposes in that case, except as otherwise provided in a written notice of limited appearance. If a notice of limited appearance is filed, service shall be made as provided in Rule 43.01(b).

An attorney appears in a case by:

(1) Participating in any proceeding as counsel for any party unless limited by a notice of limited appearance;

(2) Signing the attorney's name on any pleading, motion, or other filing except that an attorney who assisted in the preparation of a pleading, motion, or other filing and whose name appears on the pleading, motion, or other filing solely in that limited capacity has not entered an appearance in the matter; or

(3) Making a written appearance. A written entry of appearance may be limited by its terms to a particular proceeding or matter by filing a notice of limited appearance.

An attorney who files a notice of limited appearance withdraws when the attorney has fulfilled the duties set forth in the notice and files a termination of limited appearance with the court

**(c) Representation to the Court.** By presenting and maintaining a claim, defense, request, demand, objection, contention, or argument in a pleading, motion, or other paper filed with or submitted to the court, an attorney or party is certifying that to the best of the person's knowledge, information, and belief, formed after an inquiry reasonable under the circumstances, that:

(1) The claim, defense, request, demand, objection, contention, or argument is not



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presented or maintained for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation;

(2) The claims, defenses, and other legal contentions therein are warranted by existing law or by a nonfrivolous argument for the extension, modification, or reversal of existing law or the establishment of new law;

(3) The allegations and other factual contentions have evidentiary support or, if specifically so identified, are likely to have evidentiary support after a reasonable opportunity for further investigation or discovery. An attorney providing drafting assistance may rely on the otherwise self-represented person's representation of facts, unless the attorney knows that such representations are false; and

(4) The denials of factual contentions are warranted on the evidence or, if specifically so identified, are reasonably based on a lack of information or belief.

### **Rule 88.09: Parties Not Represented By Counsel**

Every party not represented by counsel who participates in a proceeding for dissolution of marriage, legal separation, parentage or the modification of a judgment in any such proceeding shall:

(a) Complete a litigant awareness program that includes an explanation of the risks and responsibilities of self-representation, unless waived by the circuit court. The awareness program shall be prepared by a committee designated by this Court, but each circuit may determine the manner and means by which the training shall be provided and the proof of compliance; and

(b) Unless such use is waived by the trial court, use the pleadings, forms, and proposed judgment prepared by a committee designated by this Court that have been approved by this Court. These forms shall be accepted by the courts of this state, until disapproved or superseded by this Court.

(c) Nothing in this Rule 88.09 prevents a court from determining the legal sufficiency of any pleading nor prevents a court from entering judgment in a form different from the judgment form approved pursuant to Rule 88.09(b).

\* The materials can be accessed at <http://www.selfrepresent.mo.gov/page.jsp?id=5240>  
"Representing Yourself in Missouri Courts: Access to Family Courts."

(Adopted Dec. 21, 2007, eff. July 1, 2008; Amended June 23, 2008, eff. July 1, 2008; Amended Dec. 23, 2008, eff. April 1, 2009.)

## **Montana Rules of Professional Conduct**

### **Rule 1.2: Scope of Representation and Allocation of Authority between Client and Lawyer**

## APPENDIX B: RULES OF ETHICS AND PROCEDURE

(c) A lawyer may limit the scope of the representation if the limitation is reasonable under the circumstances and the client gives informed consent in writing.

(1) The client's informed consent must be confirmed in writing unless:

(i) the representation of the client consists solely of telephone consultation;

(ii) the representation is provided by a lawyer employed by a nonprofit legal services program or participating in a nonprofit court-annexed legal services program and the lawyer's representation consists solely of providing information and advice or the preparation of court-approved legal forms; or

(iii) the court appoints the attorney for a limited purpose that is set forth in the appointment order.

(2) If the client gives informed consent in writing signed by the client, there shall be a presumption that:

(i) the representation is limited to the attorney and the services described in the writing; and

(ii) the attorney does not represent the client generally or in matters other than those identified in the writing.

### **Rule 4.2: Communication with Person Represented by Counsel**

(b) An otherwise unrepresented person to whom limited representation is being provided or has been provided in accordance with Rule 1.2(c) is considered to be unrepresented for purposes of this Rule unless the opposing party or lawyer has been provided with a written notice of appearance under which, or a written notice of time period during which, he or she is to communicate only with the limited representation lawyer as to the subject matter within the limited scope of the representation.

### **Rule 4.3: Dealing with Unrepresented Person**

(b) An otherwise unrepresented person to whom limited representation is being provided or has been provided in accordance with Rule 1.2(c) is considered to be unrepresented for purposes of this Rule unless the opposing party or lawyer has been provided with a written notice of appearance under which, or a written notice of time period during which, he or she is to communicate only with the limited representation lawyer as to the subject matter within the limited scope of the representation.

### **Rule 6.5: Nonprofit and Court-Annexed Limited Legal Services Programs**

(a) A lawyer who, under the auspices of a program sponsored by a nonprofit organization or court, provides short-term limited legal services to a client without expectation by either the lawyer or the client that the lawyer will provide continuing representation in the matter:

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(1) is subject to Rules 1.7 and 1.9(a) only if the lawyer knows that the representation of the client involves a conflict of interest; and

(2) is subject to Rule 1.10 only if the lawyer knows that another lawyer associated with the lawyer in a law firm is disqualified by Rule 1.7 or 1.9(a) with respect to the matter.

(b) Except as provided in paragraph (a)(2), Rule 1.10 is inapplicable to a representation governed by this Rule.

### **Montana Rules of Civil Procedure**

#### **Rule 4.1: Limited Representation Permitted -- Process**

(a) In accordance with Rule 1.2(c) of the Montana Rules of Professional Conduct, an attorney may undertake to provide limited representation to a person involved in a court proceeding.

(b) Providing limited representation of a person under these rules shall not constitute an entry of appearance by the attorney for purposes of Rule 5(b) and does not authorize or require the service or delivery of pleadings, papers, or other documents upon the attorney under Rule 5(b).

(c) Representation of the person by the attorney at any proceeding before a judge or other judicial officer on behalf of the person constitutes an entry of appearance, except to the extent that a limited notice of appearance as provided for under Rule 4.2 is filed and served prior to or simultaneous with the actual appearance. Service on an attorney who has made a limited appearance for a party shall be valid only in connection with the specific proceedings for which the attorney appeared, including any hearing or trial at which the attorney appeared and any subsequent motions for presentation of orders.

(d) The attorney's violation of this Rule may subject the attorney to sanctions provided in Rule 11.

History: En. Sup. Ct. Ord. No. AF 07-0157, April 26, 2011, eff. Oct. 1, 2011.

#### **Rule 4.2: Notice of Limited Appearance and Withdrawal as Attorney**

(a) Notice of limited appearance. If specifically so stated in a notice of limited appearance filed and served prior to or simultaneous with the proceeding, an attorney's role may be limited to one or more individual proceedings in the action.

(b) At the conclusion of such proceedings the attorney's role terminates without the necessity of leave of court, upon the attorney filing notice of completion of limited appearance.

History: En. Sup. Ct. Ord. No. AF 07-0157, April 26, 2011, eff. Oct. 1, 2011.

**Rule 11: Signing of Pleadings, Motions, and other Papers -- Sanctions**

(e) Limited Scope Representation. An attorney may help to draft a pleading, motion, or document filed by an otherwise self-represented person, and the attorney need not sign that pleading, motion, or document. The attorney in providing such drafting assistance may rely on the otherwise self-represented person's representation of facts, unless the attorney has reason to believe that such representations are false or materially insufficient, in which instance the attorney shall make an independent reasonable inquiry into the facts.

**Nebraska Rules of Professional Conduct**

**Rule 3-501.2: Scope of Representation and Allocation of Authority Between Client and Lawyer**

(a) Subject to paragraphs (b), (c), (d), (e), and (f), a lawyer shall abide by a client's decisions concerning the objectives of representation and, as required by Rule 1.4, shall consult with the client as to the means by which they are to be pursued. A lawyer may take such action on behalf of the client as is impliedly authorized to carry out the representation. A lawyer shall abide by a client's decision whether to settle a matter. In a criminal case, the lawyer shall abide by the client's decision, after consultation with the lawyer, as to a plea to be entered, whether to waive jury trial and whether the client will testify.

(b) A lawyer may limit the scope of his or her representation of a client if the limitation is reasonable in the lawyer's judgment under the circumstances and the client gives informed consent to such limited representation.

(c) A lawyer may prepare pleadings, briefs, and other documents to be filed with the court so long as such filings clearly indicate thereon that said filings are "Prepared By" and the name, business address, and bar number of the lawyer preparing the same. Such actions by the lawyer shall not be deemed an appearance by the lawyer in the case. Any filing prepared under this rule shall be signed by the litigant designated as "pro se," but shall not be signed by the lawyer preparing the filing.

(d) If, after consultation, the client consents in writing, a lawyer may enter a "Limited Appearance" on behalf of an otherwise unrepresented party involved in a court proceeding, and such appearance shall clearly define the scope of the lawyer's limited representation.

(e) Upon completion of the "Limited Representation," the lawyer shall within 10 days file a "Certificate of Completion of Limited Representation" with the court. Copies shall be provided to the client and opposing counsel or opposing party if unrepresented. After such filing, the lawyer shall not have any continuing obligation to represent the client. The filing of such certificate shall be deemed to be the lawyer's withdrawal of appearance which shall not require court approval.

## APPENDIX B: RULES OF ETHICS AND PROCEDURE

(f) A lawyer shall not counsel a client to engage, or assist a client, in conduct that the lawyer knows is criminal or fraudulent, but a lawyer may discuss the legal consequences of any proposed course of conduct with a client and may counsel or assist a client to make a good faith effort to determine the validity, scope, meaning or application of the law.

§ 3-501.2(a) through (f) amended August 28, 2008; § 3-501.2(c) amended October 21, 2008.

### **Comment**

[5] The scope of services to be provided by a lawyer may be limited by agreement with the client or by the terms under which the lawyer's services are made available to the client. When a lawyer has been retained by an insurer to represent an insured, for example, the representation may be limited to matters related to the insurance coverage. A limited representation may be appropriate because the client has limited objectives for the representation. In addition, the terms upon which representation is undertaken may exclude specific means that might otherwise be used to accomplish the client's objectives. Such limitations may exclude actions that the client thinks are too costly or that the lawyer regards as repugnant or imprudent.

[6] Although this Rule affords the lawyer and client substantial latitude to limit the representation, the limitation must be reasonable under the circumstances. If, for example, a client's objective is limited to securing general information about the law the client needs in order to handle a common and typically uncomplicated legal problem, the lawyer and client may agree that the lawyer's services will be limited to a brief telephone consultation. Such a limitation, however, would not be reasonable if the time allotted was not sufficient to yield advice upon which the client could rely. Although an agreement for a limited representation does not exempt a lawyer from the duty to provide competent representation, the limitation is a factor to be considered when determining the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation. See Rule 1.1.

[7] All agreements concerning a lawyer's representation of a client must accord with the Rules of Professional Conduct and other law. See, e.g., Rules 1.1, 1.8 and 5.6.

### **Rule 3-504.2: Communication with Person Represented by Counsel**

In representing a client, a lawyer shall not communicate about the subject of the representation with a person the lawyer knows to be represented by another lawyer in the matter, unless the lawyer has the consent of the other lawyer or is authorized to do so by law or a court order.

### **Comment**

[10] In the event an "Entry of Limited Appearance" is filed, opposing counsel may communicate with such lawyer's client on matters outside the scope of limited representation, and by filing such limited appearance, the lawyer and the client shall be deemed to have consented to such communication.

Comment [10] of § 3-504.2 adopted August 27, 2008.

**Rule 3-506.5: Nonprofit and Court-Annexed Limited Legal Services Programs**

(a) A lawyer who, under the auspices of a program sponsored by a nonprofit organization or court, provides short-term limited legal services to a client without expectation by either the lawyer or the client that the lawyer will provide continuing representation in the matter:

(1) is subject to Rules 1.7 and 1.9(a) only if the lawyer knows that the representation of the client involves a conflict of interest; and

(2) is subject to Rule 1.10 only if the lawyer knows that another lawyer associated with the lawyer in a law firm is disqualified by Rule 1.7 or 1.9(a) with respect to the matter.

(b) Except as provided in paragraph (a)(2), Rule 1.10 is inapplicable to a representation governed by this Rule.

**Comment**

[1] Legal services organizations, courts and various nonprofit organizations have established programs through which lawyers provide short-term limited legal services – such as advice or the completion of legal forms – that will assist persons to address their legal problems without further representation by a lawyer. In these programs, such as legal-advice hotlines, advice-only clinics or pro se counseling programs, a client-lawyer relationship is established, but there is no expectation that the lawyer's representation of the client will continue beyond the limited consultation. Such programs are normally operated under circumstances in which it is not feasible for a lawyer to systematically screen for conflicts of interest as is generally required before undertaking a representation. See, e.g., Rules 1.7, 1.9 and 1.10.

[2] A lawyer who provides short-term limited legal services pursuant to this Rule must secure the client's informed consent to the limited scope of the representation. See Rule 1.2(b). If a short-term limited representation would not be reasonable under the circumstances, the lawyer may offer advice to the client but must also advise the client of the need for further assistance of counsel. Except as provided in this Rule, the Rules of Professional Conduct, including Rules 1.6 and 1.9(c), are applicable to the limited representation.

[3] Because a lawyer who is representing a client in the circumstances addressed by this Rule ordinarily is not able to check systematically for conflicts of interest, paragraph (a) requires compliance with Rules 1.7 or 1.9(a) only if the lawyer knows that the representation presents a conflict of interest for the lawyer, and with Rule 1.10 only if the lawyer knows that another lawyer in the lawyer's firm is disqualified by Rules 1.7 or 1.9(a) in the matter.

[4] Because the limited nature of the services significantly reduces the risk of conflicts of interest with other matters being handled by the lawyer's firm, paragraph (b) provides that Rule 1.10 is inapplicable to a representation governed by this Rule except as provided by paragraph (a)(2). Paragraph (a)(2) requires the participating lawyer to comply with Rule 1.10 when the lawyer knows that the lawyer's firm is disqualified by Rules 1.7 or 1.9(a). By virtue of paragraph (b), however, a lawyer's participation in a short-term limited legal services program will not preclude

## APPENDIX B: RULES OF ETHICS AND PROCEDURE

the lawyer's firm from undertaking or continuing the representation of a client with interests adverse to a client being represented under the program's auspices. Nor will the personal disqualification of a lawyer participating in the program be imputed to other lawyers participating in the program.

[5] If, after commencing a short-term limited representation in accordance with this Rule, a lawyer undertakes to represent the client in the matter on an ongoing basis, Rules 1.7, 1.9(a) and 1.10 become applicable.

### **Nebraska Court Rules of Pleading in Civil Cases**

#### **Rule 6-1109: Pleading Special Matters**

(h) If, after consultation, the client consents in writing, an attorney may enter a “Limited Appearance” on behalf of an otherwise unrepresented party involved in a court proceeding, and such appearance shall clearly define the scope of the lawyer’s limited representation. A copy shall be provided to the client and

opposing counsel or opposing party if unrepresented.

(i) Upon completion of the limited representation, the lawyer shall within 10 days file a “Certificate of Completion of Limited Appearance” with the court. Copies shall be provided to the client and opposing counsel or opposing party if unrepresented. After such filing, the lawyer shall not have any continuing obligation to represent the client. The filing of such certificate shall be deemed to be the lawyer’s withdrawal of appearance which shall not require court approval.

#### **Comment**

Neb. Ct. R. Pldg. §§ 6-1109(h) and (i) should be viewed in conjunction with Neb. Ct. R. of Prof. Cond. § 3-501.2 which specifically authorizes Limited Scope Representation in Nebraska. Neb. Ct. R. Pldg. §§ 6-1109(h) and (i) formalize the method by which lawyers enter a case for a limited purpose and how such representation is formally ended.

#### **Rule 6-1111: Signing of Pleadings**

(b) When a lawyer is not an attorney of record, such lawyer may prepare pleadings, briefs, and other documents to be filed with the court so long as such filings clearly indicate thereon that said filings are “Prepared By” along with the name, business address, and bar number of the lawyer preparing the same, and that preparing such filings shall not be deemed an appearance by the lawyer in the case.

### **Nevada Rules of Professional Conduct**

#### **Rule 1.2: Scope of Representation and Allocation of Authority between Client and Lawyer**

(c) A lawyer may limit the scope of the representation if the limitation is (c) reasonable under the circumstances and the client gives informed consent.

**Rule 6.5: Nonprofit and Court-Annexed Limited Legal Services Programs**

A lawyer who, under the auspices of a program sponsored by a nonprofit (a) organization or court, provides short-term limited legal services to a client without expectation by either the lawyer or the client that the lawyer will provide continuing representation in the matter:

Is subject to Rules 1.7 and 1.9(a) only if (1) the lawyer knows that the representation of the client involves a conflict of interest; and Is subject to Rule 1.10 only if the lawyer (2) knows that another lawyer associated with the lawyer in a law firm is disqualified by Rule 1.7 or 1.9(a) with respect to the matter. Except as provided in paragraph (a)(2), Rule 1.10 is (b) inapplicable to a representation governed by this Rule.

[Added; effective May 1, 2006.]

**Rules of Practice for the Eighth Judicial District of Nevada**

**Rule 5.28: Withdrawal of attorney in limited services (“unbundled services”) contract.**

(a) An attorney who contracts with a client to limit the scope of representation shall state that limitation in the first paragraph of the first paper or pleading filed on behalf of that client. Additionally, if the attorney appears at a hearing on behalf of a client pursuant to a limited scope contract, the attorney shall notify the court of that limitation at the beginning of that hearing.

(b) An attorney who contracts with a client to limit the scope of representation shall be permitted to withdraw from representation before the court by filing a Substitution of Attorney with the clerk’s office. The Substitution of Attorney shall state that the attorney is withdrawing from the case because the attorney was hired to perform a limited service, that service has completed, and shall include a copy of the limited services retainer agreement between the attorney and the client. The Substitution of Attorney shall also state that the client will be representing himself or herself in proper person unless another attorney agree to represent the client and shall contain the client’s address, or last known address, and telephone number at which the client may serve with notice of further proceedings taken in the case. The attorney must serve a copy of the Substitution of Attorney upon the client and all other parties to the action or their attorneys.

[Added; effective August 21, 2000.]

**New Hampshire Rules of Professional Conduct**

**Rule 1.2: Scope of Representation and Allocation of Authority Between Client and Lawyer**

(c) A lawyer may limit the scope of the representation if the limitation is reasonable under the circumstances and the client gives informed consent. In providing limited representation, the lawyer's responsibilities to the client, the court and third parties remain as defined by these Rules as viewed in the context of the limited scope of the representation itself; and court rules when applicable.



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(f) In addition to requirements set forth in Rule 1.2(c),

(1) a lawyer may provide limited representation to a client who is or may become involved in a proceeding before a tribunal (hereafter referred to as litigation), provided that the limitations are fully disclosed and explained, and the client gives informed consent to the limited representation. The form set forth in section (g) of this Rule has been created to facilitate disclosure and explanation of the limited nature of representation in litigation. Although not prohibited, the provision of limited representation to a client who is involved in litigation and who is entitled as a matter of law to the appointment of counsel is discouraged.

(2) a lawyer who has not entered an applicable limited appearance, and who provides assistance in drafting pleadings, shall advise the client to comply with any rules of the tribunal regarding participation of the lawyer in support of a pro se litigant.

(g) *Sample form.*

### CONSENT TO LIMITED REPRESENTATION

#### Limited Representation

To help you in litigation, you and a lawyer may agree that the lawyer will represent you in the entire case, or only in certain parts of the case. "Limited representation" occurs if you retain a lawyer only for certain parts of the case.

When a lawyer agrees to provide limited representation in litigation, the lawyer must act in your best interest and give you competent help. However, when a lawyer and you agree that the lawyer will provide only limited help,

-- the lawyer DOES NOT HAVE TO GIVE MORE HELP than the lawyer and you agreed.

-- the lawyer DOES NOT HAVE TO help with any other part of your case.

If you and a lawyer have agreed to limited representation in connection with litigation, you should complete this form and sign your name at the bottom. Your lawyer will also sign to show that he or she agrees. If you and the lawyer both sign, the lawyer agrees to help you by performing the following limited services:

1. \_\_\_ Provide you general advice about your legal rights and responsibilities in connection with potential litigation concerning:

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which advice shall be provided as:

\_\_\_ consultation at a one-time meeting, or

APPENDIX B: RULES OF ETHICS AND PROCEDURE

\_\_\_\_\_ consultation at an initial meeting and further meetings, telephone calls or correspondence (by mail, fax or email) as needed, or as requested by you.

2. \_\_\_\_\_ Assist in the preparation of your court or mediation matter regarding

\_\_\_\_\_

by:

[Case name]

\_\_\_\_\_ explaining court procedures

\_\_\_\_\_ legal research and analysis regarding \_\_\_\_\_

\_\_\_\_\_ reviewing court papers and other documents prepared by you or for you

\_\_\_\_\_ preparation for court hearing regarding \_\_\_\_\_

\_\_\_\_\_ suggesting court papers for you to prepare

\_\_\_\_\_ preparation for mediation

\_\_\_\_\_ drafting the following court papers for your use:

\_\_\_\_\_ other: \_\_\_\_\_

3. \_\_\_\_\_ Representing you in Court regarding \_\_\_\_\_, [Case name]

but only for the following specific matter(s):

\_\_\_\_\_ Motion for \_\_\_\_\_

\_\_\_\_\_ Temporary hearing

\_\_\_\_\_ final hearing

\_\_\_\_\_ trial

\_\_\_\_\_ other:

4. \_\_\_\_\_ Other limited service:

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Consent

I have read this Consent to Limited Representation Form and I understand what it says. As the lawyer's client, I agree that the legal services specified above are the only legal help this lawyer will give me. I understand and agree that:

- the lawyer who is helping me with these services is not my lawyer for any other purpose and does not have to give me any more legal help;
- the lawyer is not promising any particular outcome;
- because of the limited services to be provided, the lawyer has limited his or her investigation of the facts to that necessary to carry out the identified tasks with competence and in compliance with court rules;
- if the lawyer goes to court with me, the lawyer does not have to help me afterwards, unless we both agree in writing.

I agree the address below is my permanent address and telephone number where I may be reached. I understand that it is important that my lawyer, the opposing party and the court handling my case, if applicable, be able to reach me at this address. I therefore agree that I will inform my lawyer or any Court and opposing party, if applicable, of any change in my permanent address or telephone number.

A separate fee agreement (\_\_\_\_ was / \_\_\_\_ was not) also signed by me and my lawyer.

\_\_\_\_\_  
[print or type your name] Client's Name

\_\_\_\_\_  
[print or type your full mailing street/apartment address]

\_\_\_\_\_  
[sign your name]

\_\_\_\_\_  
[print or type City, State and Zip Code]

\_\_\_\_\_  
Date

\_\_\_\_\_  
[print or type your Phone Number]

\_\_\_\_\_  
[print or type your name] Lawyer's Name

\_\_\_\_\_  
[print or type name of law firm]

\_\_\_\_\_  
[sign your name]

\_\_\_\_\_  
[print or type Street,

City, State and Zip Code]

\_\_\_\_\_  
Date

\_\_\_\_\_  
[print or type your Phone Number]

**Rule 4.2: Communication with Person Represented by Counsel**

In representing a client, a lawyer shall not communicate about the subject of the representation with a person the lawyer knows to be represented by another lawyer in the matter, unless the lawyer has the consent of the other lawyer or is authorized to do so by law or a court order. An otherwise unrepresented party to whom limited representation is being provided or has been provided in accordance with Rule 1.2(f)(1) is considered to be unrepresented for purposes of this Rule, except to the extent the limited representation lawyer provides other counsel written notice of a time period within which other counsel shall communicate only with the limited representation lawyer.

**Rule 6.5: Nonprofit and Court-Annexed Limited Legal Service Programs**

(a) A lawyer who, under the auspices of a program sponsored by the New Hampshire Bar Association, a nonprofit organization or court, provides one-time consultation with a client without expectation by either the lawyer or the client that the lawyer will provide continuing representation in the matter:

(1) is subject to Rules 1.7 and 1.9(a) only if the lawyer knows that the representation of the client involves a conflict of interest; and

(2) is subject to Rule 1.10 only if the lawyer knows that another lawyer associated with the lawyer in a law firm is disqualified by Rule 1.7 or 1.9(a) with respect to the matter.

(b) Except as provided in paragraph (a)(2), Rule 1.10 is inapplicable to a representation governed by this Rule.

(c) Rules 1.6 and 1.9(c) are applicable to a representation governed by this Rule.

**Ethics Committee Comment**

**1. New Hampshire’s version differs from the Model Rule as follows:**

a. Application of this Rule in (a) is limited to a “one time consultation with a client” instead of the ABA’s version “short-term limited legal services to a client”.

b. Section (c) is added.

2. The change in (a) is intended to give the attorney some clarity as to the scope of this Rule. This Rule relaxes certain of the normal conflicts limitations to allow this important pro bono

## APPENDIX B: RULES OF ETHICS AND PROCEDURE

service; this Rule applies only under circumstances where it is not reasonably possible for the attorney to otherwise comply with normal conflict of interest records checks procedures. Therefore, the situation where an attorney provides repeated services for the same client, and not a “one time consultation”, would not permit any deviation from the normal conflicts rules.

3. The addition of Section (c) is intended simply to emphasize the attorney's continuing responsibility to maintain confidences under Rule 1.6, and the attorney's duties to a former client under Rule 1.9(c). This inclusion raises this language, already contained in ABA Comment [2], to Rule status.

4. The value of the services rendered to the public in this pro bono context is important enough to justify carving out a special exception to the normal conflicts rules applicable in general client representation. In this special context, not even the protective “screening” rules, such as those adopted in 1.11(b), were employed.

5. Should a lawyer participating in a one-time consultation under this Rule later discover that the lawyer's firm was representing or later undertook the representation of an adverse client, the prior participation of the attorney will not preclude the lawyer's firm from continuing or undertaking representation of such adverse client. But the participating lawyer will be disqualified and must be screened from any involvement with the firm's adverse client. *See* ABA Comment [4].

### **New Hampshire Rules of Civil Procedure**

#### **Rule 3: Filing and Service**

(b) When an attorney has filed a limited appearance under Rule 14(d) on behalf of an opposing party, copies of pleadings filed and communications addressed to the court shall be furnished both to the opposing party who is receiving the limited representation and to the limited representation attorney. After the limited representation attorney files that attorney's “withdrawal of limited appearance” form, as provided in Rule 15(e), no further service need be made upon that attorney. All such pleadings or communications shall contain a statement of compliance herewith.

#### **Rule 17: Appearance and Withdrawal**

(c) Limited Appearance of Attorneys. To the extent permitted by Rule 1.2 of the New Hampshire Rules of Professional Conduct, an attorney providing limited representation to an otherwise unrepresented litigant may file a Limited Appearance in a non-criminal case on behalf of such unrepresented party. The Limited Appearance shall state precisely the scope of the limited representation, and the attorney's involvement in the matter shall be limited only to what is specifically stated. The requirements of Rule 7(c) and (d) of these Rules shall apply to every pleading and motion signed by the limited representation attorney. An attorney who has filed a Limited Appearance, and who later signs a motion or other filing outside the scope of the limited representation, shall be deemed to have amended the Limited Appearance to extend to such filing. An attorney who signs a pleading (see Rule 6) or any amendment thereto that is filed with

## APPENDIX B: RULES OF ETHICS AND PROCEDURE

the court will be considered to have filed a General Appearance and, for the remainder of that attorney's involvement in the case, shall not be considered as a limited representation attorney under these rules; provided, however, if such attorney properly withdraws from the case and the withdrawal is allowed by the court, the attorney could later file a Limited Appearance in the same matter.

(f) Automatic Termination of Limited Representation. Any Limited Representation Appearance filed by an attorney, as authorized under Rule 17(c) and Professional Conduct Rule 1.2(f), shall automatically terminate upon completion of the agreed representation, without the necessity of leave of court, provided that the attorney shall provide the court a "withdrawal of limited appearance" form giving notice to the court and all parties of the completion of the limited representation and termination of the limited appearance. Any attorney having filed a Limited Appearance who seeks to withdraw prior to the completion of the limited representation stated in the Limited Appearance, however, must comply with Rule 17(d).

(g) Pleading Prepared for Unrepresented Party. When an attorney provides limited representation to an otherwise unrepresented party, by drafting a document to be filed by such party with the court in a proceeding in which (1) the attorney is not entering any appearance, or (2) the attorney has entered a Limited Appearance which does not include representation regarding such document, the attorney is not required to disclose the attorney's name on such pleading to be used by that party; any pleading drafted by such limited representation attorney, however, must conspicuously contain the statement "This pleading was prepared with the assistance of a New Hampshire attorney." The unrepresented party must comply with this required disclosure. Notwithstanding that the identity of the drafting attorney need not be required to be disclosed under this rule, by drafting a pleading to be used in court by an otherwise unrepresented party, the limited representation attorney shall be deemed to have made those same certifications as set forth in Rule 7(d) despite the fact the pleading need not be signed by the attorney.

### **New Jersey Rules of Professional Conduct**

#### **Rule 1.2: Scope of Representation and Allocation of Authority between Client and Lawyer**

(c) A lawyer may limit the scope of the representation if the limitation is reasonable under the circumstances and the client gives informed consent.

#### **Rule 6.5: Nonprofit and Court-Annexed Limited Legal Service Programs**

(a) A lawyer who, under the auspices of a program sponsored by a nonprofit organization or court, provides short-term limited legal services to a client without expectation by either the lawyer or the client that the lawyer will provide continuing representation in the matter:

(1) is subject to RPC 1.7 and 1.9(a) only if the lawyer knows that the representation of the client involves a conflict of interest; and

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(2) is subject to RPC 1.10 only if the lawyer knows that another lawyer associated with the lawyer in a law firm is disqualified by RPC 1.7 or 1.9(a) with respect to the matter.

(b) Except as provided in paragraph (a)(2), RPC 1.10 is inapplicable to a representation governed by this RPC.

Note: Adopted November 17, 2003 to be effective January 1, 2004.

### **New Mexico Rules of Professional Conduct**

#### **Rule 16-102: Scope of Representation and Allocation of Authority between Client and Lawyer**

C. **Limitation of representation.** A lawyer may limit the scope of the representation if the limitation is reasonable under the circumstances and the client gives informed consent.

#### **Comments**

[6] The scope of services to be provided by a lawyer may be limited by agreement with the client or by the terms under which the lawyer's services are made available to the client. When a lawyer has been retained by an insurer to represent an insured, for example, the representation may be limited to matters related to the insurance coverage. A limited representation may be appropriate because the client has limited objectives for the representation. In addition, the terms upon which representation is undertaken may exclude specific means that might otherwise be used to accomplish the client's objectives. Such limitations may exclude actions that the client thinks are too costly or that the lawyer regards as repugnant or imprudent

[7] Although this rule affords the lawyer and client substantial latitude to limit the representation, the limitation must be reasonable under the circumstances. If, for example, a client's objective is limited to securing general information about the law the client needs in order to handle a common and typically uncomplicated legal problem, the lawyer and client may agree that the lawyer's services will be limited to a brief telephone consultation. Such a limitation, however, would not be reasonable if the time allotted was not sufficient to yield advice upon which the client could rely. Although an agreement for a limited representation does not exempt a lawyer from the duty to provide competent representation, the limitation is a factor to be considered when determining the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation. *See* Rule 16-101 NMRA of the Rules of Professional Conduct.

