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Thank you, Chair Hoylman-Sigal and the Committee on Judiciary, and Chair Brisport and the Committee on Children & Families, for the opportunity to submit testimony on the critical matter of operational and other challenges in the New York Family Courts. For 30 years, Her Justice has stood with women living in poverty in New York City, committed to advocating for them in the Family Courts which they must access for legal relief that can provide essential security and stability to them and their families. We are grateful for the opportunity to describe what we view as the need for change based on our experience working with litigants, and how innovations like the advent of e-filing and virtual court appearances in Family Court cases during the COVID-19 pandemic point to opportunities to improve efficiency in the courts