[8] With regard to Paragraph C, limitations on the scope of representation may include drafting specific, discrete pleadings or other documents to be used in the course of representation without taking on the responsibility for drafting all documents needed to carry the representation to completion. For example, a lawyer may be retained by a client during the course of an appeal for the sole purpose of drafting a specific document, such as a docketing statement, memorandum in opposition, or brief. A lawyer who agrees to prepare a discrete document under a limited representation agreement must competently prepare such a document and fully advise the client

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with respect to that document, which includes informing the client of any significant problems that may be associated with the limited representation arrangement. However, by agreeing to prepare a specific, discrete document the lawyer does not also assume the responsibility for taking later actions or preparing subsequent documents that may be necessary to continue to pursue the representation. While limitations on the scope of representation are permitted under this rule, the lawyer must explain the benefits and risks of such an arrangement and obtain the client's informed consent to the limited representation. Upon expiration of the limited representation arrangement, the lawyer should advise the client of any impending deadlines, pending tasks, or other consequences flowing from the termination of the limited representation. *See* Rule 16-303 NMRA.

[9] All agreements concerning a lawyer's representation of a client must accord with the Rules of Professional Conduct and other law. *See, e.g.*, Rules 16-101, 16-108 and 16-506 NMRA of the Rules of Professional Conduct.

### **Rule 16-303: Candor Toward the Tribunal**

E. Limited entry of appearance; lawyer's duty. In all proceedings where a lawyer appears for a client in a limited manner, that lawyer shall disclose to the tribunal the scope of representation.

### **Rule 16-605: Nonprofit and Court-Annexed Limited Legal Services Programs**

A. A lawyer who, under the auspices of a program sponsored by a nonprofit organization or court, provides short-term limited legal services to a client without expectation by either the lawyer or the client that the lawyer will provide continuing representation in the matter:

(1) is subject to Rule 16-107 NMRA and Paragraph A of Rule 16-109 NMRA of the Rules of Professional Conduct only if the lawyer knows that the representation of the client involves a conflict of interest; and

(2) is subject to Rule 16-110 NMRA of the Rules of Professional Conduct only if the lawyer knows that another lawyer associated with the lawyer in a law firm is disqualified by Rule 16-107 NMRA or Paragraph A of Rule 16-109 NMRA of the Rules of Professional Conduct with respect to the matter.

B. Except as provided in Subparagraph (2) of Paragraph A, Rule 16-110 NMRA of the Rules of Professional Conduct is inapplicable to a representation governed by this Rule.

### **Committee Commentary**

[1] Legal services organizations, courts and various nonprofit organizations have established programs through which lawyers provide short-term limited legal services — such as advice or the completion of legal forms — that will assist persons to address their legal problems without further representation by a lawyer. In these programs, such as legal-advice hotlines, advice-only clinics or pro se counseling programs, a client-lawyer relationship is established, but there is no expectation that the lawyer's representation of the client will continue beyond the limited



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consultation. Such programs are normally operated under circumstances in which it is not feasible for a lawyer to systematically screen for conflicts of interest as is generally required before undertaking a representation. *See, e.g.*, Rules 16-107, 16-109 and 16-110 NMRA of the Rules of Professional Conduct.

[2] A lawyer who provides short-term limited legal services pursuant to this Rule must secure the client's informed consent to the limited scope of the representation. *See* Paragraph C of Rule 16-102 NMRA of the Rules of Professional Conduct. If a short-term limited representation would not be reasonable under the circumstances, the lawyer may offer advice to the client but must also advise the client of the need for further assistance of counsel. Except as provided in this Rule, the Rules of Professional Conduct, including Rule 16-106 NMRA and Paragraph C of Rule 16-109 NMRA, are applicable to the limited representation.

[3] Because a lawyer who is representing a client in the circumstances addressed by this Rule ordinarily is not able to check systematically for conflicts of interest, Paragraph A requires compliance with Rule 16-107 NMRA or Paragraph A of Rule 16-109 NMRA of the Rules of Professional Conduct only if the lawyer knows that the representation presents a conflict of interest for the lawyer, and with Rule 16-110 NMRA of the Rules of Professional Conduct only if the lawyer knows that another lawyer in the lawyer's firm is disqualified by Rule 16-107 NMRA or Paragraph A of Rule 16-109 NMRA of the Rules of Professional Conduct in the matter.

[4] Because the limited nature of the services significantly reduces the risk of conflicts of interest with other matters being handled by the lawyer's firm, Paragraph B provides that Rule 16-110 NMRA of the Rules of Professional Conduct is inapplicable to a representation governed by this Rule except as provided by Subparagraph (2) of Paragraph A. Subparagraph (2) of Paragraph A requires the participating lawyer to comply with Rule 16-110 NMRA of the Rules of Professional Conduct when the lawyer knows that the lawyer's firm is disqualified by Rule 16-107 NMRA or Paragraph A of Rule 16-109 NMRA of the Rules of Professional Conduct. By virtue of Paragraph B, however, a lawyer's participation in a short-term limited legal services program will not preclude the lawyer's firm from undertaking or continuing the representation of a client with interests adverse to a client being represented under the program's auspices. Nor will the personal disqualification of a lawyer participating in the program be imputed to other lawyers participating in the program.

[5] If, after commencing a short-term limited representation in accordance with this Rule, a lawyer undertakes to represent the client in the matter on an ongoing basis, Rule 16-107 NMRA, Paragraph A of Rule 16-109 NMRA, and Rule 16-110 NMRA of the Rules of Professional Conduct become applicable.

(adopted by Supreme Court Order No. 08-8300-29, effective November 3, 2008)

**New Mexico Rules of Civil Procedure**

**District Court Rule 1-089: Entry of Appearance; Withdrawal or Substitution of Attorneys**

**A. Entry of appearance.** When an attorney represents a party, the attorney shall file an entry of appearance, unless the court filed an order appointing the attorney. Filing a pleading pursuant to Rule 1-007 NMRA signed by an attorney constitutes an entry of appearance under this rule.

If an attorney's appearance is limited pursuant to Paragraph C of Rule 16-102 NMRA, the attorney shall:

- (1) file an entry of appearance entitled "Limited Entry of Appearance" that identifies the nature of the limitation;
- (2) note the limitation in the signature block of any paper the attorney files; and
- (3) include in the signature block of any paper the attorney files an address where service may be made on the party.

**C. Withdrawal upon completion of limited representation.** An attorney whose appearance is limited as set forth in Paragraph A of this rule and who has completed the purpose of the limited representation need not obtain a court order permitting withdrawal. Such an attorney shall file with the clerk and serve on all parties a notice of withdrawal or substitution of counsel. If an attorney ceases to act without complying with the provisions of this rule, upon motion of any party or upon the court's own motion, the court may enter an order requiring any actions that the court deems necessary.

**Magistrate Court Rule 2-107: Pro Se and Attorney Appearance**

**C. Attorney appearance.** A party may appear, prosecute, defend and appeal any proceeding by an attorney. Whenever an attorney undertakes to represent a party, the attorney shall file a written entry of appearance showing the attorney's name, address and telephone number. For the purpose of this rule, the filing of any pleading or paper signed by counsel constitutes an entry of appearance. If entry of appearance is made by the filing of a pleading on behalf of a party, the attorney shall set forth on the pleading the attorney's address and telephone number. If an attorney's appearance is limited pursuant to Paragraph C of Rule 16-102 NMRA, the attorney shall:

- (1) file an entry of appearance entitled "Limited Entry of Appearance" that identifies the nature of the limitation;
- (2) note the limitation in the signature block of any paper the attorney files; and
- (3) include in the signature block of any paper the attorney files an address at which service may be made on the client.

**Magistrate Court Rule 2-108: Withdrawal or Substitution of Attorneys**

**A. Approval of court.** An attorney or firm who has appeared without limitation in a cause may withdraw from it upon motion and approval of the court. The motion shall be substantially

## APPENDIX B: RULES OF ETHICS AND PROCEDURE

in the form approved by the Supreme Court. Approval of the court may be conditioned upon substitution of other counsel or the filing by a party of an address at which service may be made upon the party, with proof of service on all other parties, or otherwise. Following withdrawal by counsel, an unrepresented party shall have twenty (20) days within which to secure counsel or be deemed to have entered an appearance pro se. Withdrawing counsel or substitute counsel shall serve on all parties a copy of the motion requesting written consent to withdraw and shall file proof of service with the court prior to entry of the court's order. Attorneys whose appearances are limited as set forth in Paragraph C of Rule 2-107 NMRA need not obtain consent of the court before withdrawing or otherwise ceasing to act in the matter, except if the purpose of the limited representation is not completed.

### Metropolitan Court Rule 3-107: Pro Se and Attorney Appearance

**C. Attorney appearance.** A party may appear, prosecute, defend and appeal any proceeding by an attorney. Whenever an attorney undertakes to represent a party, the attorney shall file a written entry of appearance showing the attorney's name, address and telephone number. For the purpose of this rule, the filing of any pleading or paper signed by counsel constitutes an entry of appearance. If entry of appearance is made by the filing of a pleading on behalf of a party, the attorney shall set forth on the pleading the attorney's address and telephone number. If an attorney's appearance is limited pursuant to Paragraph C of Rule 16-102 NMRA, the attorney shall:

- (1) file an entry of appearance entitled "Limited Entry of Appearance" that identifies the nature of the limitation;
- (2) note the limitation in the signature block of any paper the attorney files; and
- (3) include in the signature block of any paper the attorney files an address at which service may be made on the client.

### Metropolitan Court Rule 3-108: Withdrawal or Substitution of Attorneys

**A. Consent and notice.** An attorney or firm who has appeared without limitation in a cause may withdraw from it upon motion and approval of the court. The motion shall be substantially in the form approved by the Supreme Court. Approval of the court may be conditioned upon substitution of other counsel or the filing by a party of an address at which service may be made upon the party, with proof of service on all other parties, or otherwise. Following withdrawal by counsel, an unrepresented party shall have twenty (20) days within which to secure counsel or be deemed to have entered an appearance pro se. Withdrawing counsel or substitute counsel shall serve on all parties a copy of the motion requesting written consent to withdraw and shall file proof of service with the court. Attorneys whose appearances are limited as set forth in Paragraph C of Rule 3-107 NMRA need not obtain consent of the court before withdrawing or otherwise ceasing to act in the matter, except if the purpose of the limited representation is not completed.

**New Mexico Supreme Court General Rules**

**Rule 23-113 Providing Court Information to Self-Represented Litigants**

A. **Self-represented litigant, court staff; defined.** For purposes of this rule, a self-represented litigant is any person who appears, or is contemplating an appearance, in any court in this state without attorney representation and court staff includes all judicial branch employees except judges, settlement facilitators, and mediators.

B. **Permitted information.** When communicating with a self-represented litigant, court staff are permitted to:

- (1) encourage the self-represented litigant to obtain legal advice from a licensed New Mexico attorney without recommending a specific attorney;
- (2) provide information about available pro bono, free or low-cost civil legal services, legal aid programs and lawyer referral services without endorsing a specific service;
- (3) provide information about available statutory or court-approved forms, pleadings and instructions without providing advice or recommendations as to any specific course of action;
- (4) answer questions about what information is being requested on forms without providing the self-represented litigant with the specific words to put in a form;
- (5) provide, orally or in writing, definitions of legal terminology from widely accepted legal dictionaries or other dictionaries, if available, and without advising whether a particular definition is applicable to the self-represented litigant's situation;
- (6) provide, orally or in writing, citations to constitutions, statutes, administrative rules or regulations, court rules and case law, but are not required to search for the citation and are not permitted to perform legal research as defined in Subparagraph (4) of Paragraph C of this rule or advise whether a particular provision is applicable to the self-represented litigant's situation;
- (7) provide publically available, non-sequestered information on docketed cases;
- (8) provide general information about court processes, procedures and practices, including court schedules and how to get matters scheduled;
- (9) provide information about mediation, parenting courses, courses for children of divorcing parents and any other appropriate information approved by the court for self-represented litigants;
- (10) provide, orally or in writing, information on local court rules and administrative orders;
- (11) provide information regarding proper courtroom conduct and decorum; and

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(12) provide general information about community resources without endorsing a specific resource.

**C. Prohibited information.** When communicating with a self-represented litigant, court staff are prohibited from:

(1) providing, orally or in writing, any interpretation or application of legal terminology, constitutional provisions, statutory provisions, administrative rules or regulations, court rules and case law based on specific facts or the self-represented litigant's particular circumstances;

(2) providing, orally or in writing, information that must be kept confidential by statute, administrative rule or regulation, court rule, court order or case law;

(3) creating documents or filling in the blanks on forms on behalf of self-represented litigants;

(4) performing direct legal research by applying the law to specific facts or expressing an opinion regarding the applicability of any constitutional provisions, statutes, administrative rules or regulations, court rules, court orders or case law to the self-represented litigant's particular circumstances;

(5) explaining court orders or decisions except as permitted by Subparagraph (8) of Paragraph B of this rule;

(6) telling the self-represented litigant what to say in court;

(7) assisting or participating in any unauthorized or inappropriate communications with a judge on behalf of the self-represented litigant outside the presence of the other party;

(8) indicating, orally or in writing, whether the self-represented litigant should file a case in court;

(9) predicting the outcome of a case filed in court; and

(10) indicating, orally or in writing, what the self-represented litigant should do or needs to do.

**D. Immunity.** Despite any information provided to self-represented litigants pursuant to this rule, self-represented litigants remain responsible for conducting themselves in an appropriate manner before the court and representing themselves in compliance with all applicable constitutional and statutory provisions, administrative rules or regulations, court rules, court orders and case law. Court staff shall be immune from suit, as provided by statute or common law, for any information provided to a self-represented litigant.

**New York Rules of Professional Conduct**

**Rule 1.2: Scope of Representation and Allocation of Authority between Client and Lawyer**

(c) A lawyer may limit the scope of the representation if the limitation is reasonable under the circumstances, the client gives informed consent and where necessary notice is provided to the tribunal and/or opposing counsel.

**Comment**

[6] The scope of services to be provided by a lawyer may be limited by agreement with the client or by the terms under which the lawyer's services are made available to the client. When a lawyer has been retained by an insurer to represent an insured, for example, the representation may be limited to issues related to the insurance coverage. A limited representation may be appropriate because the client has limited objectives for the representation. In addition, the terms upon which representation is undertaken may exclude specific means that might otherwise be used to accomplish the client's objectives. Such limitations may exclude actions that the client thinks are too costly or that the lawyer regards as repugnant or imprudent.

[6A] In obtaining consent from the client, the lawyer must adequately disclose the limitations on the scope of the engagement and the matters that will be excluded. In addition, the lawyer must disclose the reasonably foreseeable consequences of the limitation. In making such disclosure, the lawyer should explain that if the lawyer or the client determines during the representation that additional services outside the limited scope specified in the engagement are necessary or advisable to represent the client adequately, then the client may need to retain separate counsel, which could result in delay, additional expense, and complications.

[7] Although this Rule affords the lawyer and client substantial latitude to limit the representation, the limitation must be reasonable under the circumstances. If, for example, a client's objective is limited to securing general information about the law the client needs in order to handle a common and typically uncomplicated legal problem, the lawyer and client may agree that the lawyer's services will be limited to a brief telephone consultation. Such a limitation, however, would not be reasonable if the time allotted were not sufficient to yield advice upon which the client could rely. Although an agreement for a limited representation does not exempt a lawyer from the duty to provide competent representation, the limitation is a factor to be considered when determining the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation. See Rule 1.1.

[8] All agreements concerning a lawyer's representation of a client must accord with the Rules of Professional Conduct and other law. *See* Rules 1.1, 1.8 and 5.6.

**Rule 6.5: Participation in Limited Pro Bono Legal Service Programs**

(a) A lawyer who, under the auspices of a program sponsored by a court, government agency, bar association or not-for-profit legal services organization, provides short-term limited legal

## APPENDIX B: RULES OF ETHICS AND PROCEDURE

services to a client without expectation by either the lawyer or the client that the lawyer will provide continuing representation in the matter:

(1) shall comply with Rules 1.7, 1.8 and 1.9, concerning restrictions on representations where there are or may be conflicts of interest as that term is defined in these Rules, only if the lawyer has actual knowledge at the time of commencement of representation that the representation of the client involves a conflict of interest; and

(2) shall comply with Rule 1.10 only if the lawyer has actual knowledge at the time of commencement of representation that another lawyer associated with the lawyer in a law firm is affected by Rules 1.7, 1.8 and 1.9.

(b) Except as provided in paragraph (a)(2), Rule 1.7 and Rule 1.9 are inapplicable to a representation governed by this Rule.

(c) Short-term limited legal services are services providing legal advice or representation free of charge as part of a program described in paragraph (a) with no expectation that the assistance will continue beyond what is necessary to complete an initial consultation, representation or court appearance.

(d) The lawyer providing short-term limited legal services must secure the client's informed consent to the limited scope of the representation, and such representation shall be subject to the provisions of Rule 1.6.

(e) This Rule shall not apply where the court before which the matter is pending determines that a conflict of interest exists or, if during the course of the representation, the lawyer providing the services becomes aware of the existence of a conflict of interest precluding continued representation.

### **Local Rules of the United States District Court for Southern and Eastern Districts of New York, Civil Rules**

#### **Rule 7.2: Authorities to Be Provided to Pro Se Litigants**

In cases involving a pro se litigant, counsel shall, when serving a memorandum of law (or other submissions to the Court), provide the pro se litigant (but not other counsel or the Court) with copies of cases and other authorities cited therein that are unpublished or reported exclusively on computerized databases. Upon request, counsel shall provide the pro se litigant with copies of such unpublished cases and other authorities as are cited in a decision of the Court and were not previously cited by any party.

#### **COMMITTEE NOTE**

The Committee recommends the addition of an additional sentence to Local Civil Rule 7.2 in order to facilitate compliance with the decision of the Second Circuit in *Lebron v. Sanders*, 557 F.3d 76 (2d Cir. 2009).

**North Carolina Rules of Professional Conduct**

**Rule 1.2: Scope of Representation and Allocation of Authority between Client and Lawyer**

(c) A lawyer may limit the scope of the representation if the limitation is reasonable under the circumstances.

**Comment**

*Agreements Limiting Scope of Representation*

[6] The scope of services to be provided by a lawyer may be limited by agreement with the client or by the terms under which the lawyer's services are made available to the client. When a lawyer has been retained by an insurer to represent an insured, for example, the representation may be limited to matters related to the insurance coverage. A limited representation may be appropriate because the client has limited objectives for the representation. In addition, the terms upon which representation is undertaken may exclude specific means that might otherwise be used to accomplish the client's objectives. Such limitations may exclude actions that the client thinks are too costly or that the lawyer regards as repugnant or imprudent.

[7] Although this Rule affords the lawyer and client substantial latitude to limit the representation, the limitation must be reasonable under the circumstances. If, for example, a client's objective is limited to securing general information about the law the client needs in order to handle a common and typically uncomplicated legal problem, the lawyer and client may agree that the lawyer's services will be limited to a brief telephone consultation. Such a limitation, however, would not be reasonable if the time allotted was not sufficient to yield advice upon which the client could rely. Although an agreement for a limited representation does not exempt a lawyer from the duty to provide competent representation, the limitation is a factor to be considered when determining the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation. See Rule 1.1.

[8] Although paragraph (c) does not require that the client's informed consent to a limited representation be in writing, a specification of the scope of representation will normally be a necessary part of any written communication of the rate or basis of the lawyer's fee. See Rule 1.0(f) for the definition of "informed consent."

[9] All agreements concerning a lawyer's representation of a client must accord with the Rules of Professional Conduct and other law. *See, e.g.*, Rules 1.1, 1.8 and 5.6.

**Rule 6.5: Limited Legal Services Programs**

(a) A lawyer who, under the auspices of a program sponsored by a nonprofit organization or court, provides short-term limited legal services to a client without expectation by either the lawyer or the client that the lawyer will provide continuing representation in the matter:



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(1) is subject to Rules 1.7 and 1.9(a) only if the lawyer knows that the representation of the client involves a conflict of interest; and

(2) is subject to Rule 1.10 only if the lawyer knows that another lawyer associated with the lawyer in a law firm is disqualified by Rule 1.7 or 1.9(a) with respect to the matter.

(b) Except as provided in paragraph (a)(2), Rule 1.10 is inapplicable to a representation governed by this Rule.

### **Comment**

[1] Legal services organizations, courts and various nonprofit organizations have established programs through which lawyers provide short-term limited legal services - such as advice or the completion of legal forms - that will assist persons to address their legal problems without further representation by a lawyer. In these programs, such as legal-advice hotlines, advice-only clinics or pro se counseling programs, a client-lawyer relationship is established, but there is no expectation that the lawyer's representation of the client will continue beyond the limited consultation. Such programs are normally operated under circumstances in which it is not feasible for a lawyer to systematically screen for conflicts of interest as is generally required before undertaking a representation. *See, e.g.*, Rules 1.7, 1.9 and 1.10.

[2] A lawyer who provides short-term limited legal services pursuant to this Rule must secure the client's informed consent to the limited scope of the representation. *See* Rule 1.2(c). If a short-term limited representation would not be reasonable under the circumstances, the lawyer may offer advice to the client but must also advise the client of the need for further assistance of counsel. Except as provided in this Rule, the Rules of Professional Conduct, including Rules 1.6 and 1.9(c), are applicable to the limited representation.

[3] Because a lawyer who is representing a client in the circumstances addressed by this Rule ordinarily is not able to check systematically for conflicts of interest, paragraph (a) requires compliance with Rules 1.7 or 1.9(a) only if the lawyer knows that the representation presents a conflict of interest for the lawyer, and with Rule 1.10 only if the lawyer knows that another lawyer in the lawyer's firm is disqualified by Rules 1.7 or 1.9(a) in the matter.

[4] Because the limited nature of the services significantly reduces the risk of conflicts of interest with other matters being handled by the lawyer's firm, paragraph (b) provides that Rule 1.10 is inapplicable to a representation governed by this Rule except as provided by paragraph (a)(2). Paragraph (a)(2) requires the participating lawyer to comply with Rule 1.10 when the lawyer knows that the lawyer's firm is disqualified by Rules 1.7 or 1.9(a). By virtue of paragraph (b), however, a lawyer's participation in a short-term limited legal services program will not preclude the lawyer's firm from undertaking or continuing the representation of a client with interests adverse to a client being represented under the program's auspices. Nor will the personal disqualification of a lawyer participating in the program be imputed to other lawyers participating in the program.

[5] If, after commencing a short-term limited representation in accordance with this Rule, a

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lawyer undertakes to represent the client in the matter on an ongoing basis, Rules 1.7, 1.9(a) and 1.10 become applicable.

History Note: Statutory Authority G. 84-23

Adopted March 1, 2003.

### **North Carolina General Statute**

#### **Rule 50B-2: Institution of Civil Action; Motion for Emergency Relief; Temporary Orders; Temporary Custody**

(d) Pro Se Forms. – The clerk of superior court of each county shall provide to pro se complainants all forms that are necessary or appropriate to enable them to proceed pro se pursuant to this section. The clerk shall, whenever feasible, provide a private area for complainants to fill out forms and make inquiries. The clerk shall provide a supply of pro se forms to authorized magistrates who shall make the forms available to complainants seeking relief under subsection (c1) of this section. (1979, c. 561, s. 1; 1985, c. 113, ss. 2, 3; 1987 (Reg. Sess., 1988), c. 893, s. 2; 1989, c. 461, s. 1; 1994, Ex. Sess., c. 4, s. 1; 1997-471, s. 2; 2001-518, s. 4; 2002-126, s. 29A.6(a); 2004-186, ss. 17.2, 19.1; 2009-342, s. 2.)

### **North Dakota Rules of Professional Conduct**

#### **Rule 1.2: Scope of Representation and Allocation of Authority between Client and Lawyer**

(c) A lawyer may limit the scope of the representation if the client consents after consultation.

#### **Comment**

[6] The scope of services to be provided by a lawyer may be limited by agreement with the client or by the terms under which the lawyer's services are made available to the client. Paragraph (c) allows the lawyer to limit the scope of representation if the client consents. Obtaining the client's consent in writing is the preferred practice. Lack of a writing may make it difficult to prove client consent if a dispute arises later. When a lawyer has been retained by an insurer to represent an insured, for example, the representation may be limited to matters related to the insurance coverage. A limited representation may be appropriate because the client has limited objectives for the representation. In addition, terms upon which representation is undertaken may exclude specific means that might otherwise be used to accomplish the client's objectives. Such limitations may exclude actions that the client thinks are too costly or that the lawyer regards as repugnant or imprudent.

[7] Although an agreement for a limited representation does not exempt a lawyer from the duty to provide competent representation, the limitation is a factor to be considered when determining the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation. See Rule 1.1.

## APPENDIX B: RULES OF ETHICS AND PROCEDURE

[8] All agreements concerning a lawyer's representation of a client must accord with these Rules and other law. See, e.g., Rules 1.1, 1.8 and 5.6.

### **Rule 6.5: Nonprofit and Court-Annexed Limited Legal Services Programs**

(a) A lawyer who, under the auspices of a program sponsored by a nonprofit organization or court, provides short-term limited legal services to a client without expectation by either the lawyer or the client that the lawyer will provide continuing representation in the matter:

(1) is subject to Rules 1.7 and 1.9(a) or (b) only if the lawyer knows that the representation of the client involves a conflict of interest; and

(2) is subject to Rule 1.10 only if the lawyer knows that another lawyer associated with the lawyer in a law firm is disqualified by Rule 1.7 or 1.9(a) or (b) with respect to the matter.

(b) Except as provided in paragraph (a)(2), Rule 1.10 is inapplicable to a representation governed by this Rule.

(c) A client who has been served under the circumstances authorized under paragraph (a) is, for purposes of Rule 1.9, a former client of the lawyer providing the service, but that lawyer's disqualification is not imputed to lawyers associated with that lawyer for purposes of Rule 1.10.

#### **Comment**

[1] Legal services organizations, courts, and various nonprofit organizations have established programs through which lawyers provide short-term limited legal services -- such as advice or the completion of legal forms -- that will assist persons to address their legal problems without further representation by a lawyer. In these programs, such as legal-advice hotlines, advice-only clinics or pro se counseling programs, a client-lawyer relationship is established, but there is no expectation that the lawyer's representation of the client will continue beyond the limited consultation. Such programs are normally operated under circumstances in which it is not feasible for a lawyer to systematically screen for conflicts of interest as is generally required before undertaking a representation. See, e.g., Rules 1.7, 1.9, and 1.10.

[2] A lawyer who provides short-term limited legal services pursuant to this Rule must secure the client's consent after consultation to the limited scope of the representation. See Rule 1.2(c). If a short-term limited representation would not be reasonable under the circumstances, the lawyer may offer advice to the client but must also advise the client of the need for further assistance of counsel. Except as provided in this Rule, the Rules of Professional Conduct, including Rules 1.6 and 1.9(c), are applicable to the limited representation.

[3] Because a lawyer who is representing a client in the circumstances addressed by this Rule ordinarily is not able to check systematically for conflicts of interest, paragraph (a) requires compliance with Rules 1.7 or 1.9(a) or (b) only if the lawyer knows that the representation presents a conflict of interest for the lawyer, and with Rule 1.10 only if the lawyer knows that another lawyer in the lawyer's firm is disqualified by Rules 1.7 or 1.9(a) or (b) in the matter.

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[4] Because the limited nature of the services significantly reduces the risk of conflicts of interest with other matters being handled by the lawyer's firm, paragraph (b) provides that Rule 1.10 is inapplicable to a representation governed by this Rule except as provided by paragraph (a)(2). Paragraph (a)(2) requires the participating lawyer to comply with Rule 1.10 when the lawyer knows that the lawyer's firm is disqualified by Rules 1.7 or 1.9(a) or (b). By virtue of paragraph (b), however, a lawyer's participation in a short-term limited legal services program will not preclude the lawyer's firm from undertaking or continuing the representation of a client with interests adverse to a client being represented under the program's auspices. Nor will the personal disqualification of a lawyer participating in the program be imputed to other lawyers participating in the program.

[5] If, after commencing a short-term limited representation in accordance with this Rule, a lawyer undertakes to represent the client in the matter on an ongoing basis, Rules 1.7, 1.9(a) or (b), and 1.10 become applicable.

*Reference:* Minutes of the Joint Committee on Attorney Standards on 11/14/03, 02/27/04, 06/08/04, 05/21/04.

### **North Dakota Rules of Civil Procedure**

#### **Rule 5: Service and Filing of Pleadings and Other Papers**

##### **(b) Service--How made.**

(1) Serving an Attorney. If a party is represented by an attorney, service under this rule must be made on the attorney unless the court orders service on the party. If an attorney is providing limited representation under Rule 11(e), service must be made on the party and on the attorney for matters within the scope of the limited representation.

(2) Service in General. A paper is served under this rule by:

(A) handing it to the person;

(B) leaving it:

(i) at the person's office with a clerk or other person in charge or, if no one is in charge, leaving it in a conspicuous place in the office; or,

(ii) if the person has no office or the office is closed, at the person's dwelling or usual place of abode with someone of suitable age and discretion who resides there;

(C) mailing it to the person's last known address, in which event service is complete upon mailing;

(D) sending it by a third-party commercial carrier to the person's last known address, in which event service is complete upon deposit of the paper to be served with the commercial carrier;

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(E) if no address is known, on order of the court by leaving it with the clerk of court;

(F) sending it by electronic means if the person consented in writing, in which event service is complete on transmission, but is not effective if the serving party learns that it did not reach the person to be served; or

(G) delivering it by any other means that the person consented to in writing.

### **Rule 11: Signing of Pleadings, Motions and Other Papers; Representation to Court; Sanctions**

#### **(e) Limited Representation.**

(1) Notice. An attorney who assists an otherwise self-represented party on a limited basis must serve a notice of limited representation on each party involved in the matter. The notice must state precisely the scope of the limited representation. An attorney who seeks to act beyond the stated scope of the limited representation must serve an amended notice of limited representation. The attorney must also serve a notice of termination of limited representation on each party involved in the matter.

(2) Filing. If the action is filed, the party who received assistance of an attorney on a limited basis must file the notice of limited representation with the court.

(3) Scope of Rule. The requirements of this rule apply to every pleading, written motion and other paper signed by an attorney acting within the scope of a limited representation.

#### **Comment**

Subdivision (e) was added, effective March 1, 2009, to permit an attorney to file a notice of limited representation indicating an intent to represent a party for one or more matters in a case, but not for all matters. An attorney must also serve a notice of termination of limited representation when the attorney's involvement ends. Rule 5, Rule 11 and N.D.R.Ct. 11.2, were amended to permit attorneys to assist an otherwise self-represented party on a limited basis without undertaking full representation of the party. Under N.D.R. Prof. Conduct 1.2 (c) a lawyer may limit the scope of the representation if a client consents after consultation.

### **North Dakota Rules of Court**

#### **Rule 11.2: Withdrawal of Attorneys**

**(d) Limited Appearance.** This rule does not apply to attorneys representing a party under a notice of limited representation served under N.D.R.Civ.P. 11(e) unless the attorney seeks to withdraw from the limited representation itself.

**Comment**

Subdivision (d) was added, effective March 1, 2009, to make it clear that an attorney who serves a notice of limited representation to represent a party for one or more matters in a case is not required to formally withdraw upon completion of activity covered by the notice. Under N.D.R.Civ.P. 11(e), however, the attorney must serve a notice of termination of limited representation when the attorney's involvement ends. Rule 11.2 and N.D.R.Civ.P. 5 and 11 were amended to permit attorneys to assist otherwise unrepresented parties on a limited basis without undertaking full representation of the party.

**Ohio Rules of Professional Conduct**

**Rule 1.2: Scope of Representation and Allocation of Authority between Client and Lawyer**

(c) A lawyer may limit the scope of a new or existing representation if the limitation is *reasonable* under the circumstances and communicated to the client, preferably in *writing*.

**Comment**

[7] Although division (c) affords the lawyer and client substantial latitude in defining the scope of the representation, any limitation must be reasonable under the circumstances. If, for example, a client's objective is limited to securing general information about the law that the client needs in order to handle a common and typically uncomplicated legal problem, the lawyer and client may agree that the lawyer's services will be limited to a brief telephone consultation. Such a limitation would not be reasonable if the time allotted was not sufficient to yield advice upon which the client could rely. In addition, the terms upon which representation is undertaken may exclude specific means that might otherwise be used to accomplish the client's objectives.

Such limitations may exclude actions that the client thinks are too costly or that the lawyer regards as repugnant or imprudent. Although an agreement for a limited representation does not exempt a lawyer from the duty to provide competent representation, the limitation is a factor to be considered when determining the legal knowledge, skill, thoroughness, and preparation reasonably necessary for the representation. See Rule 1.1.

[7A] Written confirmation of a limitation of a new or existing representation is preferred and may be any writing that is presented to the client that reflects the limitation, such as a letter or electronic transmission addressed to the client or a court order. A lawyer may create a form or checklist that specifies the scope of the client-lawyer relationship and the fees to be charged. An order of a court appointing a lawyer to represent a client is sufficient to confirm the scope of that representation.

[8] All agreements concerning a lawyer's representation of a client must accord with the Ohio Rules of Professional Conduct and other law. See, *e.g.*, Rules 1.1, 1.8 and 5.6.

**Rule 6.5: Nonprofit and Court-Annexed Limited Legal Services Programs**

(a) A lawyer who, under the auspices of a program sponsored by a nonprofit organization or court, provides short-term limited legal services to a client without expectation by either the lawyer or the client that the lawyer will provide continuing representation in the matter is subject to both of the following:

(1) Rules 1.7 and 1.9(a) only if the lawyer *knows* that the representation of the client involves a conflict of interest;

(2) Rule 1.10 only if the lawyer *knows* that another lawyer associated with the lawyer in a *law firm* is disqualified by Rule 1.7 or 1.9(a) with respect to the matter.

(b) Except as provided in division (a)(2) of this rule, Rule 1.10 is inapplicable to a representation governed by this rule.

**Comment**

[1] Legal services organizations, courts, and various nonprofit organizations have established programs through which lawyers provide short-term limited legal services—such as advice or the completion of legal forms—that will assist persons to address their legal problems without further representation by a lawyer. In these programs, such as legal-advice hotlines, advice-only clinics, or *pro se* counseling programs, a client-lawyer relationship is established, but there is no expectation that the lawyer’s representation of the client will continue beyond the limited consultation. Such programs are normally operated under circumstances in which it is not feasible for a lawyer to systematically screen for conflicts of interest as is generally required before undertaking a representation. See *e.g.*, Rules 1.7, 1.9, and 1.10.

[2] A lawyer who provides short-term limited legal services pursuant to this rule must communicate with the client, preferably in writing, regarding the limited scope of the representation. See Rule 1.2(c). If a short-term limited representation would not be reasonable under the circumstances, the lawyer may offer advice to the client but must also advise the client of the need for further assistance of counsel. Except as provided in this rule, the Ohio Rules of Professional Conduct, including Rules 1.6 and 1.9(c), are applicable to the limited representation.

[3] Because a lawyer who is representing a client in the circumstances addressed by this rule ordinarily is not able to check systematically for conflicts of interest, division (a) requires compliance with Rules 1.7 or 1.9(a) only if the lawyer knows that the representation presents a conflict of interest for the lawyer, and with Rule 1.10 only if the lawyer knows that another lawyer in the lawyer’s firm is disqualified by Rules 1.7 or 1.9(a) in the matter.

[4] Because the limited nature of the services significantly reduces the risk of conflicts of interest with other matters being handled by the lawyer’s firm, division (b) provides that Rule 1.10 is inapplicable to a representation governed by this rule except as provided by division (a)(2). Division (a)(2) requires the participating lawyer to comply with Rule 1.10 when the lawyer

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knows that the lawyer's firm is disqualified by Rules 1.7 or 1.9(a). By virtue of division (b), however, a lawyer's participation in a short-term limited legal services program will not preclude the lawyer's firm from undertaking or continuing the representation of a client with interests adverse to a client being represented under the program's auspices. Nor will the personal disqualification of a lawyer participating in the program be imputed to other lawyers participating in the program.

[5] If, after commencing a short-term limited representation in accordance with this rule, a lawyer undertakes to represent the client in the matter on an ongoing basis, Rules 1.7, 1.9(a), and 1.10 become applicable.

### **Comparison to former Ohio Code of Professional Responsibility**

The Ohio Code of Professional Responsibility does not have a specifically comparable rule regarding short-term limited legal services for programs sponsored by a nonprofit organization or court. Rule 6.5 codifies an exception to the general conflict provisions of Rule 1.7 (formerly DR 5-105) in order to encourage lawyers in firms to participate in short-term legal service projects sponsored by courts or nonprofit organizations.

(no substantive changes to the ABA Model Rule)

## **Oklahoma Rules of Professional Conduct**

### **Rule 1.2: Scope of Representation and Allocation of Authority between Client and Lawyer**

(c) A lawyer may limit the scope of the representation if the limitation is reasonable under the circumstances and the client gives informed consent.

### **Comments**

[6] The scope of services to be provided by a lawyer may be limited by agreement with the client or by the terms under which the lawyer's services are made available to the client. When a lawyer has been retained by an insurer to represent an insured, for example, the representation may be limited to matters related to the insurance coverage. A limited representation may be appropriate because the client has limited objectives for the representation. In addition, the terms upon which representation is undertaken may exclude specific means that might otherwise be used to accomplish the client's objectives. Such limitations may exclude actions that the client thinks are too costly or that the lawyer regards as repugnant or imprudent.

[7] Although this Rule affords the lawyer and client substantial latitude to limit the representation, the limitation must be reasonable under the circumstances. If, for example, a client's objective is limited to securing general information about the law the client needs in order to handle a common and typically uncomplicated legal problem, the lawyer and client may agree that the lawyer's services will be limited to a brief telephone consultation. Such a limitation, however, would not be reasonable if the time allotted was not sufficient to yield advice upon which the client could rely. Although an agreement for a limited representation does not exempt a lawyer from the duty to provide competent representation, the limitation is a factor



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to be considered when determining the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation. See Rule 1.1.

[8] All agreements concerning a lawyer's representation of a client must accord with the Rules of Professional Conduct and other law. See, e.g., Rules 1.1, 1.8 and 5.6.

### **Rule 6.5: Nonprofit and Court-Annexed Limited Legal Services Programs**

(a) A lawyer who, under the auspices of a program sponsored by a nonprofit organization or court, provides short-term limited legal services to a client without expectation by either the lawyer or the client that the lawyer will provide continuing representation in the matter:

(1) is subject to Rules 1.7 and 1.9(a) only if the lawyer knows that the representation of the client involves a conflict of interest; and

(2) is subject to Rule 1.10 only if the lawyer knows that another lawyer associated with the lawyer in a law firm is disqualified by Rule 1.7 or 1.9(a) with respect to the matter.

(b) Except as provided in paragraph (a)(2), Rule 1.10 is inapplicable to a representation governed by this Rule.

### **Comment**

[1] Legal services organizations, courts and various nonprofit organizations have established programs through which lawyers provide short-term limited legal services — such as advice or the completion of legal forms - that will assist persons to address their legal problems without further representation by a lawyer. In these programs, such as legal-advice hotlines, advice-only clinics or pro se counseling programs, a client-lawyer relationship is established, but there is no expectation that the lawyer's representation of the client will continue beyond the limited consultation. Such programs are normally operated under circumstances in which it is not feasible for a lawyer to systematically screen for conflicts of interest as is generally required before undertaking a representation. See, e.g., Rules 1.7, 1.9 and 1.10.

[2] A lawyer who provides short-term limited legal services pursuant to this Rule must secure the client's informed consent to the limited scope of the representation. See Rule 1.2(c). If a short-term limited representation would not be reasonable under the circumstances, the lawyer may offer advice to the client but must also advise the client of the need for further assistance of counsel. Except as provided in this Rule, the Rules of Professional Conduct, including Rules 1.6 and 1.9(c), are applicable to the limited representation.

[3] Because a lawyer who is representing a client in the circumstances addressed by this Rule ordinarily is not able to check systematically for conflicts of interest, paragraph (a) requires compliance with Rules 1.7 or 1.9(a) only if the lawyer knows that the representation presents a conflict of interest for the lawyer, and with Rule 1.10 only if the lawyer knows that another lawyer in the lawyer's firm is disqualified by Rules 1.7 or 1.9(a) in the matter.

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[4] Because the limited nature of the services significantly reduces the risk of conflicts of interest with other matters being handled by the lawyer's firm, paragraph (b) provides that Rule 1.10 is inapplicable to a representation governed by this Rule except as provided by paragraph (a)(2). Paragraph (a)(2) requires the participating lawyer to comply with Rule 1.10 when the lawyer knows that the lawyer's firm is disqualified by Rules 1.7 or 1.9(a). By virtue of paragraph (b), however, a lawyer's participation in a short-term limited legal services program will not preclude the lawyer's firm from undertaking or continuing the representation of a client with interests adverse to a client being represented under the program's auspices. Nor will the personal disqualification of a lawyer participating in the program be imputed to other lawyers participating in the program.

[5] If, after commencing a short-term limited representation in accordance with this Rule, a lawyer undertakes to represent the client in the matter on an ongoing basis, Rules 1.7, 1.9(a) and 1.10 become applicable.

### **Oregon Rules of Professional Conduct**

#### **Rule 1.2: Scope of Representation and Allocation of Authority between Client and Lawyer**

(b) A lawyer may limit the scope of the representation if the limitation is reasonable under the circumstances and the client gives informed consent.

#### **Rule 6.5 Nonprofit and Court-Annexed Limited Legal Services Programs**

(a) A lawyer who, under the auspices of a program sponsored by a nonprofit organization or court, provides short-term limited legal services to a client without expectation by either the lawyer or the client that the lawyer will provide continuing representation in the matter:

(1) is subject to Rule 1.7 and 1.9(a) only if the lawyer knows that the representation of the client involves a conflict of interest; and

(2) is subject to Rule 1.10 only if the lawyer knows that another lawyer associated with the lawyer in a law firm is disqualified by Rule 1.7 or 1.9(a) with respect to the matter.

(b) Except as provided in paragraph (a)(2), Rule 1.10 is inapplicable to a representation governed by this Rule.

### **Oregon Uniform Trial Court Rules**

#### **Rule 2.010 Form of Documents**

(7) Attorney or Litigant Information

All documents must include the author's name, address, telephone number, fax number, if any, and, if prepared by an attorney, the name, e-mail address, and the Bar number of the author and the trial attorney assigned to try the case. Any document not bearing the name and Bar number of

## APPENDIX B: RULES OF ETHICS AND PROCEDURE

an attorney as the author or preparer of the document must bear or be accompanied by a certificate in substantially the form as set out in Form 2.010.7 in the UTCR Appendix of Forms.

### **Pennsylvania Rules of Professional Conduct**

#### **Rule 1.2: Scope of Representation and Allocation of Authority between Client and Lawyer**

(c) A lawyer may limit the scope of the representation if the limitation is reasonable under the circumstances and the client gives informed consent.

#### **Comment**

[6] The scope of services to be provided by a lawyer may be limited by agreement with the client or by the terms under which the lawyer's services are made available to the client. When a lawyer has been retained by an insurer to represent an insured, for example, the representation may be limited to matters related to the insurance coverage. A limited representation may be appropriate because the client has limited objectives for the representation. In addition, the terms upon which representation is undertaken may exclude specific means that might otherwise be used to accomplish the client's objectives. Such limitations may exclude actions that the client thinks are too costly or that the lawyer regards as repugnant or imprudent.

[7] Although this Rule affords the lawyer and client substantial latitude to limit the representation, the limitation must be reasonable under the circumstances. If, for example, a client's objective is limited to securing general information about the law the client needs in order to handle a common and typically uncomplicated legal problem, the lawyer and client may agree that the lawyer's services will be limited to a brief telephone consultation. Such a limitation, however, would not be reasonable if the time allotted was not sufficient to yield advice upon which the client could rely. Although an agreement for a limited representation does not exempt a lawyer from the duty to provide competent representation, the limitation is a factor to be considered when determining the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation. See Rule 1.1.

[8] All agreements concerning a lawyer's representation of a client must accord with the Rules of Professional Conduct and other law. See, e.g., Rules 1.1, 1.8 and 5.6.

#### **Rule 6.5: Nonprofit and Court Appointed Limited Legal Services Programs**

(a) A lawyer who, under the auspices of a program sponsored by a nonprofit organization or court, provides short-term limited legal services to a client without expectation by either the lawyer or the client that the lawyer will provide continuing representation in the matter:

(1) is subject to Rules 1.7 and 1.9(a) only if the lawyer knows that the representation of the client involves a conflict of interest; and

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(2) is subject to Rule 1.10 only if the lawyer knows that another lawyer associated with the lawyer in a law firm is disqualified by Rule 1.7 or 1.9(a) with respect to the matter.

(b) Except as provided in paragraph (a)(2), Rule 1.10 is inapplicable to a representation governed by this Rule.

### **Comment:**

[1] Legal services organizations, courts and various nonprofit organizations have established programs through which lawyers provide short-term limited legal services – such as advice or the completion of legal forms – that will assist persons to address their legal problems without further representation by a lawyer. In these programs, such as legal-advice hotlines, advice-only clinics or pro se counseling programs, a client-lawyer relationship is established, but there is no expectation that the lawyer’s representation of the client will continue beyond the limited consultation. Such programs are normally operated under circumstances in which it is not feasible for a lawyer to systematically screen for conflicts of interest as is generally required before undertaking a representation. See, e.g., Rules 1.7, 1.9 and 1.10.

[2] A lawyer who provides short-term limited legal services pursuant to this Rule must secure the client’s informed consent to the limited scope of the representation. See Rule 1.2(c). If a short-term limited representation would not be reasonable under the circumstances, the lawyer may offer advice to the client but must also advise the client of the need for further assistance of counsel. Except as provided in this Rule, the Rules of Professional Conduct, including Rules 1.6 and 1.9(c), are applicable to the limited representation.

[3] Because a lawyer who is representing a client in the circumstances addressed by this Rule ordinarily is not able to check systematically for conflicts of interest, paragraph (a) requires compliance with Rules 1.7 or 1.9(a) only if the lawyer knows that the representation presents a conflict of interest for the lawyer, and with Rule 1.10 only if the lawyer knows that another lawyer in the lawyer’s firm is disqualified by Rules 1.7 or 1.9(a) in the matter.

[4] Because the limited nature of the services significantly reduces the risk of conflicts of interest with other matters being handled by the lawyer’s firm, paragraph (b) provides that Rule 1.10 is inapplicable to a representation governed by this Rule except as provided by paragraph (a)(2). Paragraph (a)(2) requires the participating lawyer to comply with Rule 1.10 when the lawyer knows that the lawyer’s firm is disqualified by Rule 1.7 or 1.9(a). By virtue of paragraph (b), however, a lawyer’s participation in a short-term limited legal services program will not preclude the lawyer’s firm from undertaking or continuing the representation of a client with interests adverse to a client being represented under the program’s auspices. Nor will the personal disqualification of a lawyer participating in the program be imputed to other lawyers participating in the program.

[5] If, after commencing a short-term limited representation in accordance with this Rule, a lawyer undertakes to represent the client in the matter on an ongoing basis, Rules 1.7, 1.9(a) and 1.10 become applicable.

**Rhode Island Rules of Professional Conduct**

**Rule 1.2 Scope of Representation and Allocation of Authority between Client and Lawyer**

(c) A lawyer may limit the scope of the representation if the limitation is reasonable under the circumstances and the client gives informed consent.

**Comments**

[6] The scope of services to be provided by a lawyer may be limited by agreement with the client or by the terms under which the lawyer's services are made available to the client. When a lawyer has been retained by an insurer to represent an insured, for example, the representation may be limited to matters related to the insurance coverage. A limited representation may be appropriate because the client has limited objectives for the representation. In addition, the terms upon which representation is undertaken may exclude specific means that might otherwise be used to accomplish the client's objectives. Such limitations may exclude actions that the client thinks are too costly or that the lawyer regards as repugnant or imprudent.

[7] Although this Rule affords the lawyer and client substantial latitude to limit the representation, the limitation must be reasonable under the circumstances. If, for example, a client's objective is limited to securing general information about the law the client needs in order to handle a common and typically uncomplicated legal problem, the lawyer and client may agree that the lawyer's services will be limited to a brief telephone consultation. Such a limitation, however, would not be reasonable if the time allotted was not sufficient to yield advice upon which the client could rely. Although an agreement for a limited representation does not exempt a lawyer from the duty to provide competent representation, the limitation is a factor to be considered when determining the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation. See Rule 1.1.

[8] All agreements concerning a lawyer's representation of a client must accord with the Rules of Professional Conduct and other law. See, e.g., Rules 1.1, 1.8 and 5.6.

**Rule 6.5: Nonprofit and Court-Annexed Limited Legal Services Programs**

(a) A lawyer who, under the auspices of a program sponsored by a nonprofit organization or court, provides short-term limited legal services to a client without expectation by either the lawyer or the client that the lawyer will provide continuing representation in the matter:

(1) is subject to Rules 1.7 and 1.9(a) only if the lawyer knows that the representation of the client involves a conflict of interest; and

(2) is subject to Rule 1.10 only if the lawyer knows that another lawyer associated with the lawyer in a law firm is disqualified by Rule 1.7 or 1.9(a) with respect to the matter.

(b) Except as provided in paragraph (a)(2), Rule 1.10 is inapplicable to a representation governed by this Rule. (As adopted by the court on February 16, 2007, eff. April 15, 2007.)

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### Comments

[1] Legal services organizations, courts and various nonprofit organizations have established programs through which lawyers provide short-term limited legal services -such as advice or the completion of legal forms - that will assist persons to address their legal problems without further representation by a lawyer. In these programs, such as legal-advice hotlines, advice-only clinics or pro se counseling programs, a client-lawyer relationship is established, but there is no expectation that the lawyer's representation of the client will continue beyond the limited consultation. Such programs are normally operated under circumstances in which it is not feasible for a lawyer to systematically screen for conflicts of interest as is generally required before undertaking a representation. See, e.g., Rules 1.7, 1.9 and 1.10.

[2] A lawyer who provides short-term limited legal services pursuant to this Rule must secure the client's informed consent to the limited scope of the representation. See Rule 1.2(c). If a short-term limited representation would not be reasonable under the circumstances, the lawyer may offer advice to the client but must also advise the client of the need for further assistance of counsel. Except as provided in this Rule, the Rules of Professional Conduct, including Rules 1.6 and 1.9(c), are applicable to the limited representation.

[3] Because a lawyer who is representing a client in the circumstances addressed by this Rule ordinarily is not able to check systematically for conflicts of interest, paragraph (a) requires compliance with Rules 1.7 or 1.9(a) only if the lawyer knows that the representation presents a conflict of interest for the lawyer, and with Rule 1.10 only if the lawyer knows that another lawyer in the lawyer's firm is disqualified by Rules 1.7 or 1.9(a) in the matter.

[4] Because the limited nature of the services significantly reduces the risk of conflicts of interest with other matters being handled by the lawyer's firm, paragraph (b) provides that Rule 1.10 is inapplicable to a representation governed by this Rule except as provided by paragraph (a)(2). Paragraph (a)(2) requires the participating lawyer to comply with Rule 1.10 when the lawyer knows that the lawyer's firm is disqualified by Rules 1.7 or 1.9(a). By virtue of paragraph (b), however, a lawyer's participation in a short-term limited legal services program will not preclude the lawyer's firm from undertaking or continuing the representation of a client with interests adverse to a client being represented under the program's auspices. Nor will the personal disqualification of a lawyer participating in the program be imputed to other lawyers participating in the program.

[5] If, after commencing a short-term limited representation in accordance with this Rule, a lawyer undertakes to represent the client in the matter on an ongoing basis, Rules 1.7, 1.9(a) and 1.10 become applicable.

### **South Carolina Rules of Professional Conduct**

#### **[Rule 1.2: Scope of Representation and Allocation of Authority between Client and Lawyer](#)**

(c) A lawyer may limit the scope of the representation if the limitation is reasonable under the circumstances and the client gives informed consent.

## APPENDIX B: RULES OF ETHICS AND PROCEDURE

### Comment

[6] The scope of services to be provided by a lawyer may be limited by agreement with the client or by the terms under which the lawyer's services are made available to the client. When a lawyer has been retained by an insurer to represent an insured, for example, the representation may be limited to matters related to the insurance coverage. A limited representation may be appropriate because the client has limited objectives for the representation. In addition, the terms upon which representation is undertaken may exclude specific means that might otherwise be used to accomplish the client's objectives. Such limitations may exclude actions that the client thinks are too costly or that the lawyer regards as repugnant or imprudent.

[7] Although this Rule affords the lawyer and client substantial latitude to limit the representation, the limitation must be reasonable under the circumstances. If, for example, a client's objective is limited to securing general information about the law the client needs in order to handle a common and typically uncomplicated legal problem, the lawyer and client may agree that the lawyer's services will be limited to a brief telephone consultation. Such a limitation, however, would not be reasonable if the time allotted was not sufficient to yield advice upon which the client could rely. Although an agreement for a limited representation does not exempt a lawyer from the duty to provide competent representation, the limitation is a factor to be considered when determining the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation. See Rule 1.1.

[8] All agreements concerning a lawyer's representation of a client must accord with the Rules of Professional Conduct and other law. See, e.g., Rules 1.1, 1.8 and 5.6.

### Rule 6.5: Nonprofit and Court Annexed Limited Legal Services Programs

(a) A lawyer who, under the auspices of a program sponsored by a nonprofit organization or court, provides short term limited legal services to a client without expectation by either the lawyer or the client that the lawyer will provide continuing representation in the matter:

(1) is subject to Rules 1.7 and 1.9(a) only if the lawyer knows that the representation of the client involves a conflict of interest; and

(2) is subject to Rule 1.10 only if the lawyer knows that another lawyer associated with the lawyer in a law firm is disqualified by Rule 1.7 or 1.9(a) with respect to the matter.

(b) Except as provided in paragraph (a)(2), Rule 1.10 is inapplicable to a representation governed by this Rule.

### Comment

[1] Legal services organizations, courts and various nonprofit organizations have established programs through which lawyers provide short term limited legal services such as advice or the completion of legal forms that will assist persons to address their legal problems without further representation by a lawyer. In these programs, such as legal advice hotlines, advice once clinics

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or pro se counseling programs, a client lawyer relationship is established, but there is no expectation that the lawyer's representation of the client will continue beyond the limited consultation. Such programs are normally operated under circumstances in which it is not feasible for a lawyer to systematically screen for conflicts of interest as is generally required before undertaking a representation. See, e.g., Rules 1.7, 1.9 and 1.10.

[2] A lawyer who provides short term limited legal services pursuant to this Rule must secure the client's informed consent to the limited scope of the representation. See Rule 1.2(c). If a short term limited representation would not be reasonable under the circumstances, the lawyer may offer advice to the client but must also advise the client of the need for further assistance of counsel. Except as provided in this Rule, the Rules of Professional Conduct, including Rules 1.6 and 1.9(c), are applicable to the limited representation.

[3] Because a lawyer who is representing a client in the circumstances addressed by this Rule ordinarily is not able to check systematically for conflicts of interest, paragraph (a) requires compliance with Rules 1.7 or 1.9(a) only if the lawyer knows that the representation presents a conflict of interest for the lawyer, and with Rule 1.10 only if the lawyer knows that another lawyer in the lawyer's firm is disqualified by Rules 1.7 or 1.9(a) in the matter.

[4] Because the limited nature of the services significantly reduces the risk of conflicts of interest with other matters being handled by the lawyer's firm, paragraph (b) provides that Rule 1.10 is inapplicable to a representation governed by this Rule except as provided by paragraph (a)(2). Paragraph (a)(2) requires the participating lawyer to comply with Rule 1.10 when the lawyer knows that the lawyer's firm is disqualified by Rules 1.7 or 1.9(a). By virtue of paragraph (b), however, a lawyer's participation in a short term limited legal services program will not preclude the lawyer's firm from undertaking or continuing the representation of a client with interests adverse to a client being represented under the program's auspices. Nor will the personal disqualification of a lawyer participating in the program be imputed to other lawyers participating in the program.

[5] If, after commencing a short term limited representation in accordance with this Rule, a lawyer undertakes to represent the client in the matter on an ongoing basis, Rules 1.7, 1.9(a) and 1.10 become applicable.

### **South Dakota Rules of Professional Conduct**

#### **Rule 1.2: Scope of Representation and Allocation of Authority between Client and Lawyer**

(c) A lawyer may limit the scope of the representation if the limitation is reasonable under the circumstances and the client gives informed consent.

#### **Comments**

[6] The scope of services to be provided by a lawyer may be limited by agreement with the client or by the terms under which the lawyer's services are made available to the client. When a lawyer has been retained by an insurer to represent an insured, for example, the representation may be



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limited to matters related to the insurance coverage. A limited representation may be appropriate because the client has limited objectives for the representation. In addition, the terms upon which representation is undertaken may exclude specific means that might otherwise be used to accomplish the client's objectives. Such limitations may exclude actions that the client thinks are too costly or that the lawyer regards as repugnant or imprudent.

[7] Although this Rule affords the lawyer and client substantial latitude to limit the representation, the limitation must be reasonable under the circumstances. If, for example, a client's objective is limited to securing general information about the law the client needs in order to handle a common and typically uncomplicated legal problem, the lawyer and client may agree that the lawyer's services will be limited to a brief telephone consultation. Such a limitation, however, would not be reasonable if the time allotted was not sufficient to yield advice upon which the client could rely. Although an agreement for a limited representation does not exempt a lawyer from the duty to provide competent representation, the limitation is a factor to be considered when determining the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation. See Rule 1.1.

[8] All agreements concerning a lawyer's representation of a client must accord with the Rules of Professional Conduct and other law. See, e.g., Rules 1.1, 1.8 and 5.6.

### **Rule 6.5: Nonprofit and Court-Annexed Limited Legal Services Programs**

- (a) A lawyer who, under the auspices of a program sponsored by a nonprofit organization or court, provides short-term limited legal services to a client without expectation by either the lawyer or the client that the lawyer will provide continuing representation in the matter:
  - (1) is subject to Rules 1.7 and 1.9(a) only if the lawyer knows that the representation of the client involves a conflict of interest; and
  - (2) is subject to Rule 1.10 only if the lawyer knows that another lawyer associated with the lawyer in a law firm is disqualified by Rule 1.7 or 1.9(a) with respect to the matter.
- (b) Except as provided in paragraph (a)(2), Rule 1.10 is inapplicable to a representation governed by this Rule.

### **Comments**

[1] Legal services organizations, courts and various nonprofit organizations have established programs through which lawyers provide short-term limited legal services -- such as advice or the completion of legal forms - that will assist persons to address their legal problems without further representation by a lawyer. In these programs, such as legal-advice hotlines, advice-only clinics or pro se counseling programs, a client-lawyer relationship is established, but there is no expectation that the lawyer's representation of the client will continue beyond the limited consultation. Such programs are normally operated under circumstances in which it is not feasible for a lawyer to systematically screen for conflicts of interest as is generally required before undertaking a representation. See, e.g., Rules 1.7, 1.9 and 1.10.

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[2] A lawyer who provides short-term limited legal services pursuant to this Rule must secure the client's informed consent to the limited scope of the representation. See Rule 1.2(c). If a short-term limited representation would not be reasonable under the circumstances, the lawyer may offer advice to the client but must also advise the client of the need for further assistance of counsel. Except as provided in this Rule, the Rules of Professional Conduct, including Rules 1.6 and 1.9(c), are applicable to the limited representation.

[3] Because a lawyer who is representing a client in the circumstances addressed by this Rule ordinarily is not able to check systematically for conflicts of interest, paragraph (a) requires compliance with Rules 1.7 or 1.9(a) only if the lawyer knows that the representation presents a conflict of interest for the lawyer, and with Rule 1.10 only if the lawyer knows that another lawyer in the lawyer's firm is disqualified by Rules 1.7 or 1.9(a) in the matter.

[4] Because the limited nature of the services significantly reduces the risk of conflicts of interest with other matters being handled by the lawyer's firm, paragraph (b) provides that Rule 1.10 is inapplicable to a representation governed by this Rule except as provided by paragraph (a)(2). Paragraph (a)(2) requires the participating lawyer to comply with Rule 1.10 when the lawyer knows that the lawyer's firm is disqualified by Rules 1.7 or 1.9(a). By virtue of paragraph (b), however, a lawyer's participation in a short-term limited legal services program will not preclude the lawyer's firm from undertaking or continuing the representation of a client with interests adverse to a client being represented under the program's auspices. Nor will the personal disqualification of a lawyer participating in the program be imputed to other lawyers participating in the program.

[5] If, after commencing a short-term limited representation in accordance with this Rule, a lawyer undertakes to represent the client in the matter on an ongoing basis, Rules 1.7, 1.9(a) and 1.10 become applicable.

### **Tennessee Rules of Professional Conduct**

#### **Rule 1.2: Scope of Representation and Allocation of Authority between Client and Lawyer**

(c) A lawyer may limit the scope of representation if the limitation is reasonable under the circumstances and the client gives informed consent, preferably in writing.

##### Comments

[6] The scope of services to be provided by a lawyer may be limited by agreement with the client or by the terms under which the lawyer's services are made available to the client. When a lawyer has been retained by an insurer to represent an insured, for example, the representation may be limited to matters related to the insurance coverage. A limited representation may be appropriate because the client has limited objectives for the representation. In addition, the terms upon which representation is undertaken may exclude specific means that might otherwise be used to accomplish the client's objectives. Such limitations may exclude actions that the client thinks are too costly or that the lawyer regards as repugnant or imprudent.

[7] Although this Rule affords the lawyer and client substantial latitude to limit the representation, the limitation must be reasonable under the circumstances. If, for example, a client's objective is limited to securing general information about the law the client needs in

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order to handle a common and typically uncomplicated legal problem, the lawyer and client may agree that the lawyer's services will be limited to a brief telephone consultation. Such a limitation, however, would not be reasonable if the time allotted was not sufficient to yield advice upon which the client could rely. Although an agreement for a limited representation does not exempt a lawyer from the duty to provide competent representation, the limitation is a factor to be considered when determining the legal knowledge, skill, thoroughness, and preparation reasonably necessary for the representation. See RPC 1.1.

[8] All agreements concerning a lawyer's representation of a client must accord with the Rules of Professional Conduct and other law. See, e.g., RPCs 1.1, 1.8, and 5.6.

### **Rule 6.5: Nonprofit and Court-Annexed Limited Legal Services Programs**

(a) A lawyer who, under the auspices of a program sponsored by a nonprofit organization or court, provides short-term, limited legal services to a client without expectation by either the lawyer or the client that the lawyer will provide continuing representation in the matter:

(1) is subject to RPCs 1.7 and 1.9(a) only if the lawyer knows that the representation of the client involves a conflict of interest; and

(2) is subject to RPC 1.10 only if the lawyer knows that another lawyer associated with the lawyer in a law firm is disqualified by RPC 1.7 or 1.9(a) with respect to the matter.

(b) Except as provided in paragraph (a)(2), RPC 1.10 is inapplicable to a representation governed by this Rule.

#### Comment

[1] Legal services organizations, courts and various nonprofit organizations have established programs through which lawyers provide short-term, limited legal services – such as advice or the completion of legal forms – that will assist persons to address their legal problems without further representation by a lawyer. In these programs, such as legal-advice hotlines, advice-only clinics or pro se counseling programs, a client-lawyer relationship is established, but there is no expectation that the lawyer's representation of the client will continue beyond the limited consultation. Such programs are normally operated under circumstances in which it is not feasible for a lawyer to systematically screen for conflicts of interest as is generally required before undertaking a representation. See, e.g., RPCs 1.7, 1.9, and 1.10.

[2] A lawyer who provides short-term limited legal services pursuant to this Rule must secure the client's informed consent to the limited scope of the representation. See RPC 1.2(c). If a short-term limited representation would not be reasonable under the circumstances, the lawyer may offer advice to the client but must also advise the client of the need for further assistance of counsel. Except as provided in this Rule, the Rules of Professional Conduct, including RPCs 1.6 and 1.9(c), are applicable to the limited representation.

[3] Because a lawyer who is representing a client in the circumstances addressed by this Rule ordinarily is not able to check systematically for conflicts of interest, paragraph (a) requires compliance with RPCs 1.7 or 1.9(a) only if the lawyer knows that the representation presents a conflict of interest for the lawyer, and with RPC 1.10 only if the lawyer knows that another lawyer in the lawyer's firm is disqualified by RPCs 1.7 or 1.9(a) in the matter.

[4] Because the limited nature of the services significantly reduces the risk of conflicts of interest with other matters being handled by the lawyer's firm, paragraph (b) provides that RPC 1.10 is inapplicable to a representation governed by this Rule except as provided by paragraph (a)(2). Paragraph (a)(2) requires the participating lawyer to comply with RPC 1.10 when the lawyer

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knows that the lawyer's firm is disqualified by RPCs 1.7 or 1.9(a). By virtue of paragraph (b), however, a lawyer's participation in a short-term, limited legal services program will not preclude the lawyer's firm from undertaking or continuing the representation of a client with interests adverse to a client being represented under the program's auspices. Nor will the personal disqualification of a lawyer participating in the program be imputed to other lawyers participating in the program.

[5] If, after commencing a short-term, limited representation in accordance with this Rule, a lawyer undertakes to represent the client in the matter on an ongoing basis, RPCs 1.7, 1.9(a), and 1.10 become applicable.

### **Tennessee Rules of Civil Procedure**

#### **Rule 5.02 Service and Filing of Pleadings and Other Papers**

Whenever under these rules service is required or permitted to be made on a party represented by an attorney, the service shall be made upon the attorney unless service upon the party is ordered by the court. Service shall be made pursuant to the methods set forth in (1) or (2). If an attorney has filed a notice of limited scope representation or a notice of limited appearance for an otherwise self-represented person, pursuant to Rule 11.01(b), service shall be made on the self-represented person and on the attorney until such time as a notice of completion of limited scope representation has been filed. After notice of completion of limited scope representation has been filed, service upon the attorney previously providing limited scope representation shall no longer be necessary.

(1) Service upon the attorney or upon a party shall be made by delivering to him or her a copy of the document to be served, or by mailing it to such person's last known address, or if no address is known, by leaving the copy with the clerk of the court. Delivery of a copy within this rule means: handing it to the attorney or to the party; or leaving it at such person's office with a clerk or other person in charge thereof; or, if there is none in charge, leaving it in a conspicuous place therein; or, if the office is closed or the person to be served has no office, leaving it at the person's dwelling house or usual place of abode with some person of suitable age and discretion then residing therein. Service by mail is complete upon mailing. Items which may be filed by facsimile transmission pursuant to Rule 5A may be served by facsimile transmission

(2) (a) Service upon any attorney may also be made by sending him or her the document in Adobe PDF format to the attorney's email address, which shall be promptly furnished on request. The sender shall include language in the subject line designed to alert the recipient that a document is being served under this rule. On the date that a document served under this rule is electronically sent to an attorney, the sender shall send by mail, facsimile or hand-delivery a certificate that advises that a document has been transmitted electronically. The certificate shall state the caption of the action; the trial court file number; the title of the transmitted document; the number of pages of the transmitted document (including all exhibits thereto); the sender's name, address, telephone number and electronic mail address; the electronic mail address of each recipient; and the date and time of the transmission. The certificate shall also include words to this effect: "If you did not receive this document, please contact the sender immediately to

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receive an electronic or physical copy of this document." The certificate shall be sent to all counsel of record.

(b) An attorney who sends a document to another attorney electronically and who is notified that it was not received must promptly furnish a copy of the document to the attorney who did not receive it.

(c) A document transmitted electronically shall be treated as a document that was mailed for purposes of computation of time under Rule 6.

(d) For good cause shown, an attorney may obtain a court order prohibiting service of documents on that attorney by electronic mail and requiring that all documents be served under subsection (1).

### **Advisory Commission Comments [2012]**

The first paragraph of Rule 5.02 is amended to address service of pleadings and other papers in cases in which an attorney has filed a notice of limited scope representation or a notice of limited appearance for an otherwise self-represented person, pursuant to Rule 11.01(b)

### **Rule 11.01 Signing of Pleadings, Motions, and Other Papers; Representations to Court; Sanctions**

(b) Appearance of Counsel and Notification by Counsel Subject to Limited Scope Representation. An attorney providing limited scope representation to an otherwise unrepresented party shall file at the beginning of the representation an initial notice of limited scope representation with the court, simply stating that the representation is subject to a written limited scope representation agreement without disclosing the terms of the agreement. In addition to the initial notice of limited scope representation, when provided notice by another party, attorney or the court of a motion, pleading, discovery, hearing or other proceeding that is outside of the scope of the services provided pursuant to the limited scope representation agreement, an attorney shall promptly file a notice of limited appearance that the attorney does not represent the otherwise unrepresented party for purposes of the motion, pleading, discovery, hearing or other proceeding. The notice of limited appearance shall simply state that the limited scope representation does not include representation for purposes of the motion, pleading, discovery, hearing or other proceeding noticed and shall not otherwise disclose the terms of the limited scope representation agreement. The notice of limited appearance shall provide the otherwise unrepresented client with the deadline(s), if any, for responding to the motion, pleading, discovery, hearing or other proceeding and shall state the date, place and time of any hearing or other proceeding. If an initial notice of limited scope representation or a notice of limited appearance is filed, service shall be made as provided in Rule 5.02.

(c) Withdrawal of Counsel Upon Completion of a Limited Scope Representation Upon the filing of a notice of completion of limited scope representation that is accompanied by a declaration from the attorney indicating that the attorney's obligations under a limited scope representation agreement have been satisfied, and that the attorney provided the otherwise unrepresented person

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at least fourteen (14) days advance written notice of the filing of notice of completion of limited scope representation, the attorney shall have withdrawn from representation in the case.

Advisory Commission Comments [2012]

Rule 11.01 is amended to add new paragraphs (b) and (c), concerning an attorney's limited scope representation of a client. An attorney's obligations under this Rule of Civil Procedure are also governed by Tenn. Sup. Ct. R. 8, RPC 1.2(c), which states: "A lawyer may limit the scope of representation if the limitation is reasonable under the circumstances and the client gives informed consent, preferably in writing." *See also* Tenn. Sup. Ct. R. 8, RPC 1.2(c), Comments [6] – [8]. Note, however, that paragraph (b) of this Rule goes further than RPC 1.2(c) and requires that an agreement for limited scope representation, as it relates to a proceeding governed by this Rule, must be in writing.

Nothing in this rule prohibits an attorney providing limited scope representation from withdrawing with leave of court prior to completion of the terms set forth in the limited scope representation agreement.

### **Texas Rules of Professional Conduct**

#### **Rule 1.02: Scope and Objectives of Representation**

(b) A lawyer may limit the scope, objectives and general methods of the representation if the client consents after consultation.

#### **Comments**

4. The scope of representation provided by a lawyer may be limited by agreement with the client or by the terms under which the lawyer's services are made available to the client. For example, a retainer may be for a specifically defined objective. Likewise, representation provided through a legal aid agency may be subject to limitations on the types of cases the agency handles. Similarly when a lawyer has been retained by an insurer to represent an insured, the representation may be limited to matters related to the insurance coverage. The scope within which the representation is undertaken also may exclude specific objectives or means, such as those that the lawyer or client regards as repugnant or imprudent.

5. An agreement concerning the scope of representation must accord with the Texas Disciplinary Rules of Professional Conduct and other law. Thus, the client may not be asked to agree to representation so limited in scope as to violate Rule 1.01, or to surrender the right to terminate the lawyer's services or the right to settle or continue litigation that the lawyer might wish to handle differently.

6. Unless the representation is terminated as provided in Rule 1.15, a lawyer should carry through to conclusion all matters undertaken for a client. If a lawyer's representation is limited to a specific matter or matters, the relationship terminates when the matter has been resolved. If a lawyer has represented a client over a substantial period in a variety of matters, the client may sometimes assume that the lawyer will continue to serve on a continuing basis unless the lawyer gives notice to the contrary. Doubt about whether a client-lawyer relationship still exists should be clarified by the lawyer, preferably in writing, so that the client will not mistakenly suppose the

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lawyer is looking after the client's affairs when the lawyer has ceased to do so. For example, if a lawyer has handled a judicial or administrative proceeding that produced a result adverse to the client but has not been specifically instructed concerning pursuit of an appeal, the lawyer should advise the client of the possibility of appeal before relinquishing responsibility for the matter.

### **Utah Rules of Professional Conduct**

#### **Rule 1.2: Scope of Representation and Allocation of Authority between Client and Lawyer**

(c) A lawyer may limit the scope of the representation if the limitation is reasonable under the circumstances and the client gives informed consent.

#### **Comments**

[6] The scope of services to be provided by a lawyer may be limited by agreement with the client or by the terms under which the lawyer's services are made available to the client. When a lawyer has been retained by an insurer to represent an insured, for example, the representation may be limited to matters related to the insurance coverage. A limited representation may be appropriate because the client has limited objectives for the representation. In addition, the terms upon which representation is undertaken may exclude specific means that might otherwise be used to accomplish the client's objectives. Such limitations may exclude actions that the client thinks are too costly or that the lawyer regards as repugnant or imprudent.

[7] Although this Rule affords the lawyer and client substantial latitude to limit the representation, the limitation must be reasonable under the circumstances. If, for example, a client's objective is limited to securing general information about the law the client needs in order to handle a common and typically uncomplicated legal problem, the lawyer and client may agree that the lawyer's services will be limited to a brief telephone consultation. Such a limitation, however, would not be reasonable if the time allotted were not sufficient to yield advice upon which the client could rely. Although an agreement for a limited representation does not exempt a lawyer from the duty to provide competent representation, the limitation is a factor to be considered when determining the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation. See Rule 1.1.

[8] All agreements concerning a lawyer's representation of a client must accord with the Rules of Professional Conduct and other law. See, e.g., Rules 1.1, 1.8 and 5.6.

#### **Rule 4.2: Communication with Persons Represented by Counsel**

(b) Rules Relating to Unbundling of Legal Services. A lawyer may consider a person whose representation by counsel in a matter does not encompass all aspects of the matter to be unrepresented for purposes of this Rule and Rule 4.3, unless that person's counsel has provided written notice to the lawyer of those aspects of the matter or the time limitation for which the person is represented. Only as to such aspects and time is the person considered to be represented by counsel.

**Rule 4.3: Dealing with Unrepresented Persons**

(b) A lawyer may consider a person, whose representation by counsel in a matter does not encompass all aspects of the matter, to be unrepresented for purposes of this Rule and Rule 4.2, unless that person's counsel has provided written notice to the lawyer of those aspects of the matter or the time limitation for which the person is represented. Only as to such aspects and time is the person considered to be represented by counsel.

**Comment**

[3] Paragraph (b) recognizes that the scope of representation of a person by counsel may, under Rule 1.2, be limited by mutual agreement. Because a lawyer for another party cannot know which of Rule 4.2 or 4.3 applies under these circumstances, the lawyer who undertakes a limited representation must assume the responsibility for informing another party's lawyer of the limitations. This ensures that such a limited representation will not improperly or unfairly induce an adversary's lawyer to avoid contacting the person on those aspects of a matter for which the person is not represented by counsel. Note that this responsibility on the lawyer undertaking limited-scope representation also relates to the ability of another party's lawyer to make certain ex parte contacts without violating Rule 4.2.

[3a] Utah Rule of Professional Conduct 4.3(b) and related Comment [3] are Utah additions to the ABA Model Rules clarifying that a lawyer may undertake limited representation of a client under the provisions of Rule 1.2.

**Rule 6.5: Nonprofit and Court-Annexed Limited Legal Services Programs**

(a) A lawyer who, under the auspices of a program sponsored by a nonprofit organization or court, provides short-term limited legal services to a client without expectation by either the lawyer or the client that the lawyer will provide continuing representation in the matter:

(a)(1) is subject to Rule 1.7 and 1.9(a) only if the lawyer knows that the representation of the client involves a conflict of interest; and

(a)(2) is subject to Rule 1.10 only if the lawyer knows that another lawyer associated with the lawyer in a law firm is disqualified by Rule 1.7 or 1.9(a) with respect to the matter.

(b) Except as provided in paragraph (a)(2), Rule 1.10 is inapplicable to a representation governed by this Rule.

**Comment**

[1] Legal services organizations, courts and various nonprofit organizations have established programs through which lawyers provide short-term limited legal services such as advice or the completion of legal forms that will assist persons to address their legal problems without further representation by a lawyer. In these programs, such as legal-advice hotlines, advice-only clinics or pro se counseling programs, a client-lawyer relationship is established, but there is no expectation that the lawyer's representation of the client will continue beyond the limited consultation. Such programs are normally operated under circumstances in which it is not feasible for a lawyer to systematically screen for conflicts of interest as is generally required before undertaking a representation. See, e.g. Rules 1.7, 1.9 and 1.10.



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[2] A lawyer who provides short-term limited legal services pursuant to this Rule must secure the client's informed consent to the limited scope of the representation. See Rule 1.2(c). If a short-term limited representation would not be reasonable under the circumstances, the lawyer may offer advice to the client but must also advise the client of the need for further assistance of counsel. Except as provided in this Rule, the Rules of Professional Conduct, including Rule 1.6 and 1.9(c), are applicable to the limited representation.

[3] Because a lawyer who is representing a client in the circumstances addressed by this Rule ordinarily is not able to check systematically for conflicts of interest, paragraph (a) requires compliance with Rule 1.7 or 1.9(a) only if the lawyer knows that the representation presents a conflict of interest for the lawyer, and with Rule 1.10 only if the lawyer knows that another lawyer in the lawyer's firm is disqualified by Rules 1.7 or 1.9(a) in the matter.

[4] Because the limited nature of the services significantly reduces the risk of conflicts of interest with other matters being handled by the lawyer's firm, paragraph (b) provides that Rule 1.10 is inapplicable to a representation governed by this Rule except as provided by paragraph (a)(2). Paragraph (a)(2) requires the participating lawyer to comply with Rule 1.10 when the lawyer knows that the lawyer's firm is disqualified by Rules 1.7 or 1.9(a). By virtue of paragraph (b), however, a lawyer's participation in a short-term limited legal services program will not preclude the lawyer's firm from undertaking or continuing the representation of a client with interests adverse to a client being represented under the program's auspices. Nor will the personal disqualification of a lawyer participating in the program be imputed to other lawyers participating in the program.

[5] If, after commencing a short-term limited representation in accordance with this Rule, a lawyer undertakes to represent the client in the matter on an ongoing basis, Rules 1.7, 1.9(a) and 1.10 become applicable.

### **Utah Rules of Civil Procedure**

#### **Rule 5: Service and Filing of Pleadings and Other Papers**

(b)(1) If a party is represented by an attorney, service shall be made upon the attorney unless service upon the party is ordered by the court. If an attorney has filed a Notice of Limited Appearance under Rule 75 and the papers being served relate to a matter within the scope of the Notice, service shall be made upon the attorney and the party.

#### **Rule 74: Withdrawal of Counsel**

(b) An attorney who has entered a limited appearance under Rule 75 shall withdraw from the case by filing and serving a notice of withdrawal upon the conclusion of the purpose or proceeding identified in the Notice of Limited Appearance. An attorney who seeks to withdraw before the conclusion of the purpose or proceeding shall proceed under subdivision (a).

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### **Rule 75: Limited Appearance**

(a) An attorney acting pursuant to an agreement with a party for limited representation that complies with the Utah Rules of Professional Conduct may enter an appearance limited to one or more of the following purposes:

- (a)(1) filing a pleading or other paper;
- (a)(2) acting as counsel for a specific motion;
- (a)(3) acting as counsel for a specific discovery procedure;
- (a)(4) acting as counsel for a specific hearing, including a trial, pretrial conference, or an alternative dispute resolution proceeding; or
- (a)(5) any other purpose with leave of the court.

(b) Before commencement of the limited appearance the attorney shall file a Notice of Limited Appearance signed by the attorney and the party. The Notice shall specifically describe the purpose and scope of the appearance and state that the party remains responsible for all matters not specifically described in the Notice. The clerk shall enter on the docket the attorney's name and a brief statement of the limited appearance. The Notice of Limited Appearance and all actions taken pursuant to it are subject to Rule 11.

(c) Any party may move to clarify the description of the purpose and scope of the limited appearance.

(d) A party on whose behalf an attorney enters a limited appearance remains responsible for all matters not specifically described in the Notice.

### **Vermont Rules of Professional Conduct**

#### **Rule 1.2: Scope of Representation and Allocation of Authority between Client and Lawyer**

(c) A lawyer may limit the scope of the representation if the limitation is reasonable under the circumstances and the client gives informed consent.

#### **Comments**

[6] The scope of services to be provided by a lawyer may be limited by agreement with the client or by the terms under which the lawyer's services are made available to the client. When a lawyer has been retained by an insurer to represent an insured, for example, the representation may be limited to matters related to the insurance coverage. A limited representation may be appropriate because the client has limited objectives for the representation. In addition, the terms upon which representation is undertaken may exclude specific means that might otherwise be used to accomplish the client's objectives. Such limitations may exclude actions that the client thinks are too costly or that the lawyer regards as repugnant or imprudent.

[7] Although this rule affords the lawyer and client substantial latitude to limit the representation, the limitation must be reasonable under the circumstances. If, for example, a client's objective is

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limited to securing general information about the law the client needs in order to handle a common and typically uncomplicated legal problem, the lawyer and client may agree that the lawyer's services will be limited to a brief telephone consultation. Such a limitation, however, would not be reasonable if the time allotted was not sufficient to yield advice upon which the client could rely. Although an agreement for a limited representation does not exempt a lawyer from the duty to provide competent representation, the limitation is a factor to be considered when determining the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation. See Rule 1.1.

[8] All agreements concerning a lawyer's representation of a client must accord with the Rules of Professional Conduct and other law. See, e.g., Rules 1.1, 1.8 and 5.6.

### **Rule 6.5: Nonprofit and Court-Annexed Limited Legal Services Programs**

(a) A lawyer who, under the auspices of a program sponsored by a nonprofit organization or court, provides short-term limited legal services to a client without expectation by either the lawyer or the client that the lawyer will provide continuing representation in the matter:

(1) is subject to Rules 1.7 and 1.9(a) only if the lawyer knows that the representation of the client involves a conflict of interest; and

(2) is subject to Rule 1.10 only if the lawyer knows that another lawyer associated with the lawyer in a law firm is disqualified by Rule 1.7 or 1.9(a) with respect to the matter.

(b) Except as provided in paragraph (a)(2), Rule 1.10 is inapplicable to a representation governed by this rule.—Added June 17, 2009, eff. Sept. 1, 2009.

### **Comment**

[1] Legal services organizations, courts and various nonprofit organizations have established programs through which lawyers provide short-term limited legal services - such as advice or the completion of legal forms - that will assist persons to address their legal problems without further representation by a lawyer. In these programs, such as legal-advice hotlines, advice-only clinics or pro se counseling programs, a client-lawyer relationship is established, but there is no expectation that the lawyer's representation of the client will continue beyond the limited consultation. Such programs are normally operated under circumstances in which it is not feasible for a lawyer to systematically screen for conflicts of interest as is generally required before undertaking a representation. See, e.g., Rules 1.7, 1.9 and 1.10.

[2] A lawyer who provides short-term limited legal services pursuant to this rule must secure the client's informed consent to the limited scope of the representation. See Rule 1.2(c). If a short-term limited representation would not be reasonable under the circumstances, the lawyer may offer advice to the client but must also advise the client of the need for further assistance of counsel. Except as provided in this rule, the Rules of Professional Conduct, including Rules 1.6 and 1.9(c), are applicable to the limited representation.

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[3] Because a lawyer who is representing a client in the circumstances addressed by this rule ordinarily is not able to check systematically for conflicts of interest, paragraph (a) requires compliance with Rules 1.7 or 1.9(a) only if the lawyer knows that the representation presents a conflict of interest for the lawyer, and with Rule 1.10 only if the lawyer knows that another lawyer in the lawyer's firm is disqualified by Rules 1.7 or 1.9(a) in the matter.

[4] Because the limited nature of the services significantly reduces the risk of conflicts of interest with other matters being handled by the lawyer's firm, paragraph (b) provides that Rule 1.10 is inapplicable to a representation governed by this rule except as provided by paragraph (a)(2). Paragraph (a)(2) requires the participating lawyer to comply with Rule 1.10 when the lawyer knows that the lawyer's firm is disqualified by Rules 1.7 or 1.9(a). By virtue of paragraph (b), however, a lawyer's participation in a short-term limited legal services program will not preclude the lawyer's firm from undertaking or continuing the representation of a client with interests adverse to a client being represented under the program's auspices. Nor will the personal disqualification of a lawyer participating in the program be imputed to other lawyers participating in the program.

[5] If, after commencing a short-term limited representation in accordance with this rule, a lawyer undertakes to represent the client in the matter on an ongoing basis, Rules 1.7, 1.9(a) and 1.10 become applicable.

### **Vermont Rules of Civil Procedure**

#### **Rule 79.1: Appearance and Withdrawal of Attorneys**

##### **Limited Appearance**

(1) An attorney acting pursuant to an agreement with a client for limited representation that complies with the Vermont Rules of Professional Conduct may enter an appearance limited to one or more of the following purposes on behalf of a client who is pro se and who has entered, or will enter, a general appearance:

- (A) Filing a complaint or other pleading.
- (B) Filing or arguing a specific motion or motions.
- (C) Conducting one or more specific discovery procedures.
- (D) Participating in a pretrial conference or an alternative dispute resolution proceeding.
- (E) Acting as counsel for a particular hearing or trial.
- (F) Taking and perfecting an appeal.
- (G) With leave of court, for a specific issue or a specific portion of a trial or hearing.

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(2) An attorney who wishes to enter a limited appearance shall do so by filing with the clerk and serving pursuant to Rule 5 a written notice of limited appearance as soon as practicable prior to commencement of the appearance. The purpose and scope of the appearance shall be specifically described in the notice, which shall represent that the client is pro se and has entered, or will forthwith enter, a general appearance. The attorney's name and a brief statement of the purpose of the limited appearance shall be entered upon the docket. The notice and all actions taken pursuant to it shall be subject to the obligations of Rule 11.

(3) An attorney who has entered a limited appearance shall be granted leave to withdraw as a matter of course when the purpose for which the appearance was entered has been accomplished. An attorney who seeks to withdraw before that purpose has been accomplished may do so only on motion and notice, for good cause and on terms, as provided in Rule 79.1(f).

(4) Every paper required by Rule 5 to be served upon a party's attorney that is to be served after entry of a limited appearance shall be served upon the party and upon the attorney entering that appearance unless the attorney has been granted leave to withdraw pursuant to paragraph (3) of this subdivision.

Amended Dec. 12, 1985, eff. April 1, 1986; Nov. 25, 1986, eff. March 1, 1987; Feb. 6, 2006, eff. April 14, 2006; March 15, 2006, eff. June 30, 2006.

### **Vermont Rules of Family Proceedings**

#### **Rule 15: Appearance and Withdrawal of Attorneys**

(h) Limited Appearance.

(1) Except in a proceeding under Rule 2 or 3 of these rules, an attorney acting pursuant to an agreement with a client for limited representation that complies with the Vermont Rules of Professional Conduct may enter an appearance limited to one or more of the following purposes on behalf of a client who is pro se and who has entered, or will enter, an initial appearance in accordance with paragraph (4) of subdivision (a) or pursuant to subdivision (g):

(A) Filing a complaint or other pleading.

(B) Conducting one or more specific discovery procedures.

(C) Participating in a case management or status conference, an alternative dispute resolution or parent coordination proceeding, or a proceeding before a property or visitation master.

(D) Acting as counsel for a particular hearing or court event.

(E) Filing a notice of appeal from a decision of a family court magistrate or judge and taking any subsequent actions concerning the record, briefing, or argument in connection with an appeal.

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(F) With leave of court, for a specific issue or a specific portion of a hearing.

(2) An attorney who wishes to enter a limited appearance shall do so by filing with the clerk and serving pursuant to Civil Rule 5 a written notice of limited appearance as soon as practicable prior to commencement of the appearance. The purpose and scope of the appearance shall be specifically described in the notice, which shall represent that the client is pro se and has entered, or will forthwith enter, an initial appearance. The attorney's name and a brief statement of the purpose of the limited appearance shall be entered upon the docket. The notice and all actions taken pursuant to it shall be subject to the obligations of Civil Rule 11.

(3) An attorney who has entered a limited appearance shall be granted leave to withdraw on motion without notice and hearing pursuant to paragraph (2) of subdivision (f) when the purpose for which the appearance was entered has been accomplished. An attorney who seeks to withdraw before that purpose has been accomplished may do so only on motion and notice, for good cause and on terms, as provided in paragraphs (3) and (4) of subdivision (f).

(4) Every paper required by Civil Rule 5 to be served upon a party's attorney that is to be served after entry of a limited appearance shall be served upon the party and upon the attorney entering that appearance unless the attorney has been granted leave to withdraw pursuant to paragraph (3) of this subdivision.

### **Virginia Rules of Professional Conduct**

#### **Rule 1.2: Scope of Representation**

(b) A lawyer may limit the objectives of the representation if the client consents after consultation.

#### **Comment**

[6] The objectives or scope of services provided by a lawyer may be limited by agreement with the client or by the terms under which the lawyer's services are made available to the client. For example, a retainer may be for a specifically defined purpose. Representation provided through a legal aid agency may be subject to limitations on the types of cases the agency handles. When a lawyer has been retained by an insurer to represent an insured, the representation may be limited to matters related to the insurance coverage. The terms upon which representation is undertaken may exclude specific objectives or means. Such limitations may exclude objectives or means that the lawyer regards as repugnant or imprudent.

[7] An agreement concerning the scope of representation must accord with the Rules of Professional Conduct and other law. Thus, the client may not be asked to agree to representation so limited in scope as to violate Rule 1.1, or to surrender the right to terminate the lawyer's services or the right to settle litigation that the lawyer might wish to continue.

[8] *ABA Model Rule Comment* not adopted.

**Rule 6.5: Nonprofit and Court-Annexed Limited Legal Services Programs**

(a) A lawyer who, under the auspices of a program sponsored by a nonprofit organization or court, provides short-term limited legal services to a client without expectation by either the lawyer or the client that the lawyer will provide continuing representation in the matter:

(1) is subject to Rules 1.7 and 1.9(a) only if the lawyer knows that the representation of the client involves a conflict of interest; and

(2) is subject to Rule 1.10 only if the lawyer knows that another lawyer associated with the lawyer in a law firm is disqualified by Rule 1.7 or 1.9(a) with respect to the matter.

(b) Except as provided in paragraph (a)(2), Rule 1.10 is inapplicable to a representation governed by this Rule.

**Comment**

[1] Legal services organizations, courts and various nonprofit organizations have established programs through which lawyers provide short-term limited legal services - such as advice or the completion of legal forms - that will assist persons to address their legal problems without further representation by a lawyer. In these programs, such as legal advice hotlines, advice-only clinics or *pro se* counseling programs, a client-lawyer relationship is established, but there is no expectation that the lawyer's representation of the client will continue beyond the limited consultation. Such programs are normally operated under circumstances in which it is not feasible for a lawyer to systematically screen for conflicts of interest as is generally required before undertaking a representation. *See, e.g.,* Rules 1.7, 1.9 and 1.10.

[2] A lawyer who provides short-term limited legal services pursuant to this Rule must secure the client's informed consent to the limited scope of the representation. *See* Rule 1.2(b). If a short-term limited representation would not be reasonable under the circumstances, the lawyer may offer advice to the client but must also advise the client of the need for further assistance of counsel. Except as provided in this Rule, the Rules of Professional Conduct, including Rules 1.6 and 1.9(c), are applicable to the limited representation.

[3] Because a lawyer who is representing a client in the circumstances addressed by this Rule ordinarily is not able to check systematically for conflicts of interest, paragraph (a) requires compliance with Rules 1.7 or 1.9(a) only if the lawyer knows that the representation presents a conflict of interest for the lawyer, and with Rule 1.10 only if the lawyer knows that another lawyer in the lawyer's firm is disqualified by Rules 1.7 or 1.9(a) in the matter.

[4] Because the limited nature of the services significantly reduces the risk of conflicts of interest with other matters being handled by the lawyer's firm, paragraph (b) provides that Rule 1.10 is inapplicable to a representation governed by this Rule except as provided by paragraph (a)(2). Paragraph (a)(2) requires the participating lawyer to comply with Rule 1.10 when the lawyer knows that the lawyer's firm is disqualified by Rules 1.7 or 1.9(a). By virtue of paragraph (b), however, a lawyer's participation in a short-term limited legal services program will not preclude

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the lawyer's firm from undertaking or continuing the representation of a client with interests adverse to a client being represented under the program's auspices. Nor will the personal disqualification of a lawyer participating in the program be imputed to other lawyers participating in the program.

[5] If, after commencing a short-term limited representation in accordance with this Rule, a lawyer undertakes to represent the client in the matter on an ongoing basis, Rules 1.7, 1.9(a) and 1.10 become applicable.

### **Washington Rules of Professional Conduct**

#### **Rule 1.2: Scope of Representation and Allocation of Authority Between Client and Lawyer**

(c) A lawyer may limit the scope of the representation if the limitation is reasonable under the circumstances and the client gives informed consent.

Additional Washington Comment (14)

#### **Agreements Limiting Scope of Representation**

[6] The scope of services to be provided by a lawyer may be limited by agreement with the client or by the terms under which the lawyer's services are made available to the client. When a lawyer has been retained by an insurer to represent an insured, for example, the representation may be limited to matters related to the insurance coverage. A limited representation may be appropriate because the client has limited objectives for the representation. In addition, the terms upon which representation is undertaken may exclude specific means that might otherwise be used to accomplish the client's objectives. Such limitations may exclude actions that the client thinks are too costly or that the lawyer regards as repugnant or imprudent.

[7] Although this Rule affords the lawyer and client substantial latitude to limit the representation, the limitation must be reasonable under the circumstances. If, for example, a client's objective is limited to securing general information about the law the client needs in order to handle a common and typically uncomplicated legal problem, the lawyer and client may agree that the lawyer's services will be limited to a brief telephone consultation. Such a limitation, however, would not be reasonable if the time allotted was not sufficient to yield advice upon which the client could rely. Although an agreement for a limited representation does not exempt a lawyer from the duty to provide competent representation, the limitation is a factor to be considered when determining the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation. See Rule 1.1.

[8] All agreements concerning a lawyer's representation of a client must accord with the Rules of Professional Conduct and other law. See, e.g., Rules 1.1, 1.8 and 5.6.

[14] An agreement limiting the scope of a representation shall consider the applicability of Rule 4.2 to the representation. (The provisions of this Comment were taken from former Washington



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RPC 1.2(c.) See also Comment [11] to Rule 4.2 for specific considerations pertaining to contact with an otherwise represented person to whom limited representation is being or has been provided.

[Amended effective September 1, 2006.]

### **Rule 1.5: Fees**

f) Fees and expenses paid in advance of performance of services shall comply with Rule 1.15A, subject to the following exceptions:

(1) A lawyer may charge a retainer, which is a fee that a client pays to a lawyer to be available to the client during a specified period or on a specified matter, in addition to and apart from any compensation for legal services performed. A retainer must be agreed to in a writing signed by the client. Unless otherwise agreed, a retainer is the lawyer's property on receipt and shall not be placed in the lawyer's trust account.

(2) A lawyer may charge a flat fee for specified legal services, which constitutes complete payment for those services and is paid in whole or in part in advance of the lawyer providing the services. If agreed to in advance in a writing signed by the client, a flat fee is the lawyer's property on receipt, in which case the fee shall not be deposited into a trust account under Rule 1.15A. The written fee agreement shall, in a manner that can easily be understood by the client, include the following: (i) the scope of the services to be provided; (ii) the total amount of the fee and the terms of payment; (iii) that the fee is the lawyer's property immediately on receipt and will not be placed into a trust account; (iv) that the fee agreement does not alter the client's right to terminate the client-lawyer relationship; and (v) that the client may be entitled to a refund of a portion of the fee if the agreed-upon legal services have not been completed. A statement in substantially the following form satisfies this requirement:

[Lawyer/law firm] agrees to provide, for a flat fee of \$\_\_\_\_\_, the following services:  
\_\_\_\_\_. The flat fee shall be paid as follows: \_\_\_\_\_. Upon [lawyer's/law firm's] receipt of all or any portion of the flat fee, the funds are the property of [lawyer/law firm] and will not be placed in a trust account. The fact that you have paid your fee in advance does not affect your right to terminate the client-lawyer relationship. In the event our relationship is terminated before the agreed-upon legal services have been completed, you may or may not have a right to a refund of a portion of the fee.

### **Rule 4.2: Communication with Person Represented by Counsel**

In representing a client, a lawyer shall not communicate about the subject of the representation with a person the lawyer knows to be represented by another lawyer in the matter, unless the lawyer has the consent of the other lawyer or is authorized to do so by law or a court order.

## APPENDIX B: RULES OF ETHICS AND PROCEDURE

### Additional Washington Comments (10 - 11)

[11] An otherwise unrepresented person to whom limited representation is being provided or has been provided in accordance with Rule 1.2(c) is considered to be unrepresented for purposes of this Rule unless the opposing lawyer knows of, or has been provided with, a written notice of appearance under which, or a written notice of time period during which, he or she is to communicate only with the limited representation lawyer as to the subject matter within the limited scope of the representation. (The provisions of this Comment were taken from former Washington RPC 4.2(b)).

### **Rule 4.3: Dealing with an Unrepresented Person**

In dealing on behalf of a client with a person who is not represented by counsel, a lawyer shall not state or imply that the lawyer is disinterested. When the lawyer knows or reasonably should know that the unrepresented person misunderstands the lawyer's role in the matter, the lawyer shall make reasonable efforts to correct the misunderstanding. The lawyer shall not give legal advice to an unrepresented person, other than the advice to secure counsel, if the lawyer knows or reasonably should know that the interests of such a person are or have a reasonable possibility of being in conflict with the interests of the client.

### Additional Washington Comments (3 - 4)

[3] An otherwise unrepresented person to whom limited representation is being provided or has been provided in accordance with Rule 1.2(c) is considered to be unrepresented for purposes of this Rule unless the opposing lawyer knows of, or has been provided with, a written notice of appearance under which, or a written notice of time period during which, he or she is to communicate only with the limited representation lawyer as to the subject matter within the limited scope of the representation. (The provisions of this Comment were taken from former Washington RPC 4.3(b))

### **Rule 6.5: Nonprofit and Court-Annexed Limited Legal Service Programs**

(a) A lawyer who, under the auspices of a program sponsored by a nonprofit organization or court, provides short-term limited legal services to a client without expectation by either the lawyer or the client that the lawyer will provide continuing representation in the matter and without expectation that the lawyer will receive a fee from the client for the services provided:

(1) is subject to Rules 1.7, 1.9(a), and 1.18(c) only if the lawyer knows that the representation of the client involves a conflict of interest, except that those Rules shall not prohibit a lawyer from providing limited legal services sufficient only to determine eligibility of the client for assistance by the program and to make an appropriate referral of the client to another program;

(2) is subject to Rule 1.10 only if the lawyer knows that another lawyer associated with the lawyer in a law firm is disqualified by Rule 1.7 or 1.9(a) with respect to the matter; and

## APPENDIX B: RULES OF ETHICS AND PROCEDURE

(3) notwithstanding paragraphs (1) and (2), is not subject to Rules 1.7, 1.9(a), 1.10, or 1.18(c) in providing limited legal services to a client if:

(i) the program lawyers representing the opposing clients are screened by effective means from information relating to the representation of the opposing client;

(ii) each client is notified of the conflict and the screening mechanism used to prohibit dissemination of information relating to the representation; and

(iii) the program is able to demonstrate by convincing evidence that no material information relating to the representation of the opposing client was transmitted by the personally disqualified lawyers to the lawyer representing the conflicting client before implementation of the screening mechanism and notice to the opposing client.

(b) Except as provided in paragraph (a)(2), Rule 1.10 is inapplicable to a representation governed by this Rule.

### **Comment**

[1] [Washington revision] Legal services organizations, courts and various nonprofit organizations have established programs through which lawyers provide short-term limited legal services - such as advice or the completion of legal forms - that will assist persons to address their legal problems without further representation by a lawyer. In these programs, such as legal-advice hotlines, advice-only clinics or pro se counseling programs, a client-lawyer relationship is established, but there is no expectation that the lawyer's representation of the client will continue beyond the limited consultation. Such programs are normally operated under circumstances in which it is not feasible for a lawyer to systematically screen for conflicts of interest as is generally required before undertaking a representation. See, e.g., Rules 1.7, 1.9, 1.10, and 1.18.

[2] A lawyer who provides short-term limited legal services pursuant to this Rule must secure the client's informed consent to the limited scope of the representation. See Rule 1.2(c). If a short-term limited representation would not be reasonable under the circumstances, the lawyer may offer advice to the client but must also advise the client of the need for further assistance of counsel. Except as provided in this Rule, the Rules of Professional Conduct, including Rules 1.6 and 1.9(c), are applicable to the limited representation.

[3] [Washington revision] Because a lawyer who is representing a client in the circumstances addressed by this Rule ordinarily is not able to check systematically for conflicts of interest, paragraph (a) requires compliance with Rules 1.7 or 1.9(a), or 1.18(c) only if the lawyer knows that the representation presents a conflict of interest for the lawyer, and with Rule 1.10 only if the lawyer knows that another lawyer in the lawyer's firm is disqualified by Rules 1.7 or 1.9(a) in the matter.

[4] Because the limited nature of the services significantly reduces the risk of conflicts of interest with other matters being handled by the lawyer's firm, paragraph (b) provides that Rule 1.10 is inapplicable to a representation governed by this Rule except as provided by paragraph

## APPENDIX B: RULES OF ETHICS AND PROCEDURE

(a)(2). Paragraph (a)(2) requires the participating lawyer to comply with Rule 1.10 when the lawyer knows that the lawyer's firm is disqualified by Rules 1.7 or 1.9(a). By virtue of paragraph (b), however, a lawyer's participation in a short-term limited legal services program will not preclude the lawyer's firm from undertaking or continuing the representation of a client with interests adverse to a client being represented under the program's auspices. Nor will the personal disqualification of a lawyer participating in the program be imputed to other lawyers participating in the program.

[5] If, after commencing a short-term limited representation in accordance with this Rule, a lawyer undertakes to represent the client in the matter on an ongoing basis, Rules 1.7, 1.9(a) and 1.10 become applicable.

### **Additional Washington Comments (6 - 7)**

[6] Washington's version of this Rule differs from the Model Rule. The differences accommodate the unique civil legal services delivery system, which uses a statewide centralized telephone intake and referral system for low-income persons to access free civil legal services. The Rule recognizes that lawyers who provide intake and referral services such as these will necessarily at times receive confidential information from adverse parties. The risk that such information will be used against the material interests of either party is relatively low in comparison to the need for services, and when such a risk exists, protections of lawyer screening and notice to the client are required by the Rule.

[7] Paragraph (a)(3) was taken from former Washington RPC 6.5(a)(3) as enacted in 2002. The replacement of "confidences and secrets" in paragraph (a)(3) with "information relating to the representation" was necessary to conform the language of the Rule to a terminology change in Rule 1.6. No substantive change is intended. See Comment [19] to Rule 1.6.

[Adopted effective September 1, 2006.]

## **Washington Superior Court Civil Rules and Civil Rules of Limited Jurisdiction**

### **Rule CR 4.2: Process- Limited Representation**

(a) An attorney may undertake to provide limited representation in accordance with RPC 1.2 to a person involved in a court proceeding.

(b) Providing limited representation of a person under these rules shall not constitute an entry of appearance by the attorney for purposes of CR 5(b) and does not authorize or require the service or delivery of pleadings, papers or other documents upon the attorney under CR 5(b).

Representation of the person by the attorney at any proceeding before a judge, magistrate, or other judicial officer on behalf of the person constitutes an entry of appearance pursuant to RCW 4.28.210 and CR 4(a)(3), except to the extent that a limited notice of appearance as provided for under CR 70.1 is filed and served prior to or simultaneous with the actual appearance. The attorney's violation of this Rule may subject the attorney to the sanctions provided in CR 11(a).

[Effective October 29, 2002]

**Rule CR 11: Signing of Pleadings, Motions and Legal Memoranda: Sanctions**

(b) In helping to draft a pleading, motion or document filed by the otherwise self-represented person, the attorney certifies that the attorney has read the pleading, motion, or legal memorandum, and that to the best of the attorney's knowledge, information, and belief, formed after an inquiry reasonable under the circumstances: (1) it is well grounded in fact, (2) it is warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law or the establishment of new law, (3) it is not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation, and (4) the denials of factual contentions are warranted on the evidence or, if specifically so identified, are reasonably based on a lack of information or belief. The attorney in providing such drafting assistance may rely on the otherwise self-represented person's representation of facts, unless the attorney has reason to believe that such representations are false or materially insufficient, in which instance the attorney shall make an independent reasonable inquiry into the facts.

[Amended effective January 1, 1974; September 1, 1985; September 1, 1990; September 17, 1993; October 15, 2002; September 1, 2005.]

**Rule CR 70.1: Appearance by Attorney**

(a) Notice of Appearance. An attorney admitted to practice in this state may appear for a party by serving a notice of appearance.

(b) Notice of Limited Appearance. If specifically so stated in a notice of limited appearance filed and served prior to or simultaneous with the proceeding, an attorney's role may be limited to one or more individual proceedings in the action. Service on an attorney who has made a limited appearance for a party shall be valid (to the extent permitted by statute and rule 5(b)) only in connection with the specific proceedings for which the attorney has appeared, including any hearing or trial at which the attorney appeared and any subsequent motions for presentation of orders. At the conclusion of such proceedings the attorney's role terminates without the necessity of leave of court, upon the attorney filing notice of completion of limited appearance which notice shall include the client information required by rule 71(c)(1).

[Effective October 29, 2002.]

**Rule CRLJ 4.2: Process – Limited Representation**

(a) An attorney may undertake to provide limited representation in accordance with RPC 1.2 to a person involved in a court proceeding.

(b) Providing limited representation of a person under these rules shall not constitute an entry of appearance by the attorney for purposes of CR 5(b) and does not authorize or require the service or delivery of pleadings, papers or other documents upon the attorney under CRLJ 5(b).

Representation of the person by the attorney at any proceeding before a judge, magistrate, or other judicial officer on behalf of the person constitutes an entry of appearance pursuant to RCW

## APPENDIX B: RULES OF ETHICS AND PROCEDURE

4.28.210 and CRLJ 4(a)(3), except to the extent that a limited notice of appearance as provided for under CRLJ 70.1 is filed and served prior to or simultaneous with the actual appearance. The attorney's violation of this Rule may subject the attorney to the sanctions provided in CRLJ 11(a).

[Effective October 29, 2002]

### **Rule CRLJ 11: Signing and Drafting of Pleadings, Motions and Legal Memoranda: Sanctions**

(b) In helping to draft a pleading, motion or document filed by the otherwise self-represented person, the attorney certifies that the attorney has read the pleading, motion, or legal memorandum, and that to the best of the attorney's knowledge, information, and belief, formed after an inquiry reasonable under the circumstances: (1) it is well grounded in fact, (2) it is warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law or the establishment of new law, (3) it is not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation, and (4) the denials of factual contentions are warranted on the evidence or, if specifically so identified, are reasonably based on a lack of information or belief. The attorney in providing such drafting assistance may rely on the otherwise self-represented person's representation of facts, unless the attorney has reason to believe that such representations are false or materially insufficient, in which instance the attorney shall make an independent reasonable inquiry into the facts.

[Amended effective September 1, 1990; September 1, 1994; October 15, 2002; September 1, 2005.]

### **Rule CRLJ 70.1: Appearance by Attorney**

(a) Notice of Appearance. An attorney admitted to practice in this state may appear for a party by serving a notice of appearance.

(b) Notice of Limited Appearance. If specifically so stated in a notice of limited appearance filed and served prior to or simultaneous with the proceeding, an attorney's role may be limited to one or more individual proceedings in the action. Service on an attorney who has made a limited appearance for a party shall be valid (to the extent permitted by statute and rule 5(b)) only in connection with the specific proceedings for which the attorney has appeared, including any hearing or trial at which the attorney appeared and any subsequent motions for presentation of orders. At the conclusion of such proceedings the attorney's role terminates without the necessity of leave of court, upon the attorney filing notice of completion of limited appearance which notice shall include the client information required by Rule 71(c)(1).

**West Virginia Rules of Professional Conduct**

**Rule 1.2: Scope of Representation**

(c) A lawyer may limit the objectives of the representation if the client consents after consultation.

**Wisconsin Rules of Professional Conduct**

**Rule 1.2: Scope of Representation and Allocation of Authority between Lawyer and Client**

(c) A lawyer may limit the scope of the representation if the limitation is reasonable under the circumstances and the client gives informed consent. The client's informed consent must be in writing except as set forth in sub. (1).

(1) The client's informed consent need not be given in writing if:

- a. the representation of the client consists solely of telephone consultation;
- b. the representation is provided by a lawyer employed by or participating in a program sponsored by a nonprofit organization, a bar association, an accredited law school, or a court and the lawyer's representation consists solely of providing information and advice or the preparation of court approved legal forms;
- c. the court appoints the lawyer for a limited purpose that is set forth in the appointment order; or
- d. the representation is provided by the state public defender pursuant to Wis. Stat. Ch. 977, including representation provided by a private attorney pursuant to an appointment by the state public defender.

(2) If the client gives informed consent in writing signed by the client, there shall be a presumption that:

- (i) the representation is limited to the lawyer and the services described in the writing, and
- (ii) the lawyer does not represent the client generally or in matters other than those identified in the writing.

**Comments**

[6] The scope of services to be provided by a lawyer may be limited by agreement with the client or by the terms under which the lawyer's services are made available to the client. When a lawyer has been retained by an insurer to represent an insured, for example, the representation may be limited to matters related to the insurance coverage. A limited representation may be appropriate because the client has limited objectives for the representation. In addition, the terms upon which representation is undertaken may exclude specific means that might otherwise be used to accomplish the client's objectives. Such limitations may exclude actions that the client thinks are too costly or that the lawyer regards as repugnant or imprudent.

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[7] Although this Rule affords the lawyer and client substantial latitude to limit the representation, the limitation must be reasonable under the circumstances. If, for example, a client's objective is limited to securing general information about the law the client needs in order to handle a common and typically uncomplicated legal problem, the lawyer and client may agree that the lawyer's services will be limited to a brief telephone consultation. Such a limitation, however, would not be reasonable if the time allotted was not sufficient to yield advice upon which the client could rely. Although an agreement for a limited representation does not exempt a lawyer from the duty to provide competent representation, the limitation is a factor to be considered when determining the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation. See Rule 1.1.

[8] All agreements concerning a lawyer's representation of a client must accord with the Rules of Professional Conduct and other law. See, e.g., Rules 1.1, 1.8 and 5.6.

### **Rule 1.5: Fees**

(b)(1) The scope of the representation and the basis or rate of the fee and expenses for which the client will be responsible shall be communicated to the client in writing, except before or within a reasonable time after commencing the representation when the lawyer will charge a regularly represented client on the same basis or rate as in the past. If it is reasonably foreseeable that the total cost of representation to the client, including attorney's fees, will be \$1000 or less, the communication may be oral or in writing. Any changes in the basis or rate of the fee or expenses shall also be communicated in writing to the client.

### **Rule 3.1: Meritorious claims and contentions**

A lawyer providing limited scope representation pursuant to SCR 20:1.2 (c) may rely on the otherwise self-represented person's representation of facts, unless the lawyer has reason to believe that such representations are false, or materially insufficient, in which instance the lawyer shall make an independent reasonable inquiry into the facts.

### **Rule 4.2: Communication with person represented by counsel**

(b) An otherwise unrepresented party to whom limited scope representation is being provided or has been provided in accordance with Rule 20:1.2(c) is considered to be unrepresented for purposes of this rule unless the lawyer providing limited scope representation notifies the opposing lawyer otherwise.

### **Rule 4.3: Dealing with unrepresented person**

(b) An otherwise unrepresented party to whom limited scope representation is being provided or has been provided in accordance with Rule 20:1.2 (c) is considered to be unrepresented for purposes of this rule unless the lawyer providing limited scope representation notifies the opposing lawyer otherwise.

### **Rule 6.5: Nonprofit and Court-Annexed Limited Legal Services Programs**

(a) A lawyer who, under the auspices of a program sponsored by a nonprofit organization, a bar



## APPENDIX B: RULES OF ETHICS AND PROCEDURE

association, an accredited law school, or a court, provides short-term limited legal services to a client without expectation by either the lawyer or the client that the lawyer will provide continuing representation in the matter:

(1) is subject to SCR 20:1.7 and SCR 20:1.9(a) only if the lawyer knows that the representation of the client involves a conflict of interest; and

(2) is subject to SCR 20:1.10 only if the lawyer knows that another lawyer associated with the lawyer in a law firm is disqualified by SCR 20:1.7 or SCR 20:1.9(a) with respect to the matter.

(b) Except as provided in par. (a)(2), SCR 20:1.10 is inapplicable to a representation governed by this rule.

### Comments

[1] Legal services organizations, courts and various nonprofit organizations have established programs through which lawyers provide short-term limited legal services—such as advice or the completion of legal forms—that will assist persons to address their legal problems without further representation by a lawyer. In these programs, such as legal-advice hotlines, advice-only clinics or pro se counseling programs, a client-lawyer relationship is established, but there is no expectation that the lawyer's representation of the client will continue beyond the limited consultation. Such programs are normally operated under circumstances in which it is not feasible for a lawyer to systematically screen for conflicts of interest as is generally required before undertaking a representation. See, e.g., Rules 1.7, 1.9 and 1.10.

[2] A lawyer who provides short-term limited legal services pursuant to this Rule must secure the client's informed consent to the limited scope of the representation. See Rule 1.2(c). If a short-term limited representation would not be reasonable under the circumstances, the lawyer may offer advice to the client but must also advise the client of the need for further assistance of counsel. Except as provided in this Rule, the Rules of Professional Conduct, including Rules 1.6 and 1.9(c), are applicable to the limited representation.

[3] Because a lawyer who is representing a client in the circumstances addressed by this Rule ordinarily is not able to check systematically for conflicts of interest, paragraph (a) requires compliance with Rules 1.7 or 1.9(a) only if the lawyer knows that the representation presents a conflict of interest for the lawyer, and with Rule 1.10 only if the lawyer knows that another lawyer in the lawyer's firm is disqualified by Rules 1.7 or 1.9(a) in the matter.

[4] Because the limited nature of the services significantly reduces the risk of conflicts of interest with other matters being handled by the lawyer's firm, paragraph (b) provides that Rule 1.10 is inapplicable to a representation governed by this Rule except as provided by paragraph (a)(2). Paragraph (a)(2) requires the participating lawyer to comply with Rule 1.10 when the lawyer knows that the lawyer's firm is disqualified by Rules 1.7 or 1.9(a). By virtue of paragraph (b), however, a lawyer's participation in a short-term limited legal services program will not preclude the lawyer's firm from undertaking or continuing the representation of a client with interests adverse to a client being represented under the program's auspices. Nor will the personal disqualification of a lawyer participating in the program be imputed to other lawyers participating in the program.

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[5] If, after commencing a short-term limited representation in accordance with this Rule, a lawyer undertakes to represent the client in the matter on an ongoing basis, Rules 1.7, 1.9(a) and 1.10 become applicable.

### Wisconsin Statutes

#### 800.035

**(1m)** An attorney may provide limited scope representation to a person involved in a municipal court action as provided in s. 802.045 and 802.05.

#### 801.14: Service and Filing of Pleadings and Other Papers

**(2m)** When an attorney has filed a limited appearance under s. 802.045(2) on behalf of an otherwise self-represented person, anything required to be served under sub. (1) shall be served upon both the otherwise self-represented person who is receiving the limited scope representation and to the limited scope representation attorney. After the limited scope representation attorney files that attorney's notice of termination form, as provided in s. 802.045(4), no further service upon that attorney is required.

#### 802.045: Limited Scope Representation Permitted – Process

**(1)** An attorney may provide limited scope representation to a person involved in a court action.

**(2) Notice of Limited Appearance.** An attorney's role in an action may be limited to one or more individual proceedings or issues in an action if specifically so stated in a notice of limited appearance filed and served upon the parties prior to or simultaneous with the proceeding. Providing limited scope representation of a person under this section does not constitute a general appearance by the attorney for purposes of s. 801.14. The notice of limited appearance shall contain the following information:

- (a) The name and the party designation of the client.
- (b) The specific proceeding(s) or issue(s) within the scope of the limited representation.
- (c) A statement that the attorney will file a notice of termination upon completion of services.
- (d) A statement that the attorney providing limited scope representation shall be served with all matters while providing limited scope representation.
- (e) Contact information for the client including current address and phone number.

**(3) Service.** Service shall be made under s. 801.14(2m).

**(4) Termination of Limited Appearance.** At the conclusion of the representation for which a notice of limited appearance has been filed, the attorney's role terminates without further order of the court upon the attorney filing with the court, and serving upon the parties, a notice of the termination of limited appearance. Any such notice of termination of limited appearance shall contain the following information:

- (a) A statement that the attorney has completed all services within the scope of the Notice of Limited Appearance.
- (b) A statement that the attorney has completed all acts ordered by the court.
- (c) A statement that the attorney has served the notice of termination of limited appearance on all parties, including the client.
- (d) Contact information for the client including current address and phone number.

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(5) **Forms.** The director of state courts shall provide forms for use in filing notices required under this section to the clerk of circuit court in each county.

### **802.05: Additional Representations to Court as to Preparation of Pleadings or Other Documents**

An attorney may draft or assist in drafting a pleading, motion or document filed by an otherwise self-represented person. The attorney is not required to sign the pleading, motion or document. Any such document must contain a statement immediately adjacent to the person's signature that "This document was prepared with the assistance of a lawyer." The attorney providing such drafting assistance may rely on the otherwise self-represented person's representation of facts, unless the attorney has reason to believe that such representations are false, or materially insufficient, in which instance the attorney shall make an independent reasonable inquiry into the facts.

### **809.19**

(1) (h) The signature of the attorney who files the brief, or, if the party who files the brief is not represented by an attorney, the signature of the party. If the brief was prepared with the drafting assistance of an attorney under s. 802.05(2m), the brief must contain a statement that "This document was prepared with the assistance of a lawyer."

### **809.80: Filing and service of papers**

(2) (a) A person shall serve and file a copy of any paper required or authorized under these rules to be filed in a trial or appellate court as provided in s. 801.14 (1), (2), (2m) and (4).

## **Wisconsin Supreme Court Rules of Judicial Administration**

### **Rule 70.41: Assistance to Court Users; Court Staff Guidelines**

- (1) Definitions. In this rule:
  - (a) "Court" means an appellate, circuit, or municipal court.
  - (b) "Court staff" means persons under the supervision of the clerk of the supreme court and court of appeals, a clerk of circuit court, a circuit court commissioner, a register in probate, a district court administrator, a circuit court judge, or a municipal court judge.
  - (c) "Forms" means any of the following:
    1. Forms that have been approved by the records management committee.
    2. Forms that have been approved by a circuit court or municipal judge for use in that jurisdiction.
  - (d) "Individual" means any person who seeks court-related information, including information needed to file, pursue, or respond to a case.
  - (e) "Should" is directory only, not mandatory, and connotes a duty or obligation to pursue a goal or objective.
- (2) Purpose. The purpose of this rule is to assist the court in communicating with individual court users without practicing law. The rule is intended to enable court staff to provide

## APPENDIX B: RULES OF ETHICS AND PROCEDURE

the best service possible to individuals within the limits of the individual staff member's responsibility. The rule is not intended to restrict powers of court staff otherwise provided by statute or rule nor is it intended to eliminate the collection of applicable fees or costs. The rule is not intended to list all assistance that can be provided. The rule recognizes that the best service the court staff may provide in many proceedings is advising an individual to seek the assistance of an attorney.

(3) Impartiality. Court staff shall remain impartial and may not provide or withhold assistance for the purpose of giving one party an advantage over another.

(4) Authorized information and assistance. Court staff shall do all of the following:

(a) Provide public information contained in any of the following:

1. Dockets or calendars.
2. Case files.
3. Indexes.
4. Existing reports.

(b) Provide a copy of, or recite, any of the following:

1. Common, routinely employed state and local court rules.
2. Common, routinely employed court procedures.
3. Common, routinely employed applicable fees and costs.

(c) Advise an individual where to find statutes and rules, without advising whether a particular statute or rule is applicable.

(d) Identify and provide applicable forms and written instructions without providing advice or recommendations as to any specific course of action.

(e) Answer questions about how to complete forms, such as where to write in particular types of information, but not questions about how the individual should phrase his or her responses on the forms.

(f) Define terms commonly used in court processes.

(g) Provide phone numbers for lawyer referral services, local attorney rosters, or other assistance services, such as Internet resources, known to the court staff.

(h) Provide appropriate aids and services for individuals with disabilities to the extent required by the Americans With Disabilities Act of 1990, 42 U.S.C. 12101 et seq.

(5) Unauthorized information and assistance. Court staff may not do any of the following:

(a) Provide legal advice or recommend a specific course of action for an individual.

(b) Apply the law to the facts of a given case, or give directions regarding how an individual should respond or behave in any aspect of the legal process.

(c) Recommend whether to file a petition or other pleading.

(d) Recommend phrasing for or specific content of pleadings.

(e) Fill in a form, unless required by sub. 4 (h).

(f) Recommend specific people against whom to file petitions or other pleadings.

(g) Recommend specific types of claims or arguments to assert in pleadings or at trial.

(h) Recommend what types or amount of damages to seek or the specific individuals from whom to seek damages.

(i) Recommend specific questions to ask witnesses or litigants.

(j) Recommend specific techniques for presenting evidence in pleadings or at trial.

(k) Recommend which objections to raise regarding an opponent's pleadings or motions at trial or when and how to raise them.

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- (l) Recommend when or whether an individual should request or oppose an adjournment.
- (m) Recommend when or whether an individual should settle a dispute.
- (n) Recommend whether an individual should appeal a judge's decision.
- (o) Interpret the meaning or implications of statutes or appellate court decisions as they might apply to an individual case.
- (p) Perform legal research.
- (q) Predict the outcome of a particular case, strategy, or action.
- (6) Referral to supervisor. When a court staff member is uncertain whether the advice or information requested is authorized, the staff member should seek the assistance of a supervisor. If a supervisor is not available, the staff member should advise the individual to seek assistance from an attorney.

### **Comment**

Court staff shall provide a copy of a common rule, but court staff should not attempt to apply the rule to the facts in the individual's case. Sometimes, after court staff provides a rule, an individual will ask whether or how the rule would apply, or if the rule might be applied differently, given the facts in his or her case. This calls for an interpretation of the law or rule of procedure. Court staff shall avoid offering interpretations of laws or rules.

In providing assistance regarding forms, court staff may inform individuals that some general content may be required in a pleading, such as identification of the other parties involved in the accident or a description of the facts surrounding the accident. But court staff may not tell an individual whom to identify or which particular facts might be relevant in the pleading.

Court staff should, if possible, provide or direct an individual to pamphlets or other documents that may address an individual's question and that have been prepared for general distribution to the public.

Court staff may not compute deadlines specified by statute or rule.

Court staff may not perform legal research. Court staff may refer individuals to sections of the Wisconsin supreme court rules, local court rules, or Wisconsin statutes that govern matters of routine administration, practice, or procedure and they may give definitions of common, well-defined legal terms used in those sections. However, court staff shall not interpret the meaning of statutes or rules.

The list of prohibited types of assistance set forth under sub. 70.41(5) is not comprehensive. The list is consistent with the statutory directives in ss. 757.22 and 757.30(2), stats., regarding the practice of law by judicial officers and the unauthorized practice of law.

### **Milwaukee County Family Division Rules**

#### **Rule 5.6: Appearances of Counsel**

C. If a party and the party's attorney have agreed pursuant to Supreme Court Rule 20:1.2(c) to limit the scope of the attorney's representation in any way which limits the appearances an attorney is expected to make on behalf of the client in court, then the notice of appearance shall state the proceedings at which the court may expect the attorney to be present or other function for which the court may expect the attorney to be responsible.

## APPENDIX B: RULES OF ETHICS AND PROCEDURE

D. An attorney whose appearance is limited under paragraph C. may withdraw at the point in the proceedings contemplated by the limited appearance agreement by submitting a proposed order for withdrawal under Rule 1.21 (the five-day rule) and serving a copy of the proposed order upon the client and all parties.

### **Wyoming Rules of Professional Conduct**

#### **Rule 1.1: Competence**

A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation.

##### **Comment**

Thoroughness and Preparation [5]

Competent handling of a particular matter includes inquiry into and analysis of the factual and legal elements of the problem, and use of methods and procedures meeting the standards of competent practitioners. It also includes adequate preparation. The required attention and preparation are determined in part by what is at stake; major litigation and complex transactions ordinarily require more treatment than matters of lesser complexity and consequence. A lawyer and a client may agree, pursuant to Rule 1.2(c) or Rule 6.5, to limit the scope of the representation. In such circumstances, competence means the legal knowledge, skill, thoroughness and preparation reasonably necessary for the limited representation.

#### **Rule 1.2: Scope of Representation**

(c) A lawyer may limit the scope of the representation pursuant to Rule 6.5 or if the limitation is reasonable under the circumstances and the client makes an informed decision.

(1) The limitation(s) must be fully disclosed and explained to the client in a manner which can reasonably be understood by the client.

(2) Unless the representation of the client consists solely of telephone consultation, the disclosure and consent required by this subsection shall be in writing.

(3) The use of a written notice and consent form approved by, or substantially similar to, a form approved by the Board of Judicial Policy and Administration shall create the presumptions that:

- (i) the representation is limited to the attorney and the services described in the form; and
- (ii) the attorney does not represent the client generally or in any matters other than those identified in the form.

##### **Comment**

[7] Subsection (c) is intended to facilitate the provision of unbundled legal services, especially to low-income clients. “Unbundled” means that a lawyer may agree to perform a limited task for a client without incurring the responsibility to investigate or consider other aspects of the client’s matter. Accordingly, a lawyer and a client may agree, in writing, that the lawyer will perform discrete, specified services. The agreement need not be in writing if the representation consists solely of telephone consultation between the lawyer and the client. In such circumstances, the

## APPENDIX B: RULES OF ETHICS AND PROCEDURE

lawyer should maintain a written summary of the conversation(s), including the nature of the requested legal assistance and the advice given. Pursuant to paragraph (c), therefore, a lawyer and a client may agree that the lawyer will: (1) provide advice and counsel on a particular issue or issues; (2) assist in drafting or reviewing pleadings or other documents; or (3) make a limited court appearance. If a lawyer assists in drafting a pleading, the document shall include a statement that the document was prepared with the assistance of counsel and shall include the name and address of the lawyer who provided the assistance. Such a statement does not constitute an entry of appearance or otherwise mean that the lawyer represents the client in the matter beyond assisting in the preparation of the document(s). Further, any limited court appearance must be in writing pursuant to Rule 102 of the Uniform Rules for the District Courts of Wyoming, and must describe the extent of the lawyer's involvement. See also, Rule 6.5, Non-profit Limited Legal Services Programs. To further facilitate the provision of unbundled services, the Board of Judicial Policy and Administration has approved a notice and consent form which may be used to comply with this rule. As paragraph (c)(4) indicates, using such a form will create the presumption that the lawyer has complied with this rule, as well as the presumption that the lawyer owes no additional duties to the client. The approved notice and consent form is attached as an appendix to these rules.

## APPENDIX I: Appendix to Rule 1.2 of the Rules of Professional Conduct

### NOTICE AND CONSENT TO LIMITED REPRESENTATION NOTICE

To help you with your legal problems, a lawyer may agree to give you some of the help you want, but not all of it. In other words, you and the lawyer may agree that the lawyer will limit his representation to helping you with a certain legal problem for a short time or for a particular purpose. Limited representation is available only in civil cases.

When a lawyer agrees to help you for a short time or for a particular purpose, the lawyer must act in your best interest and give you competent help. When a lawyer and you agree that the lawyer will provide such limited help,

--- The lawyer DOES NOT HAVE TO GIVE MORE HELP than the lawyer and you agreed.

--- The lawyer DOES NOT HAVE TO help with any other part of your legal problem.

If short-term limited representation is not reasonable, a lawyer may give advice, but will also tell you of the need to get another lawyer.

If you agree to have this lawyer give you limited help, sign your name at the bottom of this form. The lawyer will also sign to show that he or she agrees. If you and the lawyer both sign, the lawyer agrees to help you by performing the following limited services, and need not give you any more help.

Advise you about the following issues:

Write or read and advise you about the following legal documents:

Go to court to represent you only in the following matter(s):

\_\_\_\_\_  
Attorney's Name

**Consent**

## APPENDIX B: RULES OF ETHICS AND PROCEDURE

I have read this Notice and Consent form and I understand what it says. I agree that the legal services specified above are the ONLY legal help this lawyer will give me. I understand and agree that the lawyer who is helping me with these services is not my lawyer for any other purpose and does not have to give me any more legal help. If the lawyer is giving me advice, or is helping me with legal or other documents, I understand the lawyer may decide to stop helping me whenever the lawyer wants. I also understand that if the lawyer goes to court for me, he or she does not have to help me after he goes to court unless we both agree in writing. I agree that the address I give below is my permanent address where I may be reached. I understand that it is important that both the opposing party and the court handling my case be able to reach me at this address in the event my attorney ends his limited representation. I therefore agree that I will inform the Court and the opposing party of any change in my permanent address.

\_\_\_\_\_  
Print Your Name

\_\_\_\_\_  
Mailing Address

\_\_\_\_\_  
Sign Your Name

\_\_\_\_\_  
City State and Zip Code

\_\_\_\_\_  
Date

\_\_\_\_\_  
Phone Number

### **Rule 6.5: Nonprofit Limited Legal Services Programs**

(a) A lawyer may, under the auspices of a program sponsored by a nonprofit organization, the state or county bar association, or a court, provide short-term limited legal services to a client without expectation by either the lawyer or the client that the lawyer will provide continuing representation in the matter if the lawyer informs the client of the scope of the representation at the time legal services are provided and the client makes an informed decision to the limited scope. In such circumstances, the lawyer:

(1) is subject to Rules 1.7 and 1.9(a) only if the lawyer actually knows that the representation of the client involves a conflict of interest;

(2) is subject to Rule 1.10 only if the lawyer actually knows that another lawyer associated with the lawyer in a law firm is disqualified by Rule 1.7 or 1.9 with respect to the matter.

(b) Unless the representation of the client consists solely of telephone consultation(s), the disclosure and consent required by subsection (a) shall be in writing.

(c) Except as provided in paragraph (a)(2), Rule 1.10 is inapplicable to a representation governed by this Rule.

### **Comments**

[1] Various nonprofit organizations, bar associations, and courts have established or may establish programs through which lawyers provide short-term limited legal services – such as advice or completion of legal forms – that will assist persons to address their legal problems without further representation by a lawyer. In these programs, such as legal-advice hotlines,



## APPENDIX B: RULES OF ETHICS AND PROCEDURE

advice-only clinics or pro se counseling programs, a short-term, limited client-lawyer relationship is established, but there is no expectation that the lawyer's representation of the client will continue beyond the limited consultation. Such programs are normally operated under circumstances in which it is not feasible for a lawyer to systematically screen for conflicts of interest as is generally required before undertaking a representation. See, e.g., Rules 1.7, 1.9 and 1.10.

[2] A lawyer who provides in-person, short-term limited legal services pursuant to this Rule must provide written notice to the client of the limited scope of the representation and secure the client's written, informed decision to the limited scope of the representation. The disclosure and agreement need not be in writing if the representation consists solely of telephone consultation between the lawyer and the client. In such circumstances, if a lawyer gives legal advice, the lawyer should maintain a written summary of the conversation. See also, Rule 1.2(c). If a short-term limited representation would not be reasonable under the circumstances, the lawyer may offer advice to the client but must also advise the client of the need for further assistance of counsel. Except as provided in this Rule, the Rules of Professional Conduct, including Rules 1.6 and 1.9(c), are applicable to the limited representation.

[3] Because a lawyer who is representing a client in the circumstances addressed by this Rule ordinarily is not able to check systematically for conflicts of interest, paragraph (a) requires compliance with Rules 1.7 or 1.9(a) only if the lawyer knows that the representation presents a conflict of interest for the lawyer, and with Rule 1.10 only if the lawyer knows that another lawyer in the lawyer's firm is disqualified by Rule 1.7 or 1.9(a) in the matter.

[4] Because the limited nature of the services significantly reduces the risk of disqualifying conflicts of interest with other matters being handled by the lawyer's firm, paragraph (b) provides that Rule 1.10 is inapplicable to a representation governed by this Rule except as provided by paragraph (a)(2). Paragraph (a)(2) requires the participating lawyer to comply with Rule 1.10 when the lawyer knows that the lawyer's firm is disqualified by Rule 1.7 or 1.9(a). By virtue of paragraph (b) however, a lawyer's participation in a short-term limited legal services program will not preclude the lawyer's firm from undertaking or continuing the representation of a client with interests adverse to a client being represented under the program's auspices. Nor will the personal disqualification of a lawyer participating in the program be imputed to other lawyers participating in the program.

[5] If, after commencing a short-term limited representation in accordance with this Rule, a lawyer undertakes to represent the client in the matter on an ongoing basis, Rules 1.7, 1.9(a) and 1.10 become applicable.

(Added January 9, 2002, effective April 1, 2002; amended April 11, 2006, effective July 1, 2006.)

**Uniform Rules of the District Court of the State of Wyoming**

**Rule 102: Appearance and Withdrawal of Counsel**

(a)(1) An attorney appears in a case:

(A) By attending any proceeding as counsel for any party;

(B) By permitting the attorney's name to appear on any pleadings or motions, except that an attorney who assisted in the preparation of a pleading and whose name appears on the pleading as having done so shall not be deemed to have entered an appearance in the matter; or

(C) By a written appearance. Except in a criminal case, a written entry of appearance may be limited, by its terms, to a particular proceeding or matter.

(a)(2) Except as otherwise limited by a written entry of appearance, an appearing attorney shall be considered as representing the party or parties for whom the attorney appears for all purposes.

(b) All pleadings shall contain the name, address and telephone number of counsel or, if pro se, the party. All notices shall be mailed to the address provided. Each party or counsel shall give notice in writing of any change of address to the clerk and other parties.

(c) Counsel will not be permitted to withdraw from a case except upon court order. Except in the case of extraordinary circumstances, the court shall condition withdrawal of counsel upon the substitution of other counsel by written appearance. In the alternative, the court shall allow withdrawal upon a statement submitted by the client acknowledging the withdrawal of counsel for the client, and stating a desire to proceed pro se. An attorney who has entered a limited entry of appearance shall be deemed to have withdrawn when the attorney has fulfilled the duties of the limited entry of appearance.

(amended January 8, 2002, effective April 1, 2002)

**APPENDIX 19:**

**Report of the Task Force's Working Group on Ensuring  
Effective Legal Assistance to Low Income New Yorkers**

## ENSURING EFFECTIVE LEGAL ASSISTANCE TO LOW INCOME NEW YORKERS

“The inability of low income Americans to get legal assistance, and in that way to vindicate their legal entitlements, undermines the legitimacy of courts, the legitimacy of our entire legal system and runs counter to our national commitment to the rule of law.”

*Remarks of United States Supreme Court Justice Elena Kagan on the 40th Anniversary of the Legal Services Corporation, September 2014.*

“[D]enial of access to professional legal assistance is denial of equal justice. . . . [T]he American ideal is not for some justice, it is, as the pledge of allegiance says, ‘liberty and justice for all,’ or as the Supreme Court pediment has it, ‘equal justice.’ . . . Can there be justice if it is not equal, can there be a just society when some do not have justice?”

*Remarks of United States Supreme Court Justice Antonin Scalia on the 40th Anniversary of the Legal Services Corporation, September 2014.*

The Chief Judge’s Task Force to Expand Access to Civil Legal Services has studied the need for legal assistance in civil proceedings extensively. The Task Force recommends adoption by the New York State Legislature of a formal resolution embracing an aspirational goal that in the State of New York, anyone living at or under 200% of poverty who confronts legal matters that impact the essentials of life should have access to effective legal assistance in such matters. To advance this goal, the Task Force recommends in this year’s Report a number of critical and concrete steps that can be taken by the courts, the legal services community, the law schools within our state and the private bar that will lay the foundation for providing full access to effective legal assistance in New York State.

Since 2010, the Task Force has worked to highlight the unmet need for civil legal services in matters involving the essentials of life, matters which “most often involve legal problems in the areas of housing (including evictions, foreclosures, and homelessness), family matters (including domestic violence, children, and family stability), access to health care and education, and subsistence income (including wages, disability and other benefits, and consumer debts). . . . [S]uch matters are often interrelated with other legal problems that must be addressed in order to remedy the presenting legal issue.”<sup>1</sup>

### The Continuing Unmet Need for Legal Assistance in Essential Matters

In testimony at this year’s hearings conducted by Chief Judge Jonathan Lippman, the Hon. A. Gail Prudenti offered a sobering review of the current numbers of people coming before the court without representation:

- In New York City, 99% of tenants are unrepresented in eviction proceedings.

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<sup>1</sup> TASK FORCE TO EXPAND ACCESS TO CIVIL LEGAL SERVICES IN NEW YORK, REPORT TO THE CHIEF JUDGE OF THE STATE OF NEW YORK 40 (2010), available at <http://www.nycourts.gov/ip/access-civil-legal-services/PDF/CLS-TaskForceREPORT.pdf>.

- Eighty-seven percent of child support petitioners in Family Courts outside New York City and 86% of respondents are unrepresented. In New York City, 92% of petitioners and 91% of respondents do not have attorneys.
- Defendants in consumer credit cases—which may result in loss of income or property—are unrepresented in 97% of the cases outside New York City and 96% of cases in NYC.<sup>2</sup>

### The Status of Current Efforts to Expand Access to Civil Legal Aid

In trying to determine the best approach New York State could take in meeting this documented unmet need for legal assistance, the Task Force this year undertook a number of research efforts. This included a review of the current statutory and common law framework for access to legal assistance in New York State, efforts in other states and the approaches being taken in other countries to address these needs.

### New York State Has Created a Right to Counsel in Certain Civil Matters

New York State has established—through statute and through the courts—the right to counsel in a number of civil contexts, including cases concerning housing, family, health, and employment.<sup>3</sup> Under New York law, courts have discretion to appoint legal counsel for indigent civil litigants.<sup>4</sup> Courts have been hesitant to assign counsel under this statutory authority because of the lack of public funding, so it is only when “liberty interests” are at stake that courts are more likely to assign counsel in civil cases.<sup>5</sup>

The courts have established a right to counsel in eviction proceedings involving military personnel.<sup>6</sup> Under New York law, the courts may appoint counsel for mental health patients in cases concerning mental health facilities and issues of abuse and mistreatment, which could involve challenges to living conditions.<sup>7</sup> In the family law context, Section 261 of the Family Court Act recognizes the fundamental interests implicated in family court proceedings and the concomitant role that counsel plays in protecting those interests.<sup>8</sup> Section 262 (“Assignment of Counsel for Indigent Persons”) implements this legislative purpose by creating a menu of proceedings for which the right to counsel is guaranteed.<sup>9</sup>

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<sup>2</sup> *The Chief Judge’s Hearing on Legal Services, Third Dep’t. Oct. 6, 2014 (statement of Hon. A Gail Prudenti, Chief Administrative Judge, NYS Unified Court System, at 6).*

<sup>3</sup> See Exhibit A to this report.

<sup>4</sup> N.Y. C.P.L.R. § 1102(a) (MCKINNEY 2014).

<sup>5</sup> See *Planck v. Cnty. of Schenectady*, 858 N.Y.S.2d 824 (App. Div. 3d Dep’t 2008).

<sup>6</sup> See *444 W. 54th Street Tenants Ass’n v. Costello*, 523 N.Y.S.2d 374 (Civ. Ct. 1987) (holding that constitutional due process concerns necessitated the appointment of counsel in cases involving evictions of military personnel). See also N.Y. MIL. LAW § 303 (MCKINNEY 2014) (providing that the court may appoint an attorney to represent a person in military service in any action or proceeding).

<sup>7</sup> N.Y. MENTAL HYG. LAW §§ 47.03(c), (e) (MCKINNEY 2014) (requiring the mental hygiene legal service in each judicial department to provide legal assistance to patients or residents and their families related to the admissions, retention and care and treatment of such persons, and to take any legal action deemed necessary to protect any patient or resident from abuse or mistreatment).

<sup>8</sup> N.Y. FAM. CT. ACT § 261 (MCKINNEY 2014).

<sup>9</sup> N.Y. FAM. CT. ACT § 262(a) (MCKINNEY 2014).

Aside from the mandatory Section 262(a) categories, judges have *discretion* to assign counsel under Section 262(b) where the court determines that either the federal or the state constitution requires assignment.<sup>10</sup>

In cases involving minors, Section 249 of the Family Court Act governs the appointment of counsel (called “attorney for the child” post-2010) to safeguard minors’ interests in family court proceedings.<sup>11</sup> Under this provision, courts are required to appoint counsel to represent a minor in certain cases “if independent legal representation is not available to such minor.”<sup>12</sup> These cases include: Juvenile Delinquency Proceedings; Person in Need of Supervision Proceedings; Child Abuse and Neglect Proceedings; Child Permanency and Placement Proceedings; Social Services Proceedings; and Proceedings Involving Destitute Children.<sup>13</sup> New York has also established a statutory right to counsel in cases involving “Allegedly Incapacitated Individuals” whose liberty is at stake or who, by virtue of their mental incapacity, are unable to make significant medical decisions. Accordingly, statutory and common law mandate a right to counsel in cases involving the involuntary commitment, medical treatment and remedial care of statutorily incapacitated persons.<sup>14</sup> In addition, New York common law expressly provides a right to counsel for individuals facing involuntary commitment.<sup>15</sup>

In the area of wages and income, a statutory right to counsel exists for unemployment insurance claimants who have received a favorable decision from the Unemployment Insurance Appeal Board and who are defending that decision in an appeal brought by another party.<sup>16</sup>

#### Efforts in Other States to Expand Access to Legal Assistance in Civil Matters

Of the states reviewed by the Task Force,<sup>17</sup> California’s Sargent Shriver Civil Counsel Act, which was adopted in 2009, is instructive. A comprehensive article about the Shriver Act noted:

[A]lthough widely misreported as a ‘right to counsel’ statute, the Shriver Act does not create any rights or guarantee counsel to anyone. Instead, it identifies six key areas of the law (housing, domestic violence and restraining orders, elder abuse, guardianship of the person, probate conservatorship, and child custody). It then establishes a structure under which legal services agencies, courts, other service providers, and *pro bono* attorneys can partner to experiment with increased representation, innovations in court procedures,

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<sup>10</sup> N.Y. FAM. CT. ACT § 262(b) (MCKINNEY 2014).

<sup>11</sup> See N.Y. FAM. CT. ACT § 242 (MCKINNEY 2014) (“As used in this act, ‘attorney for the child’ refers to an attorney admitted to practice law in the state of New York and designated under this part to represent minors pursuant to section two hundred forty-nine of this act.”); see also N.Y. CT. R. §§ 7.1, 7.2 (MCKINNEY 2014) (setting forth standards for the designation of law guardians to represent minors in Family Court proceedings, and functions of the “attorney for the child”).

<sup>12</sup> N.Y. FAM. CT. ACT § 249(a) (MCKINNEY 2014)

<sup>13</sup> See *id.*

<sup>14</sup> See N.Y. MENTAL HYG. LAW § 47.03(c) (MCKINNEY 2014).

<sup>15</sup> See *In re Rapaport v. G.M.*, 657 N.Y.S.2d 748 (App. Div. 2d Dep’t 1997) (establishing a constitutional right to counsel in cases involving the involuntary hospitalization of a person with a communicable disease); *People ex rel. Rogers v. Stanley*, 17 N.Y.2d 256 (Ct. App. 1966) (establishing a constitutional right to counsel for individuals facing commitment to a mental institution).

<sup>16</sup> See N.Y. LAB. LAW 538(1)(e) (MCKINNEY 2014).

<sup>17</sup> See Exhibit B to this report.

improved self-help, and other best practices to better serve indigent litigants with cases in those fields, and to measure the effects of increasing representation and providing other services.<sup>18</sup>

As the article explains, the Shriver Act provided public funding for seven pilot projects to operate over three years. The pilot projects were established after a competitive bidding process and are now operating in areas throughout the state. The pilots provide legal representation in targeted civil matters taking into account a number of factors and using a variety of approaches, ranging from self-help to Alternative Dispute Resolution to the use of *pro bono* assistance to full representation.<sup>19</sup>

### Approaches Taken in Other Countries

Public funding of counsel to provide meaningful legal assistance in civil matters involving the essentials of life has worked well internationally for decades. The Task Force reviewed a paper that explored the operation of local programs that provide civil legal services in France, Germany, the Netherlands, the United Kingdom, Ireland, China, South Africa, Brazil and India. The paper found that many jurisdictions (both common law and civil law) have programs providing broad rights of representation to indigent persons in many types of civil matters. In some jurisdictions, the representation is guaranteed by constitution or statute, and in others it is a matter of government policy. The nature of the programs varies as well, but includes civil legal assistance provided by an entity created by the government, arrangements between the government and bar associations, or direct funding from the government to individual lawyers.<sup>20</sup>

According to the World Justice Project, an independent, multi-disciplinary project working to advance the rule of law around the world, the United States received a score in access to and affordability of its civil justice system that places it behind more than 60 other countries.<sup>21</sup>

### Recommendations for Building on New York's Current Efforts

To build on the recommendations advanced in its prior reports, the Task Force this year outlines a process to identify the core areas of legal needs impacting the essentials of life for those living on incomes at or under 200% of poverty; to take into account such factors as an individual's age, literacy level, physical or mental impairments; to review case-specific factors such as the complexity of the legal matter, the severity of the issues involved and the risk of loss to the client; to take into account the impact and cost benefits of the issues involved; and to determine the level of judicial involvement, from administrative actions through court hearings, in order to determine the effective level of legal assistance to be provided, ranging from informational assistance to *pro se* clients through full representation in court by an attorney.

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<sup>18</sup> Clare Pastore, *Gideon Is My Co-Pilot: The Promise of Civil Right to Counsel Pilot Programs*, 17 U.D.C. L. REV. 75, 91 (2014), available at <http://www.udclawreview.com/wp-content/uploads/2014/08/GIDEON-IS-MY-CO-PILOT-THE-PROMISE-OF-CIVIL-RIGHT-TO-COUNSEL-PILOT-PROGRAMS.pdf>.

<sup>19</sup> *Id.* at 100-22.

<sup>20</sup> See Exhibit C to this report.

<sup>21</sup> See THE WORLD JUSTICE PROJECT, RULE OF LAW INDEX 2014 at 184 (2014) (calculated using Column 7.1, "Accessibility and Affordability"), available at [http://worldjusticeproject.org/sites/default/files/files/wjp\\_rule\\_of\\_law\\_index\\_2014\\_report.pdf](http://worldjusticeproject.org/sites/default/files/files/wjp_rule_of_law_index_2014_report.pdf). See also 3 EARL JOHNSON, JR., TO ESTABLISH JUSTICE FOR ALL 881-95 (2014).

This report does not recommend any statutory changes or statutory expansions of current legal rights in providing counsel in civil matters. Rather, the Task Force is urging the State Legislature to articulate and embrace an aspirational goal of effective legal assistance in matters affecting the essentials of life.

### Expanding Access to Effective Legal Assistance in New York

In essence, the Task Force recommends the adoption of a framework within which each person in need of legal assistance receives the appropriate level of service to ensure effective legal assistance in matters involving the essentials of life.

The Task Force proposes the framework outlined below, which includes broadly: Client Characteristics, Essential Legal Matters, Legal Issues and Case Dynamics, and Level of Assistance and Range of Services.

#### Client Characteristics

The Task Force recommends that clients whose income is at or less than 200% of poverty be eligible to receive effective legal assistance in civil matters. In fulfilling this priority, consideration should be given to certain vulnerable age groups, such as seniors or children, the client's ability to speak English at a level sufficient to navigate our complicated legal system, the client's level of education, whether the client has a physical or mental disability, the client's level of technology skills, the size of the client's household and the client's ability to represent himself or herself in a legal proceeding. Other kinds of particular vulnerabilities, such as whether the client is a victim of domestic violence or human trafficking, might also be considered.

#### Essential Legal Matters in Which Effective Legal Assistance Should be Provided

As noted above and in keeping with the Chief Judge's priority that legal assistance be provided in matters that impact the "essentials of life," the Task Force recommends that effective legal assistance be provided in these targeted areas:

Housing and foreclosure matters, including eviction prevention, homelessness assistance and shelter placements. Such matters would include housing eviction proceedings, especially eviction from public housing, matters involving housing subsidies, terminations and grievances involving public housing, New York State Homes & Community Renewal proceedings and access to shelter placements in order to avoid homelessness.

Family law issues, particularly in matters involving domestic violence and in those matters where a right to counsel does not currently exist in New York or where additional legal assistance is needed to address the continuity of assistance in cases where access to legal assistance begins and ends within the same case (*i.e.*, legal assistance is provided in custody issues but not child support).

Legal issues involving health coverage and access to health care, including inappropriate denials of health coverage or the refusal or failure to provide necessary care and services.



Economic security and subsistence income, including matters involving wages, disability assistance and other benefits and legal issues involving consumer debt. These matters include unemployment insurance benefits, social security disability and public assistance issues.

Education, including legal matters involving special education and access to appropriate and needed educational supports and services.

### Legal Issues and Case Dynamics to be Considered

The Task Force recommends that in determining effective assistance, factors involving the case itself should be considered. These include the magnitude of the harm or the risk at issue, should the client proceed without assistance; the complexity of the legal matter, the strength of the legal position of the client, the novelty of the issue and whether it could be precedential; the level of judicial involvement required; and whether the client is confronting a state or federal administrative hearing, a matter in town or village court or a matter before a state court or federal court.

The Task Force further recommends that the stage of intervention (assisting in an initial matter or appealing denial of benefits for example) should be considered along with a determination of what level of assistance would be most effective. Such factors should include whether the client is the plaintiff or defendant in a particular matter; whether or not the opposing party is represented by counsel; and whether the opposing party is a government entity or private entity.

A further level of analysis would include the benefit to client and family in terms of safety, stability and security; the cost of providing the assistance and any savings to the state or the economic benefit to the state's taxpayers.

### Level or Type of Legal Assistance to be Provided

The Task Force notes that there is a range of legal assistance that could be effective and appropriate depending on the client characteristics, the substantive law issue in question and the dynamics of the case as outlined above. For some, access to self-help materials may offer the needed assistance; others will need full representation by an attorney. A variety of approaches could be taken to provide the needed assistance; for example, offering clinics and legal education sessions at one end of the spectrum, to providing representation in complex appeals on the other end of the spectrum. Likewise, a range of methods can be used to meet these needs: from web-based *pro se* assistance to assistance by non-lawyers to one-on-one attorney representation.

Depending on the client's characteristics (educational level, language capacity and other factors as noted above) and given the type and level of assistance needed, technology-assisted or web-based help may be effective for those clients who can self-advocate under certain circumstances. This could include information (substantive, legal information or referral to additional resources); informational videos; do-it-yourself ("DIY") forms; court-developed access to justice forms; resources that help people fill out and file court papers such as petitions or answers or income tax filings on their own. Web-assisted help in New York is sometimes provided through "LiveHelp," a contemporaneous "chat" that helps clients navigate through websites to find the

most helpful materials. LiveHelp can also provide non-contemporaneous assistance by responding to posted questions.

Some limited assistance outside the courtroom could be provided by law students or non-lawyers. Limited assistance could include advice given in person or by phone (for example, via hotline); brief service, such as assistance helping a client fill out forms for unrepresented litigants; advocacy letters; preparation for hearings (for example, by gathering essential documents and educating clients about the relevant procedures); ghost-writing pleadings (such as answers and motions) and navigator assistance (in and out of court).

In February 2014, the Unified Court System launched a Court Navigator Program, with pilot projects in nonpayment proceedings in Brooklyn Housing Court and consumer debt cases in Bronx Civil Court.<sup>22</sup> “Navigators” are non-lawyers who provide assistance in helping unrepresented litigants have a more productive experience in court.

Limited representation could also include an attorney’s limited scope representation or provision of “unbundled” services: an attorney would provide representation limited to a particular portion of a litigated case. Around the state, for example in New York City, Buffalo, Albany and Long Island, “Attorney For the Day” programs provide *pro se* or legal aid staff to provide representation at a tenant’s first appearance.<sup>23</sup> “Unbundled” or limited representation could include preparation of answers (in housing court in a landlord-tenant matter or in Supreme Court in a foreclosure matter); discovery assistance (answering discovery received from an adversary or developing discovery to serve on an adversary). “Unbundled” lawyer assistance could also include negotiation or mediation assistance (for example, at settlement conferences in foreclosure actions).

Unbundled services could also include motion practice (such as filing and appearing on a motion to vacate default or in opposition to a motion for summary judgment). Hearing representation, either in court or in an administrative proceeding or on appeal, could be provided and could be limited to the particular level in court (such as trial or appeal). Finally, assistance post-judgment (such as an order to show cause) or post-settlement (such as assistance in getting rent grants from New York City’s Human Resources Administration; federal Section 8 voucher modifications or scheduling repairs with a landlord) could also be provided on a limited service basis.

Finally, access to effective legal assistance may require full attorney representation from an initial intake to trial and/or appeal.

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<sup>22</sup> See Administrative Order of the Chief Administrative Judge of the Courts AO/42/14 (Feb. 10, 2014), available at <http://www.nycourts.gov/COURTS/nyc/SSI/pdfs/AO-42-14.pdf>; for information regarding the Court Navigator program, see *New York City Housing Court: Court Navigator Program*, N.Y. STATE UNIFIED COURTS SYS., <http://www.nycourts.gov/Courts/nyc/housing/rap.shtml> (last visited Nov. 19, 2014).

<sup>23</sup> See, e.g., *Court-Sponsored Volunteer Attorney Program: Volunteer Program Descriptions*, N.Y. STATE UNIFIED COURTS SYS., [http://www.nycourts.gov/attorneys/volunteer/vap/program\\_descriptions.shtml](http://www.nycourts.gov/attorneys/volunteer/vap/program_descriptions.shtml) (last visited Nov. 19, 2014) (information regarding Volunteer Lawyer for a Day programs in housing and consumer matters in New York City); *Pro Bono*, ALBANY CNTY. BAR ASS’N, [http://www.albanycountybar.com/pro\\_bono/](http://www.albanycountybar.com/pro_bono/) (last visited Nov. 19, 2014) (discussing collaborative “Attorney for a Day” program established by Albany County Bar Association and Legal Aid Society of Northeastern New York).

In determining what level of assistance would be effective, consideration should be given to the type of case, the client characteristics and vulnerabilities, the benefit to the client, the benefit to the client community, the client's ability to represent on their own, and the amount of time the level of assistance to be considered would take.

### Conclusion

New York has witnessed the enormous benefit to low income people from the provision of legal assistance. From ensuring a low income child a free and appropriate education to obtaining income and health care for a person with a disability, providing effective assistance changes clients' lives. The provision of effective legal assistance also provides significant and long-lasting economic benefits to all of New York.

The Task Force accordingly recommends the adoption of a statement of principle by the New York State Legislature that low income New Yorkers facing matters involving the essentials of life have effective legal assistance, and proposes the following "resolved" clauses:

RESOLVED, that it is the sense of this Legislative Body that the state must continue its effort to achieve the ideal of equal access to civil justice for all; and be it further

RESOLVED, that, to accomplish this end, the policy of the State of New York is that every New Yorker who lives in poverty, defined by living at or below 200% of the federal poverty guidelines, have effective legal assistance in matters involving the essentials of life (housing, family matters, access to healthcare, education and subsistence income).

See Exhibit D for a proposed draft of the complete joint legislative resolution.

EXHIBIT A

MEMORANDUM ON SCOPE OF CIVIL *GIDEON* RIGHTS  
IN NEW YORK STATE

October 29, 2014

**TO:** Task Force On Access To Civil Legal Services

**FROM:** Jonathan D. Kelley  
Kelly E. Mannion

**RE:** Scope of Civil Gideon Rights in New York

**I. Introduction**

Using Constitutional law as the touchstone for its civil *Gideon* jurisprudence, New York has established statutory and common law rights to counsel in a number of civil contexts, including in cases concerning housing, family, health, and employment. Each of these substantive areas is discussed in turn. Section II of this memorandum discusses the scope of the federal right to counsel under the Fourteenth Amendment. Section III discusses the scope of the right to counsel in housing court proceedings. Section IV analyzes the right to counsel in family law matters. Section V then describes the statutory framework in guardianship proceedings for mentally incapacitated persons. Finally, Section VI discusses the rights of indigent litigants to counsel in employment insurance cases. This memorandum concludes that although New York has created an affirmative right to counsel in a number of civil contexts, there remain a number of areas in which New York can further improve the right of indigent litigants to counsel.

**II. The Scope Of The Federal Right**

Although the right to counsel originated in criminal cases, a constitutional right to counsel exists in a number of quasi-criminal and civil proceedings involving indigent

litigants. Under the United States Constitution, a presumption exists that civil litigants are entitled to counsel when their physical liberty is at stake. *See Lassiter v. Dep't of Social Servs.*, 452 U.S. 18, 26-27 (1981) (holding that although there is not a categorical right to counsel in termination of parental rights proceedings, there is a “presumption that an indigent litigant has a right to appointed counsel only when, if he loses, he may be deprived of his physical liberty”). This presumption, however, is not categorical, and does not automatically entitle civil litigants to counsel in all civil cases threatening incarceration. *See Turner v. Rogers*, 131 S. Ct. 2507 (2011) (denying a categorical right to counsel in civil contempt cases).

Rather, courts assessing the appropriateness of civil litigants’ right to counsel weigh the factors outlined in *Mathews v. Eldridge*. *See Lassiter*, 452 U.S. at 27 (applying the *Mathews* balancing test). Under *Mathews*, courts balance the private interests at stake, the competing governmental interests, and the risk of an erroneous decision in the absence of legal counsel. *See Mathews v. Eldridge*, 424 U.S. 319, 334-35 (1976); *see also Application of St. Luke’s-Roosevelt Hosp. Cntr.*, 159 Misc. 2d 932, 936 (Sup. Ct. 1993) (applying the *Mathews v. Eldridge* balancing test to ascertain the necessity of litigants’ right to counsel under New York Law). In its recent *Turner* decision applying the *Mathews* balancing test in the civil *Gideon* context, the Supreme Court concluded that although certain private interests, including the interest in freedom from bodily restraint, militated “strongly for the right to counsel,” this interest could be outweighed by two salient factors. These factors were: (1) the existence of other procedural safeguards for pro se litigants and (2) the risk of creating asymmetry in situations in which the opposing party is likewise unrepresented by

an attorney. See *Turner*, 131 S. Ct. at 2517. Significantly, *Turner* did not disrupt the *Mathews* framework for evaluating civil litigants' right to counsel. Nor did *Turner* disrupt *Lassiter's* proposition that states may define the scope of their own civil *Gideon* rights. See *In re Smiley*, 36 N.Y.2d 433, 438 (1975) (recognizing that New York may define the scope of its own civil *Gideon* jurisprudence). Instead, *Turner* alluded to the fact that more fulsome procedural safeguards for pro se litigants may obviate the need for a right to counsel in civil cases.

### **III. New York Has Established A Right To Counsel In A Limited Number Of Housing Contexts**

Under New York law, courts have discretion to appoint legal counsel for indigent civil litigants. N.Y.C.P.L.R. § 1102(a) (McKinney 2011). Despite possessing this discretion, it is only when “liberty interests” are at stake that courts are likely to assign counsel in civil cases under this provision. See *Planck v. County of Schenectady*, N.Y.S.2d 824 (3d Dept. 2008). This is due in no small part to a lack of funding for such appointments. See, e.g., *Morgenthau v. Garcia*, 561 N.Y.S.2d 867, 869 (Sup. Ct. 1990). Generally, then, court-appointed legal counsel in this milieu is available to defendants in only two situations. First, courts have established a right to counsel in eviction proceedings involving military personnel. N.Y. Mil. Law § 303 (McKinney 2008); *444 W. 54th Street Tenants Ass'n v. Costello*, 138 Misc. 2d 5 (Civ. Ct. 1987) (holding that Constitutional due process concerns necessitated the appointment of counsel in cases involving evictions of military personnel). Second, courts may appoint counsel in cases concerning mental health facilities, which could involve challenges to living conditions. See N.Y. Mental Hyg. Law §

47.03(c), (e) (McKinney 2007); *see In re Application of St. Luke's-Roosevelt Hosp. Cntr.*, 215 A.D.2d 337 (1st Dept. 1995) (upholding appointment of counsel in case involving the involuntary transfer of an allegedly incapacitated adult to a nursing home facility). *But see Jagr v. Kubus*, 126 Misc. 2d 280, 282 (Just. Ct. 1984) (finding no due process or equal protection right to counsel under the New York State Constitution in a nursing home eviction).

Courts have been hesitant to expand the right to counsel beyond this narrow context and indeed, for every other type of civil case involving an indigent defendant's right to counsel in housing cases, New York courts have routinely held that the Constitution does not mandate the appointment of counsel. *See, e.g., Brown v. Popolizio*, 166 A.D.2d 44, 53-54 (1st Dept. 1991) (finding that due process concerns necessitate adequate procedural safeguards for indigent tenants, but that the appointment of counsel is not required); *170 W. 85<sup>th</sup> St. Tenants Ass'n v. Cruz*, 173 A.D.2d 338, 340 (1st Dept. 1991) (holding that the Due Process Clause does not necessitate appointed counsel in eviction proceedings); *Donaldson v. New York*, 156 A.D.2d 290, 293 (1st Dept. 1989) (noting that the Supreme Court has not found a right to counsel for indigent tenants in Housing Court).<sup>1</sup>

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<sup>1</sup> *See also In re Enrique R.*, 126 A.D.2d 169, 175-76 (1st Dept. 1987) (Family Court lacks power to appoint attorney for mother to seek public housing necessary to retain custody of her child); *Williams v. White Plains Housing Auth.*, 62 Misc. 2d 613, 618 (Sup. Ct. 1970) (holding that due process does not require the housing authority to provide counsel for indigent defendants).



#### **IV. New York Has Established A Right To Counsel In A Range Of Family Law Matters**

The Supreme Court has recognized that “[w]hen the State moves to destroy weakened familial bonds, it must provide the parents with fundamentally fair procedures.” *Santosky v. Kramer*, 455 U.S. 745, 753-54 (1982). Although New York courts have held that the “fundamentally fair procedures” mandated by *Santosky* are “not to be equated with the right to the automatic appointment of assigned counsel for all indigent litigants,” *Ward v. Jones*, 303 A.D.2d 844, 845 (3d Dept. 2003), New York’s legislature has created a right to legal counsel for family court litigants in a number of circumstances.

##### **A. The Scope of Parental Rights In Family Court**

Section 261 of the Family Court Act recognizes the fundamental interests implicated in family court proceedings and the concomitant role that counsel plays in protecting those interests. *See* N.Y. Fam. Ct. Act § 261 (McKinney 2014).<sup>2</sup> Section 262 (“Assignment of Counsel for Indigent Persons”) implements this legislative purpose by

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<sup>2</sup> Section 261 states: “Persons involved in certain family court proceedings may face the infringements of fundamental interests and rights, including the loss of a child's society and the possibility of criminal charges, and therefore have a constitutional right to counsel in such proceedings. Counsel is often indispensable to a practical realization of due process of law and may be helpful to the court in making reasoned determinations of fact and proper orders of disposition. The purpose of this part is to provide a means for implementing the right to assigned counsel for indigent persons in proceedings under this act.” N.Y. Fam. Ct. Act § 261 (McKinney 2014).

creating a menu of proceedings for which the right to counsel is guaranteed.<sup>3</sup> The present menu includes:

- *Child Protective Proceedings* – The respondent (including parents, foster parents, or any other person having physical or legal custody of the child) has the right to counsel in child abuse and neglect proceedings. N.Y. Fam. Ct. Act § 262(a)(i) (McKinney 2014).
- *Child Permanency Proceedings* – The respondent has the right to counsel in proceedings to place the child in foster care, to place the child directly with a relative, or to free the child for adoption. *Id.*
- *Foster Care Visitation Proceedings* – Non-custodial parents and grandparents have the right to counsel in proceedings seeking visitation rights over children placed in foster care. *Id.*
- *Family Offense Proceedings* – The petitioner *and* the respondent have the right to counsel in domestic violence cases and other family offense proceedings. N.Y. Fam. Ct. Act § 262(a)(ii) (McKinney 2014).
- *Termination Proceedings* – The respondent has the right to counsel in any proceeding concerning the termination of custody rights, including visitation rights. N.Y. Fam. Ct. Act § 262(a)(iii) (McKinney 2014).
- *Social Services Proceedings* – The respondent (including parents, foster parents, or any other person having physical or legal custody of the child) has a right to counsel in any proceeding concerning: dependent children in foster care; guardianship and custody of children not in foster care; and guardianship and custody of destitute or dependent children. N.Y. Fam. Ct. Act § 262(a)(iv) (McKinney 2014). Non-custodial parents and grandparents with visitation rights also have the right to

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<sup>3</sup> Section 262(a) states: “Each of the persons described below in this subdivision has the right to the assistance of counsel. When such person first appears in court, the judge shall advise such person before proceeding that he or she has the right to be represented by counsel of his or her own choosing, of the right to have an adjournment to confer with counsel, *and of the right to have counsel assigned by the court in any case where he or she is financially unable to obtain the same . . .*” N.Y. Fam. Ct. Act § 262(a) (McKinney 2014) (emphasis added).

counsel where a social services agency assumes child custody and denies such visitation rights. *Id.*

- *Custody Proceedings* – Any parent seeking custody or contesting the substantial infringement of his or her custody rights has the right to counsel in such proceedings. N.Y. Fam. Ct. Act § 262(a)(v) (McKinney 2014).
- *Contempt Proceedings* – Any person who faces possible incarceration for contempt of court in a family court proceeding (for example, contempt for failure to comply with a child support order) has the right to counsel in such proceedings. N.Y. Fam. Ct. Act § 262(a)(vi) (McKinney 2014).<sup>4</sup>
- *Adoption Proceedings* – Any parent who opposes the adoption of his or her child has the right to counsel in such proceedings. N.Y. Fam. Ct. Act § 262(a)(vii) (McKinney 2014).
- *Paternity Proceedings* – Respondents in an action to establish paternity have the right to counsel in such proceedings; N.Y. Fam. Ct. Act § 262(a)(viii) (McKinney 2014)<sup>5</sup> and
- *Proceedings Involving Destitute Children* – A respondent (parent, caretaker, or interested adult) has the right to counsel in proceedings originated by the commissioner of social services concerning destitute children (defined as a “child under the age of eighteen who is in a state of want or suffering due to lack of sufficient food, clothing, shelter, or medical or surgical care” and who is neither an “abused child” nor a “neglected child” as defined in the Family Court Act). N.Y. Fam. Ct. Act § 262(a)(ix) (McKinney 2014).

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<sup>4</sup> The Supreme Court’s decision in *Turner v. Rogers*, in which the Court declined to recognize a federal categorical right to counsel in contempt proceedings enforcing child support orders, does not disrupt the New York legislature’s guarantee of counsel where a parent faces possible incarceration for failure to pay child support. 131 S. Ct. 2507, 2519-20 (2011).

<sup>5</sup> New York Family Courts have further extended this right to petitioners in paternity proceedings. *In re Clinton L.C.*, 191 Misc. 2d 211, 212 (Fam. Ct. 2002) (“[Petitioner] is constitutionally entitled to assigned counsel . . . in a paternity proceeding where he is seeking to establish his paternity of the subject child and the assistance of counsel is necessary to enable him to prosecute the action.”).

Aside from the mandatory Section 262(a) categories, the judge has *discretion* to assign counsel under Section 262(b) where the court determines that either the federal or the state constitution requires assignment. N.Y. Fam. Ct. Act § 262(b) (McKinney 2014). Additionally, all section 262 parties have the right to counsel in an appeal of the underlying proceedings. N.Y. Fam. Ct. Act § 1120(a) (McKinney 2014). Section 262 representation is assigned in accordance with local laws and rules. N.Y. Fam. Ct. Act § 262(c) (“Any order for the assignment of counsel issued under this part shall be implemented as provided in article eighteen-B of the county law.”). Courts actively enforce this right. In the decades since the Family Court Act’s inception, courts have routinely enforced its provisions. *See, e.g., In re Arlene R. v. Wynette G.*, 37 A.D.3d 1044 (4th Dept. 2007) (reversing where the Family Court failed to advise the party of its right to counsel and failed to secure a valid waiver of that right); *In re Er-Mei Y.*, 29 A.D.3d 1013 (2d Dept. 2006) (same).

Notably, while the right to section 262 representation attaches whether the relevant proceedings take place in New York’s Family Courts or Supreme Courts, *see* N.Y. Jud. Law § 35(8) (McKinney 2002), its guarantee is *limited* to these enumerated proceedings. Section 262 of the Family Court Act does not, for example, entitle all indigent litigants to assigned counsel in child support proceedings. *See Com’r of Social Servs. of City of N.Y. v. Remy K.Y.*, 298 A.D.2d 261, 262 (1st Dept. 2002) (holding that petitioner could not make a showing that, in the absence of an affirmative right, the *Lassiter* balancing test entitled him to counsel). In *Ward v. Jones*, for example, the court held that a noncustodial parent was not entitled to legal representation in child visitation proceedings. 303 A.D.2d at 846 n. 2 (“Even assuming that appointed counsel would have succeeded in keeping the entire

transcript of [the noncustodial parent's] underlying criminal proceeding into evidence, there would remain the matter of [his] criminal conviction. . . . Accordingly, this omission does not tip the scales in petition's favor . . . ."). Nor does Section 262 guarantee a right to counsel in private matrimonial actions. *See In re Smiley*, 36 N.Y.2d at 438 ("In several situations which arise in Family Court there are provisions for publicly-compensated counsel. . . . There are no similar statutory provisions to cover public provision or compensation of counsel in private litigation.").

### **B. The Scope of Minors' Rights In Family Court**

Section 249 of the Family Court Act governs the appointment of counsel (called "attorney for the child" post-2010) to safeguard minors' interests in family court proceedings. N.Y. Fam. Ct. Act § 242 (McKinney 2014) ("As used in this act, 'attorney for the child' refers to an attorney admitted to practice law in the state of New York and designated under this part to represent minors pursuant to section two hundred forty-nine of this act."); N.Y. Ct. Rules §§ 7.1, 7.2 (McKinney 2014). Whether these proceedings take place in the New York Supreme Court, Family Court, or in Surrogate's Court, the same right to counsel applies. N.Y. Jud. Law § 35(7) (McKinney 2002). Under this provision, courts are required to appoint counsel to represent a minor in certain cases "if independent legal representation is not available to such minor." *Id.* These cases include: Juvenile Delinquency Proceedings; Person in Need of Supervision Proceedings; Child Abuse and Neglect Proceedings; Child Permanency and Placement Proceedings; Social Services Proceedings; and Proceedings Involving Destitute Children. N.Y. Fam. Ct. Act § 249(a) (McKinney 2014).

Although section 249 representation is *not* required in custody, domestic offenses, visitation, or adoption proceedings, courts may exercise their discretion to appoint an attorney for the child in such cases. *Id.* The judicial trend is towards appointment, especially for an Article 8 (family offenses) and Article 6 (custody) proceeding. In fact, appellate courts have found an abuse of discretion where the Family Court or Supreme Court declined to appoint an Attorney for the Child in these types of contested proceedings. *See Anonymous 2011-1 v. Anonymous 2011-2*, 102 A.D.3d 640 (2d Dept. 2013); *In re Pamela N. v. Neil N.*, 93 A.D.3d 1107 (3d Dept. 2012); *Betts v. Betts*, 51 A.D.3d 699 (2d Dept. 2008); and *Amato v. Amato*, 51 A.D.3d 1123 (3d Dept. 2008).

The right to section 249 representation continues to attach on appeal from the underlying proceedings. N.Y. Fam. Ct. Act § 1120(b) (McKinney 2014). As a general matter, attorneys for the child are required to advocate for the child's *position*, as opposed to some conception of the child's best interests. *See* N.Y. Ct. Rules § 7.2(c), (d) (McKinney 2014) ("In juvenile delinquency and person in need of supervision proceedings, where the child is the respondent, the attorney for the child must zealously defend the child . . . In other types of proceedings, where the child is the subject, the attorney for the child must zealously advocate the child's position").

**V. Mentally Incapacitated Defendants Are Entitled To Legal Counsel When They Face Involuntary Commitment Or Are Unable To Manage Their Own Care And Treatment**

New York has established a right to counsel in cases involving "Allegedly Incapacitated Individuals" whose liberty is at stake or who, by virtue of their mental incapacity, are unable to make significant medical decisions. Accordingly, New York

statutory and common law mandate a right to counsel in cases involving the involuntary commitment, medical treatment, and remedial care of statutorily incapacitated persons. N.Y. Mental Hyg. Law § 47.03(c) (McKinney 2008).

New York common law expressly provides a right to counsel for individuals facing involuntary commitment. This right attaches in a range of involuntary confinement proceedings stemming from litigants' mental illness, sex offender status, or contraction of a communicable disease. *See, e.g., Rapoport v. G.M.*, 239 A.D.2d 422, 422 (2d Dept. 1997) (establishing a constitutional right to counsel in cases involving the involuntarily hospitalization of a person with a communicable disease); *People ex rel. Rogers v. Stanley*, 17 N.Y.2d 256, 259 (1966) (establishing a constitutional right to counsel for individuals facing commitment to a mental institution); N.Y. Mental Hyg. Law 10.08(g) (McKinney 2008) (establishing a right to counsel for sex offenders facing involuntary confinement). This right is not limited in incapacitated adults. Rather, courts have likewise extended these protections to incapacitated minors. *In Matter of Andrea B.*, 94 Misc. 2d 919, 927 (Fam. Ct. 1978) (finding a right to counsel in Family Court proceeding to extend temporary commitment of minor to mental hospital).

These rights have been further enshrined in the New York Mental Hygiene Law, which provides a right to counsel for "allegedly incapacitated individuals" in a range of guardianship proceedings. Specifically, New York's Mental Hygiene Law establishes a right to counsel when an allegedly incapacitated individual requires a temporary court-appointed guardian or, moreover, contests a guardianship petition. N.Y. Mental Hyg. Law § 81.10 (McKinney 2008). Courts have discretion to appoint counsel notwithstanding

litigants' refusal of legal assistance. N.Y. Mental Hyg. Law § 81.11(e); 81.10(d) (McKinney 2008).

Incapacitated individuals also have a right to counsel in cases concerning the scope or propriety of their medical treatment. Specifically, New York's Mental Hygiene Law provides a right to counsel for individuals who are in need of "major medical or dental treatment" but who refuse such treatment. N.Y. Mental Hyg. Law § 81.10 (McKinney 2008). *See also Rivers v. Katz*, 67 N.Y.2d 485 (1986) (granting a right to counsel in a hearing regarding the involuntary administration of psychotropic medication). The right to counsel in the context of medical treatment is not, however, meant to be exclusive. Rather, New York's Mental Hygiene Law explicitly allows for the appointment of counsel in any other situation in which courts deem representation "helpful to the resolution of the matter." N.Y. Mental Hyg. Law § 81.10 (McKinney 2008). Indeed, New York's Social Services Law entitles incapacitated individuals to counsel in cases involving an alleged inability to manage their resources, carry out basic activities, or protect themselves from abuse, neglect, or financial exploitation. N.Y. Soc. Serv. Law § 473-a (5)(b)(iv) (McKinney 2008) (noting that "the court shall assign counsel to assist" individuals facing temporary involuntary protective services).

#### **VI. New York Provides A Limited Right To Counsel For Indigent Unemployment Insurance Claimants**

New York's legislature has also created a statutory right to counsel for unemployment insurance claimants who have received a favorable decision from the



Unemployment Insurance Appeal Board and who are defending that decision in an appeal brought by another party. *See* N.Y. Lab. Law 538(1)(e) (McKinney 2008).

**VII. Conclusion**

To date, New York has provided a right to legal counsel for indigent litigants in a limited number of contexts ranging from military eviction proceedings and child custody, to involuntary commitment and employment litigation. Although the Supreme Court's decision in *Turner v. Rogers* may signify a turning point in state courts' willingness to provide an affirmative right to counsel in areas where litigants' procedural rights may be satisfied by access-to-justice programs, the scope of the right to counsel in New York remains robust.

J.D.K.

K.E.M.

EXHIBIT B

“CIVIL *GIDEON*” PILOT PROGRAMS  
IN THE UNITED STATES

“CIVIL GIDEON” PILOT PROGRAMS IN THE UNITED STATES<sup>1</sup>

Jurisdiction	Program Title and Description	Criteria for Client Eligibility	Scope of Assistance / Case Characteristics	Legal Framework	Statewide/ Municipal/Other	Funding	Other Notes
California (Shriver Act)	<p><b>Seven pilot programs, funded by approximately \$9 million in state appropriations annually for 3 years, provide full representation, limited-scope representation and ADR and other services in child custody, landlord-tenant and probate guardianship matters.</b></p> <p>The Sargent Shriver Civil Counsel Act pilot programs were launched beginning in 2011 and are to continue through 2014, subject to renewal for up to three years.</p> <p>Under the Shriver Act, grants have been made to legal services providers to establish the following pilot programs in partnership with state courts, overseen by an Implementation Committee appointed by the Judicial Council of the California Courts:</p> <ul style="list-style-type: none"> <li><u>Child Custody Pilot Project</u> (Bar Association of San Francisco Volunteer Legal Services Program): Full representation, limited scope representation, advice and assistance, social services, and ADR in child custody cases. The project’s goal is to provide representation to all low-income persons in San Francisco requesting (or responding to a request for) sole physical or legal custody of a child, where the opposing party is represented by counsel. The project proposed to provide full representation to 100 clients per year, and provide information to 150 self-represented clients.</li> </ul>	<p>Individuals earning not more than 200% of the federal poverty level. Certain programs established additional criteria (see also “Scope of Assistance / Case Characteristics”).</p>	<p>Full representation and limited-scope representation, according to each program’s parameters.</p> <p>Factors Considered by the Judicial Council in selecting grantees (as provided by statute):</p> <ul style="list-style-type: none"> <li>• Case complexity;</li> <li>• Whether opposing party is represented;</li> <li>• Adversarial nature of proceeding;</li> <li>• Availability/effectiveness of other types of assistance;</li> <li>• Literacy/language issues;</li> <li>• Disability access issues;</li> <li>• Merits of case;</li> <li>• Nature/severity of potential consequences if counsel not provided;</li> <li>• Potential savings for state by reducing cost of social services to client.</li> </ul> <p>Specific case criteria have been reported for the following programs:</p>	<p>Sargent Shriver Civil Counsel Act (AB 590), passed by California State Legislature in September 2009, including direct legislative funding and funding through new court fees.</p>	<p>San Francisco, Kern, San Diego, Santa Barbara, Yolo, Sacramento, and Los Angeles Counties.</p>	<p>About \$9 million in annual funding for three years (subject to renewal following Judicial Counsel evaluation), funded by a \$10 filing fee on certain post-judgment motions in state courts.</p>	<p>The Judicial Council is conducting a study to evaluate the effectiveness and continued need for the pilot programs and will report the findings to the Governor and Legislature on or before January 31, 2016. According to the Judicial Council’s website, the study will report the percentage of funding utilized by case type, data on the impact of counsel on equal access to justice, the effect on court administration and efficiency, and the level of enhanced coordination between courts and other government service providers and community resources.</p> <p>Projects may be renewed for up to three years as determined by the Judicial Council.</p>

<sup>1</sup> Chart prepared by Skadden, Arps, Slate, Meagher & Flom LLP and Sullivan & Cromwell LLP. While jurisdictions omitted from this summary chart have not (based on our review) established a civil right to counsel pilot program, certain states have established (i) a right to counsel under limited circumstances, such as abuse, neglect, or termination of parental rights proceedings (*e.g.*, New Mexico, North Dakota, Oklahoma, Oregon, South Dakota, Utah, Wyoming, Georgia, North Carolina, South Carolina, Virginia, Kentucky, Alabama, Florida), or (ii) a Task Force to explore civil justice reform (*e.g.*, Iowa).

Jurisdiction	Program Title and Description	Criteria for Client Eligibility	Scope of Assistance / Case Characteristics	Legal Framework	Statewide/ Municipal/Other	Funding	Other Notes
	<p>BASF's 2013 annual report disclosed that the project served 509 clients through its self-help center and 97 clients in custody hearings in 2013.</p> <ul style="list-style-type: none"> <li>• <u>Landlord-Tenant Assistance Center</u> (Greater Bakersfield Legal Assistance): Full legal representation and self-help services (drafting assistance, information, mediation) in a variety of landlord-tenant matters. In the program's first year, about 900 clients received self-help assistance and 183 received full representation.</li> <li>• <u>Housing and Child Custody Pilot Projects</u> (Legal Aid Society of San Diego): Full and limited-scope representation in housing cases (civil unlawful detainer) and child custody cases. The housing program proposed to assist in 4,500 cases per year and reported 1,193 cases in the first 14 months. The child custody program anticipated at least 180 cases per year, and reported 171 cases in approximately 20 months of the project.</li> <li>• <u>Housing / Probate Guardianship Pilot Projects</u> (Legal Aid Foundation of Santa Barbara County): Legal assistance to low-income clients in landlord-tenant matters and probate guardianship matters. The guardianship project served 138 clients over its first (approximately) 20 months. (Case statistics are not available for the housing project.)</li> <li>• <u>Housing Pilot Project</u> (Legal Services of Northern California): Legal representation for tenants in eviction proceedings in Sacramento and Yolo County. The Sacramento project proposed to represent clients in 720 trials and 288 dispositive motions and provide self-help advocacy in 300 cases; and reported serving about 700 clients in its first year. The Yolo County project proposed to</li> </ul>		<ul style="list-style-type: none"> <li>• <u>Child Custody Pilot Project</u> (Bar Association of San Francisco Volunteer Legal Services Program): Clients must be opposed by a represented party.</li> <li>• <u>Landlord-Tenant Assistance Center</u> (Greater Bakersfield Legal Assistance): All eligible clients receive full representation or self-help assistance. Priority for full representation was given in cases where the opposing party was represented and the case was unusually complex, the client was especially vulnerable, or there was an opportunity to establish useful precedent.</li> <li>• <u>Housing and Child Custody Pilot Projects</u> (Legal Aid Society of San Diego): Program goal is to provide some level of assistance to all eligible litigants who contact the program and are opposed by a represented party. Child custody program is currently working to increase the number of clients assisted.</li> <li>• <u>Housing / Probate Guardianship Pilot Projects</u> (Legal Aid Foundation of Santa Barbara County): The</li> </ul>				<p>For a detailed description and assessment of the Shriver Act pilot projects as of mid-2013, see Clare Pastore, <i>Gideon Is My Co-Pilot: The Promise of Civil Right to Counsel Pilot Programs</i>, 17 UDC/DCSL L. REV. 75 (2014).</p>

Jurisdiction	Program Title and Description	Criteria for Client Eligibility	Scope of Assistance / Case Characteristics	Legal Framework	Statewide/ Municipal/Other	Funding	Other Notes
	<p>serve about 200 full-representation clients and about 100 limited-scope clients, and reported that these goals were met, except the proportion of limited-scope clients was higher than expected.</p> <ul style="list-style-type: none"> <li>• <u>Legal Access to Education and Representation</u> (Los Angeles Center for Law and Justice, Levitt and Quinn Family Law Center, Asian Pacific American Legal Center): Court-based assistance in high-conflict custody cases involving allegations of domestic violence, including legal representation, mediation and support services. The program proposed to assist 450 clients per year, and reported 230 referrals in the first year.</li> <li>• <u>Eviction Legal Assistance Center</u> (Neighborhood Legal Services of Los Angeles, Inner City Law Center, Legal Aid Foundation of Los Angeles, Public Counsel): Court-based help center providing legal assistance, self-help services, ADR, code enforcement services, and referrals to government and community social services. The pilot is intended to provide full representation to 2,000 clients and limited-scope representation to 3,000 clients per year; NLSLA reported that as of July 2013, it had served 3,083 full-representation clients and 2,033 limited-scope clients.</li> </ul>		<p>housing program evaluates case complexity and merits, consequences for the client of lack of representation; and client's disability and language ability. The guardianship project serves all eligible clients, with full representation for clients with complex or contested cases. Other clients are assisted by a (Shriver-funded) court-based facilitator.</p> <ul style="list-style-type: none"> <li>• <u>Housing Pilot Project</u> (Legal Services of Northern California): The project's goal is to provide some level of assistance to all eligible persons who contact the project.</li> <li>• <u>Eviction Legal Assistance Center</u> (Neighborhood Legal Services of Los Angeles et al.): All eligible litigants contacting the program who face a represented opponent receive limited-scope (drafting of answers or fee waiver requests, brief advice, referral to self-help resources) or full representation, depending on available defenses, income, vulnerability potential precedential value and other factors.</li> </ul>				

Jurisdiction	Program Title and Description	Criteria for Client Eligibility	Scope of Assistance / Case Characteristics	Legal Framework	Statewide/ Municipal/Other	Funding	Other Notes
California (San Francisco)	<p><b>San Francisco funded a one-year grant of \$100,000 to hire a staff attorney to coordinate <i>pro bono</i> services in eviction defense cases through existing full-scope and limited-scope representation programs.</b></p> <p>San Francisco Ordinance 45-12 (2012) established a “Right to Civil Counsel Pilot Program” for the 2012-2013 fiscal year.</p> <ul style="list-style-type: none"> <li>The City’s funding commitment was limited to the cost of one staff member to support coordination among the city, the Superior Court, non-profit organizations and others to implement the program. The City of San Francisco contracted with the Justice &amp; Diversity Center (JDC) of the Bar Association of San Francisco to implement the project.</li> <li>Services under the program were provided by <i>pro bono</i> and civil legal services attorneys through LDC’s programs for full- and limited-scope legal aid.</li> </ul>	Individuals earning not more than 200% of the federal poverty level (for cases handled <i>pro bono</i> ).	<p>Coordination of <i>pro bono</i> full representation in eviction proceedings and <i>pro bono</i> limited-scope representation in eviction proceedings for mandatory settlement conferences and on motions to vacate a default judgment.</p> <p>The staff attorney funded by the program supervised <i>pro bono</i> attorneys handling eviction proceedings; recruited <i>pro bono</i> volunteers; designed <i>pro bono</i> projects; developed <i>pro bono</i> training materials; and worked to improve case referrals to <i>pro bono</i> attorneys.</p>	Ordinance providing for limited City funding for coordination, supplemented by bar association and <i>pro bono</i> efforts.	San Francisco City/County	\$100,000 in City funding to hire a staff attorney for coordination of <i>pro bono</i> services.	<p>A report evaluating the program was published by the Levin Center for Public Service and Public Interest at Stanford Law School in May 2014.<sup>2</sup></p> <p>Based on the report, the City will consider expanding, extending or making permanent the work of the program.</p> <p>JDC’s civil legal services projects also include family law, tax law and other services.</p>

<sup>2</sup> The report is available at [www.sfbos.org/Modules/ShowDocument.aspx?documentid=49157](http://www.sfbos.org/Modules/ShowDocument.aspx?documentid=49157) (last visited October 20, 2014).

Jurisdiction	Program Title and Description	Criteria for Client Eligibility	Scope of Assistance / Case Characteristics	Legal Framework	Statewide/ Municipal/Other	Funding	Other Notes
Louisiana	<p><b>While no statewide pilot program has been established, the Federal District Court of the Eastern District of Louisiana has established a one-year unfunded pilot program for appointment of <i>pro bono</i> counsel in any civil case referred to magistrate judges, upon a litigant's motion and subject to court approval.</b></p> <p>See "Other Notes."</p>					None.	<p>The Federal District Court of the Eastern District of Louisiana has established a Civil <i>Pro Bono</i> Pilot Program, to be conducted by the magistrate judges of the Court for one year starting July 2014, at the request of the Federal Bar Association (New Orleans Chapter). The Association will form a panel of attorneys who may be appointed in any civil case referred to the magistrate judges, on a litigant's motion and subject to court approval based on certain standards (<i>e.g.</i>, clients must demonstrate inability to pay for privately retained counsel; counsel may not be appointed as a matter of course or ordinary practice).</p>

Jurisdiction	Program Title and Description	Criteria for Client Eligibility	Scope of Assistance / Case Characteristics	Legal Framework	Statewide/ Municipal/Other	Funding	Other Notes
Texas	<p><b>Texas established two one-year pilot programs targeted to rural communities, funded by a one-time grant of \$658,000 in civil legal services funding from various sources, to provide full representation to clients in foreclosure and landlord-tenant matters.</b></p> <p>In 2009, the Texas Access to Justice Foundation (which administers civil legal services funding on behalf of the Supreme Court of Texas<sup>3</sup>) funded two “Expanding the Right to Civil Counsel ‘Civil Gideon’ Pilot Projects”:</p> <ul style="list-style-type: none"> <li>• Tenant Defense Project (Texas Rio Grande Legal Aid): Provided two full-time attorneys to accept statutory court appointments for eviction appeals in three counties.</li> <li>• Border Foreclosure Defense Project (Lone Star Legal Aid): Represented homeowners in statutory foreclosure hearings under Texas Rules of Civil Procedure Section 736 in six counties.</li> </ul>	Individuals earning not more than 125% of the federal poverty level.	<p>Full representation for indigent litigants in eviction appeals and statutory foreclosure proceedings.</p> <p>Tenant Defense Project: Projected to serve 38 clients per month; provider also planned to assess clients to determine the scope of services needed.</p> <p>Border Foreclosure Defense Project: All eligible persons facing a Section 736 foreclosure proceeding in target counties.</p>	<p>Funding initiative by Texas Access to Justice Foundation to develop pilot projects in underserved, remote or rural communities.</p> <p>This initiative also funded four Self-Represented Litigation Pilot Projects at the county level.<sup>4</sup></p>	<p>Tenant Defense Project: Fort Bend, Harris, and Montgomery Counties.</p> <p>Border Foreclosure Defense Project: Webb, Zapata, Starr, Cameron, Hidalgo, and Willacy Counties.</p>	\$658,000 in one-time civil legal services funding from the Texas Access to Justice Foundation.	<p>Projects reportedly served fewer clients than expected due to difficulty in obtaining appointments and assignments from courts.</p> <p>Projects were required to assess for information gathering purposes:</p> <ul style="list-style-type: none"> <li>• Cost to client if legal assistance was not provided;</li> <li>• Estimated cost to hire a private attorney for the type of assistance provided;</li> <li>• Estimated cost to the community if legal assistance is not provided;</li> <li>• Estimated cost or benefit as a result of the legal assistance provided;</li> <li>• Estimated time savings and/or cost benefit to the court resulting from legal assistance.</li> </ul>

<sup>3</sup> Funds administered by the Texas Access to Justice Foundation include funding provided from the budget of the Texas Supreme Court; IOLTA revenue, LSC funding, and funding from other sources.

<sup>4</sup> These projects, each implemented by a legal services provider, included initiatives to create self-help centers based in courts (and, in one instance, a county law library), standardized forms and *pro se* legal clinics, and develop online document assembly tools and online brief services.



Jurisdiction	Program Title and Description	Criteria for Client Eligibility	Scope of Assistance / Case Characteristics	Legal Framework	Statewide/ Municipal/Other	Funding	Other Notes
Washington	<p><b>Washington established a pilot program to fund additional resources in dependency and termination of parental rights cases in two counties, beginning with \$500,000 in 2000. The program has since been converted to a permanent program which encompasses 25 of Washington’s 39 counties, and funding has been re-appropriated by the legislature annually since 2000. Most recently, the program has received an expansion grant of about \$3.4 million for fiscal 2015.</b></p> <p>The Parents Representation Program (“PRP”) was a pilot program established by the State Office of Public Defense in 2000.</p> <ul style="list-style-type: none"> <li>PRP was designed to provide and improve legal representation for parents in dependency and termination cases.</li> <li>PRP was converted into a permanent, legislatively-funded program in 2005.</li> </ul> <p>PRP primarily focused on funding and resources, including:</p> <ul style="list-style-type: none"> <li>Increased staffing (ultimately 8 full time and 5 part time attorneys and 2 paralegals);</li> <li>Indigence screening;</li> <li>Caseload limits and professional attorney standards;</li> <li>Access to expert services and independent social workers;</li> <li>Office of Public Defense oversight;</li> <li>Ongoing training and support for attorneys.</li> </ul>	<p>Individuals determined to be “indigent” within the meaning of Revised Code of Washington Section 10.101.</p> <p>“Indigent” is defined as:</p> <ul style="list-style-type: none"> <li>Receives public assistance; or</li> <li>Is involuntarily committed to a public mental health facility; or</li> <li>Has an after-tax income of 125 percent or less of the federal poverty level; or</li> <li>Is unable to pay the anticipated costs of counsel.</li> </ul>	Full representation for indigent parents in dependency and termination cases; access to non-legal services (e.g., social work services) and attorney support.	Funding provided by State legislative appropriation.	PRP was initially focused on two locations (Benton/Franklin Counties and Pierce County), and now exists in 25 of 39 counties in Washington, with plans to include six more by July 1, 2014.	<p>Initial funding for the pilot program was \$500,000 from the state, in addition to existing county funding. Since 2000, the legislature has continuously re-appropriated funding for the program.</p> <p>Funding totaled \$1,244,825 in 2001 according to a report issued by the State Office of Public Defense.</p> <p>The 2013-15 State budget notes a grant of about \$3.4 million to expand the program to six new counties in 2015.</p>	<p>The primary focus was to determine if additional funding and staffing would improve process and outcome. Three independent evaluations were conducted in 2001-02, 2003 and 2005.</p> <p>Several consistent themes emerged across the evaluations:</p> <ul style="list-style-type: none"> <li>PRP produced increases in family reunifications, despite declining statewide reunification rates.</li> <li>Evaluations observed consistent increases in the amount of time pilot attorneys could devote to cases, which resulted in improved handling of cases.</li> <li>Unnecessary continuances of hearings decreased.</li> </ul> <p>RCW 13.34 creates a statutory right to counsel for a child’s parents, guardian, or legal custodian involved in dependency or termination proceedings and provides that if indigent, counsel shall be appointed by the court.</p>

Jurisdiction	Program Title and Description	Criteria for Client Eligibility	Scope of Assistance / Case Characteristics	Legal Framework	Statewide/ Municipal/Other	Funding	Other Notes
Mississippi	<p><b>The Parent Representation Pilot Program provides legal representation for parents in Youth Court hearings involving allegations of abuse or neglect that could result in removal, and was implemented in four counties in Mississippi beginning in late 2012 with \$145,000 in grants provided by Casey Family Programs (through December 2014) and the Administrative Office of Courts (through September 2014).</b></p> <p>The Parent Representation Pilot Program provides free legal representation for low-income parents in Youth Court hearings in which allegations of abuse or neglect could result in court-ordered removal of children from the parents' custody. The goal of the pilot program is to expedite the placement of children in a permanent home.</p> <p>The program had a staggered start date in four counties: Harrison County (March 1, 2013); Rankin County (October 2012); Forrest County (October 2012); Adams County (December 2012).</p> <p>The program in Forrest County receives cases involving children from birth to 3 years of age.</p>	<p>Cases are referred on a case by case basis.</p> <p>Currently each program accepts all child protection cases which exemplify the highest potential for prevention of removal, or reunification.</p> <p>Most cases would qualify as indigent cases.</p>	<p>Full representation provided through adjudication and review hearings.</p> <p>The timing of appointment varies: either prior to petition filing, before or after shelter hearing. The procedure for assigning attorneys varies by county.</p> <p>Case must be one in which allegations of abuse or neglect could result in court-ordered removal of children from the parents' custody.</p>	<p>The Mississippi Administrative Office of the Courts subcontracted with the Mississippi Center for Legal Services and Mission First legal Aid Office to hire, supervise, and support the attorneys in the pilot program.</p> <p>Mississippi does not have any legislative provision specific to legal representation for indigent parents in child abuse and neglect situations.</p>	<p>Harrison, Rankin, Forrest, and Adams Counties.</p> <p>The youth court judges in each of these counties volunteered their courts to participate based on their strong interest in the pilot program.</p>	<p>\$100,000 grant from Casey Family Programs, the nation's largest private foundation focused on foster care and improving the child welfare system. Funding from Casey extends through December 2014.</p> <p>Harrison County (largest number of cases) received \$50,000 in Casey Family Programs grant funding to hire a full-time attorney.</p> <p>Adams and Forrest Counties each received \$25,000 in grant money to pay for attorney representation.</p>	<p><b>Effectiveness:</b></p> <p>The National Council of Juvenile and Family Court Judges (NCJFCJ) published "Exploring Outcomes Related to Legal Representation for Parents Involved in Mississippi's Juvenile Dependency System, Preliminary Findings" in January of 2014. The study focused on Forrest County and Rankin County, and consists of a parent survey study conducted by the ABA, and a case file review conducted by NCJFCJ research staff.</p> <p><b>Findings:</b></p> <ul style="list-style-type: none"> <li>• Parents with an attorney had children placed in foster care/group homes/treatment facilities less often at the review hearing.</li> <li>• Parents with attorneys stipulated to all allegations less often.</li> <li>• Parents with attorneys appeared at a higher percentage of hearings across the life of the case.</li> <li>• Parents with attorneys had a higher number of case continuances.</li> </ul>

Jurisdiction	Program Title and Description	Criteria for Client Eligibility	Scope of Assistance / Case Characteristics	Legal Framework	Statewide/ Municipal/Other	Funding	Other Notes
						<p>The Administrative Office of Courts provided \$45,000 through a federal Court Improvement Program grant to fund the Rankin County program through September 2014 (and beyond, as funding is made available).</p> <p>The Administrative Office of the Courts also funded two trainings for judges, attorneys, and stakeholders to assist with the implementation of parent representation in the courts.</p>	<ul style="list-style-type: none"> <li>• Parents with attorneys were ordered fewer services in Forrest County, but more services in Rankin County.</li> <li>• The parent surveys showed that parents with an attorney expressed more positive opinions about their courtroom experiences, and expressed more positive experiences than parents who had hired their own attorneys. As parents' positive ratings of their perceptions towards their attorneys increased, their positive ratings of their perceptions about their courtroom experience also increased, and vice versa.</li> </ul>

Jurisdiction	Program Title and Description	Criteria for Client Eligibility	Scope of Assistance / Case Characteristics	Legal Framework	Statewide/ Municipal/Other	Funding	Other Notes
New Hampshire	<p><b>The 2006 Civil Legal Services and the “Working Poor” Pilot Project provided a wide range of legal assistance to moderate income and working class New Hampshire residents through the state beginning in 2005.</b></p> <p>From February 1 2006 to October 30, 2006, the Pilot Program provided assistance in 101 cases. The purpose of the program is to reach and understand the needs of the working class people who cannot afford private attorneys but are not traditionally eligible for legal aid.</p>	<p>Financial eligibility standard is 250% of the federal poverty level (up from 187.5%).</p> <p>Cases are referred on a case by case basis.</p>	Full representation.	In 2004, the New Hampshire legislature authorized NHLA to undertake the Working Poor Pilot Program.	Statewide.		<p><b>Effectiveness:</b></p> <p>New Hampshire Legal Assistance published a report on Civil Legal Services and the “Working Poor” Pilot Project.</p> <p><u>Findings:</u></p> <ul style="list-style-type: none"> <li>• Working class people, like the very poor, often face urgent legal problems.</li> <li>• Advocacy to secure and protect government benefits is important to working class families.</li> <li>• Sliding scale fees for the working poor would be appropriate in non-emergency cases.</li> <li>• The legal problems of the very poor and the working class overlap significantly.</li> </ul>

Jurisdiction	Program Title and Description	Criteria for Client Eligibility	Scope of Assistance / Case Characteristics	Legal Framework	Statewide/ Municipal/Other	Funding	Other Notes
Massachusetts	<b>The Housing Assistance and Representation Pilot Project provided full legal representation to low-income tenants facing eviction through two separate pilot studies. The first reviewed and handled reviewed eviction cases in District Court in Quincy, MA, ultimately serving 470 tenants. The second study operated within Northeast Housing Court, one of the five Housing Courts.</b>	Criteria for eligibility included three categories of cases: (1) cases involving mental disability; (2) cases involving criminal allegations; and (3) cases where a power imbalance between the landlord and tenant was likely to deprive the tenant of an affordable apartment despite a viable defense.	Full representation.  In Northeast, an existing Lawyer for the Day program was in place; lawyers working for the Lawyer for the Day program did not appear before a judge on behalf of control group (non-pilot program) tenants.	The two pilot projects were initiated by The Boston Bar Association Task Force on the Civil Right to Counsel.	Quincy, Massachusetts and Northeast Housing Court.	The two pilots were privately funded by Boston Bar Foundation, The Boston Foundation, and Massachusetts Bar Foundation.	<p><b>Effectiveness:</b></p> <p><u>Findings:</u></p> <ul style="list-style-type: none"> <li>• The Quincy project served 470 tenants, 27% of which were met the criteria for the study.</li> <li>• Tenants from the Quincy pilot were twice as likely to retain possession of their homes, with two-thirds retaining possession.</li> <li>• Tenants in the Quincy pilot achieved legal results that were five times as favorable in terms of rent and monetary awards than those outside the pilot program.</li> <li>• The Northeast Housing Court Pilot showed little difference between control group and pilot program tenants (both groups received legal assistance, but only pilot program tenants had lawyers appear before a judge on their behalf).</li> <li>• Clients in the treated group received slightly higher awards (\$122,235 vs. \$109,778 total) and were slightly</li> </ul>

Jurisdiction	Program Title and Description	Criteria for Client Eligibility	Scope of Assistance / Case Characteristics	Legal Framework	Statewide/ Municipal/Other	Funding	Other Notes
							<p>more likely to go to court following the notice to quit (~50% v. 40%).</p> <p><b>Northeast Program:</b></p> <p>In Northeast, 54.3% of the cases involved cases taken at the notice to quit stage.</p>
Illinois	<p><b>“Access to Justice” pilot programs were created with the signing of the Access to Justice Act in August 2013.</b></p> <p>Two pilot programs:</p> <ul style="list-style-type: none"> <li>- A “statewide military personnel and veterans’ legal assistance hotline and coordinated network of legal support resources;”</li> <li>- “[A] pilot program to provide court-based legal assistance within a circuit court in each appellate district of this State.”</li> </ul>	The military personnel and veterans’ legal assistance resources appear to be limited to veterans and military personnel.	Full representation and/or legal assistance.	Authorized by the Access to Justice Act, 705 ILCS 95/10.	Statewide.	Special fund of the state treasury consisting of fees collected by Section 23.7g of the Clerks of Courts Act. <i>See</i> 705 ILCS 95/15,	

EXHIBIT C

MEMORANDUM ON PROGRAMS IN OTHER COUNTRIES  
INVOLVING RIGHTS OF REPRESENTATION FOR INDIGENT PERSONS  
IN CIVIL MATTERS



**Re:** Report on Public Funding of Civil Legal Services Around the Globe  
**To:** Task Force to Expand Access to Civil Legal Services in New York  
**From:** Bettina B. Plevan  
**Date:** November 18, 2014

## Memorandum

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The Task Force undertook to examine the experience of other countries where public funding is provided for legal assistance in civil matters. The history of such support in the United States is fairly recent, dating from the 1960s. However, in many other countries, such support has been long-standing, may be guaranteed by the constitution, and often administered by the state. As summarized below, the support provided in many countries is far more expansive than what is provided in the United States and takes many different forms, including direct payment to lawyers providing such services. We are grateful to the many law firms around the globe who assisted by providing summaries of the experiences in their countries to allow us to prepare this summary. Their names are listed in the acknowledgement at the end of this report.

(1) **United Kingdom**

In the UK, “Legal Aid” is a common term used to describe the provision of government funding for those without the means to pay for the services of lawyers. The types of civil matters covered include entitlement to welfare/social security benefits, actions involving debts such as mortgage lending or other action that might force a person to sell their home, bankruptcy, action taken by a creditor; housing-related entitlements and related litigation such as eviction, person in need of assistance with repairs to a rented home, prevention from harassment, defense of anti-



social behavior, actions by a landlord or the counsel; discrimination in the provision of goods and services (not employment), educational entitlements; immigration and asylum issues; family, children, and the domestic abuse, including family court proceedings, family law cases such as divorce and custody as well as domestic violence; mental health issues; order of protection work involving personal welfare and community care of the physically and mentally disabled. The types of matters that are not covered include employment law, most immigration cases, personal injury, torts, conveyancing, wills and trusts, private family law and business law matters.

In terms of eligibility, any person who receives state benefits is automatically eligible. In general, to otherwise be eligible, a person's gross monthly income must be less than £2,657. However, there is some flexibility depending on the amount of the person's disposable income. Other rules apply if the person has capital, owns a home, or is over the age of 60. The funds to pay for these services come directly from the government through the Legal Aid Agency, an Executive Agency of the Ministry of Justice. The Legal Aid Agency contracts with legal services organizations, which are authorized to provide the services mentioned above. The organizations can assign work to solicitors in private practice, law centers, and some citizens' advice bureau. In addition, lawyers can provide services on a pro bono basis or through other nonprofit organizations similar to the work done in the United States.

(2) **The Netherlands**

Under the Constitution of the Netherlands (and the European Convention on Human Rights), each citizen is regarded as having the right to access the courts and to seek legal advice and to receive state financed legal aid if means do not suffice. This latter entitlement comes from Section 17 of the Constitution of the Netherlands which states: "No one may be prevented against his will from being heard by the courts to which he is entitled to apply under the law."

Section 16 of the Constitution provides: “Everyone may be legally represented in legal and administrative proceedings [and] terms concerning the supply of legal aid to persons of limited means shall be laid down by act of Parliament.” Pursuant to the Constitution, the Dutch Legal Aid Act provides legal aid to people of limited means who are unable to bear the costs of legal representation. The Legal Aid Board regulates the granting of aid and assesses each application to determine whether the applicant has the limited financial capacity to qualify for assistance and to some extent whether the case has sufficient merit to provide the representation.

Importantly, there is no restriction on the type of matter for which civil legal services are provided by the state so long as it concerns a legal interest connected with the Dutch jurisdiction. The Legal Aid Fund, which compensates private lawyers who register with the Legal Aid Board and must comply with a set of quality standards, is financed by the state, although a small sum is ordinarily paid by the client in an amount commensurate with their ability to pay. Dutch trade unions and consumer organizations also provide legal aid. The quality of the work is assured by organized bar.

Generally, the private lawyers who handle these matters obtain the cases either by being contacted by a client directly or through a legal services organization. Typically, the lawyer charges a fixed fee and submits the bill to the Legal Aid Board for the work performed. As in many other countries, in addition to this form of guarantee legal aid for civil matters, large law firms in the Netherlands provide pro bono legal assistance as well, recognizing this voluntary service to be part of their corporate social responsibility. NGOs or individuals having a case which bears significance for the society at large are often represented in this fashion.

(3) **France**

The first statute governing legal aid for civil legal services in France dates from January 22, 1851. Not surprisingly, the legal aid regime in France has been modified many times in the last 150 years. Generally speaking, current law provides for two different types of legal aid, legal aid in the litigation meaning before a court, which can be full or partial, and legal aid for access to the law which includes general advice and assistance to individuals on their rights and obligations and how to exercise those rights with non-contentious remedies. This latter form of assistance is provided to the public in areas such as town halls, courts, or specific areas devoted to providing free legal advice.

The statute authorizing this form of legal aid in France covers any type of civil matter. There are no exclusions as to subject matter. In terms of eligibility, the individual must be a citizen of France or the European Union, or a foreign person living permanently in France. To be eligible for legal aid in litigation, there are thresholds for financial resources that cannot be exceeded. There are no limits placed on the number of hours of free legal services provided.

The funding for these legal services is provided by the state at the national level for legal aid in litigation. For legal aid for access to the law, the funding is provided by the state, the local authorities, bar associations, and associations from other legal professions such as bailiffs. To access these benefits, an individual must make an application and demonstrate that their financial resources are below the established thresholds. The applicant may choose his or her own lawyer. The lawyer can refuse to take the case unless he or she has worked on it before, and if that occurs, a lawyer will be appointed by the head of the Bar Association. If it is a case of full legal aid, the lawyer will receive a fixed fee from the Bar Association (which itself has received the sums from the state). There is a scale determining what amount will be paid to the lawyer. In

the case of partial legal aid, the lawyer is allowed to negotiate with a client and in addition to the fixed fee from the Bar Association can receive an additional amount but this amount would be taken into account and must be agreed to in writing. It also possible that lawyers will take cases for free or on a pro bono basis to give advice, and law firms also decide to promote pro bono work and encourage lawyers to volunteer their services. Some bar associations such as the Paris Bar promote pro bono work and encourage lawyers to perform such work and give awards to lawyers who volunteer their services in that way.

(4) **Ireland**

In Ireland, legal aid is administered through law centers throughout the county by solicitors who are full-time employees of the Legal Aid Board. The legal services are provided by government funding on a national level, although the Legal Aid Board also receives contributions and income from recoveries by individuals who are assisted by the Legal Aid attorneys. As in several other countries, there is a separation of civil legal aid from civil legal advice but both are covered by the legal aid system in Ireland. The entitlement to civil legal advice is very broad, excluding primarily conveyancing and criminal matters. With respect to proceedings in court, legal aid is available for most types of civil proceedings but exceptions include defamation, licensing, property disputes and certain conveyancing matters. In practice, the Legal Aid Board handles primarily family law and refugee-related matters. Most of the services (unlike other western European countries) are provided by lawyers employed directly by the Board but in addition, the Board may establish panels of independent lawyers to provide services on a case-by-case basis. To obtain these services, an individual must contact their local law center which will allocate appointment of the lawyer to them. As in some other countries, a potential client must pay some contribution to the Board's costs but this is very limited in nature and will depend on the

person's disposable income. For advice as opposed to legal proceedings, the minimum contribution is 10 Euros. The person applying for legal aid must satisfy a financial eligibility test, must show merit to their case and have case that falls within the "remit" of the Board. In addition to the provision of legal services through the Legal Aid Board, there are other organizations in Ireland that provide legal assistance and large law firms also provide assistance on a pro bono basis.

(5) **Brazil**

In Brazil, legal services to the poor are provided through the State and Federal Defender's offices which are composed of public lawyers who are mandated to prioritize the service in areas with the highest rates of population density and social exclusion and who cannot bear the costs of legal services. Criteria have been established for determining eligibility for these legal services. Due to the high demand and limited government resources, the Brazilian Bar Association has local agreements with the Defender's offices so that regular private lawyers can supplement the needs of legal assistance to the poor. Through this arrangement, individual lawyers register at the Defenders' office and are designated to act on a rotating basis.

The services rendered are compensated by government funds or out of the budget of the Defender's Office. A government statute determines the amount of fee to be paid to the lawyer according to a preset schedule although a factor could also be the degree of success although this provision is not used consistently. The Federal Constitution defines that the types of matters to be handled by the Defender's Office shall include consultation, promotion of human rights, and the defense of all individual and collective rights "free of charge." These services include those relating to family law, constitutional rights, consumer rights and environmental law. They may include any types of issues and there is no limit on the number of hours of free legal services that

can be provided. However, there is no coverage for labor/employment matters largely because individuals may appear before the labor courts on behalf of themselves or represented by their union without any costs.

The funding for these Defender's Offices is provided by the federal government of Brazil but funds also may come from attorneys' fees earned in lawsuits donations, etc. An individual seeking such services will apply to the appropriate Defender's Office and could be required to wait if no individual is available to handle their matter at that time. In addition to lawyers who are compensated by the Defender's Office, the Brazilian Bar Association provides pro bono services to nonprofits and NGOs largely on a consultancy or legal advisory basis. Finally, although it is not a common practice, non-lawyers can assist poor people informally if assisted by a lawyer but they are not able to represent poor persons in court.

(6) **South Africa**

The right to legal representation is guaranteed by the Constitution of the Republic of South Africa adopted in 1996 and entitles certain individuals to the right of legal representation subject to specified conditions. Legal representation is provided by the state or at state expense. There are no provisions in the Constitution directly entitling adults to the right of legal representation in civil matters, although this right could be implied from certain provisions in the Constitution.

The South African government has established Legal Aid South Africa whose mandate is to make legal services available to indigent persons at state expense. Legal Aid SA can provide these services itself (by its own employees) or through private attorneys who are paid by Legal Aid SA to provide other representation. To implement this program, Legal Aid SA has established Judicare, a program whereby private attorneys are accredited by Legal Aid SA to provide such services. In addition, the four law societies of South Africa have adopted rules

requiring that its members generally perform pro bono services of not less than 24 hours per calendar year. The law societies have organized programs whereby they act as clearing houses for the members of the public who qualify for legal aid and are seeking legal representation. In addition, many of the universities in South Africa have law clinics that provide legal services to indigent members of the community as well as provide providing educational programs.

Through the law societies, there is in effect a mandatory pro bono program. The services provided are civil in nature and includes representation of the most vulnerable in the community, the poorest of the poor, children under the age of 18, women who are victims of domestic violence, etc.

(7) **India**

In India, legal aid is provided in civil matters for free pursuant to the Constitution of the State of India with respect to civil matters. The Constitution states: “The State shall provide ‘free legal aid’ . . . to ensure that opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities.” Other rights are guaranteed by statutes enacted in accordance with the constitutional provision including the Legal Service Authorities Act of 1987. The Legal Service Authorities Act established the National Legal Services Authorities and other legal services authorities at more local levels. The Supreme Court of India and other high courts are required to establish their own legal services committees. All of these legal services institutions are funded by the government and the stakeholders include the judiciary, the Bar, the government, and civil society. Definitions of eligibility include members of specific scheduled castes or tribes, the victims of trafficking, a woman or child, mentally or otherwise disabled person, someone who is a victim of a mass disaster, ethnic violence, or natural disaster, custody dispute or issues related to psychiatric hospitals or nursing homes and has income below a

certain level. There are no limitations on the types of civil cases for which legal aid is provided in India, although there may be certain types of cases where the individual would be required to pay a portion of the expenses. Otherwise, the government is committed to ensuring equitable access by providing the financing for these services. The Finance Commission allocated \$1 billion to these efforts for the period 2010 to 2015.

One method for obtaining counsel is that in a court proceeding, the court will assign a “pleader” to an unrepresented indigent person. In addition, the LSAA maintains a panel of interested legal practitioners who may apply to be a member of the panel. The legal services institution will then select a lawyer to be assigned to the indigent person who has established eligibility. Different panels may be maintained for different types of cases. Lawyers who are designated as “retainers” under the panel system work exclusively for Legal Aid and are always available to handle these cases. Other lawyers are assigned through the legal services system and are paid an honorarium for handling such cases. Paralegal volunteers and social service institutions are also permitted to assist with legal services for the poor in India.

(8) **China**

In China, the regulations on legal aid were promulgated by the State Council of the People’s Republic of China effective as of September 1, 2003 (“ROLA”). This sets up the general legal framework for a legal aid system in China. At the national level, the Ministry of Justice established a China Legal Aid center in 1997 to supervise legal aid work across China. Legal aid centers have been created by provincial government departments and at the city level; the same has occurred at the county level. The civil matters that are covered by the legal aid system in China include, for people unable to afford legal services, claims for government compensation, social insurance, pension, elderly support, alimony and child support, labor compensation and



the rights and interests arising from Good Samaritan behaviors. The person seeking such legal assistance must establish a need to safeguard their legal rights and financial hardship. The Chinese government is responsible for financial support to enhance the legal aid work through the China Legal Aid Foundation which is a national public foundation. Lawyers and law firms have the duty to undertake the legal aid work under PRC laws and must perform this work for citizens who need legal assistance in accordance with the applicable legal aid policies and regulations. Paralegals, notaries and other staff and legal aid centers also provide legal aid services as “grass roots legal workers.” This has increased.

**Acknowledgements:**

We are deeply grateful to the following lawyers and law firms who provided detailed reports on legal aid for civil matters in their country:

United Kingdom – Proskauer Rose LLP, London office (Peta-Anne Barrow and Daniel Ornstein)

The Netherlands – Stibbe (Astrid Helstone & Michiel Coenraads)

France - Proskauer Rose LLP, Paris office (Marianne Le Moullec and Mirelle Dany)

Ireland – Mason Hayes & Curran (Melanie Crowley)

Brazil – Souza, Cescon, Barriou & Flesch Advogados (Vivian Rodrigues and Dario Rabay)

South Africa – ENS Africa (Lindie Saunderson, Ngwako Raboshakga and Stuart Harrison)

India – Nishith Desai Associates (Vikram Shroff and Rahul Rishi)

China – Proskauer Rose LLP, Beijing office (Ying Li)

**EXHIBIT D**

**DRAFT OF PROPOSED JOINT LEGISLATIVE RESOLUTION**

## PROPOSED RESOLUTION

WHEREAS, This legislative Body, by resolution adopted in 2010 (S. 6368/A. 1621), recognized that the fair administration of justice requires that every person who must use the courts have access to adequate legal representation and, accordingly, requested that the chief judge of the state annually report to the governor and the legislature concerning the findings of his statewide hearings to assess the extent and nature of unmet civil legal services needs, and the work of the Task Force to Expand Access to Civil Legal Services in New York; and

WHEREAS, These annual reports have consistently demonstrated that, for a significant percentage of those New Yorkers who live in poverty (defined for these purposes as living at or below 200 percent of the Federal poverty guidelines), effective legal assistance can have profound impact upon one's ability to realize or protect the essentials of life, which may include remaining in one's home, escaping from domestic violence, stabilizing a family, maintaining or obtaining subsistence income or other vital government services, securing adequate health care or pursuing an education; and

WHEREAS, These annual reports also have shown that, when impoverished New Yorkers must appear in the state's civil courts without legal representation, there is a greater public cost because these courts must divert more of their limited resources to assist them, and because their cases are much less likely to be settled early or otherwise disposed of and therefore they add to court calendar congestion; and

WHEREAS, Although, in the wake of this Legislative Body's 2010 resolution, the state has committed greater fiscal resources to the provision of civil legal services for the poor and the Task Force has secured greater service contributions by law schools and bar associations and the private bar, it remains the case that today that a vast number of New Yorkers who live in poverty actually do not have access to effective legal assistance when necessary to realize or protect the essentials of life; and now, therefore, be it

RESOLVED, That it is the sense of this Legislative Body that the state must continue its efforts to achieve the ideal of equal access to civil justice for all; and be it further

RESOLVED, That, to accomplish this end, the policy of the State of New York is that every New Yorker who lives at or below 200 percent of the Federal poverty guidelines have effective legal assistance in matters involving the essentials of life (housing, family matters, access to healthcare, education and subsistence income).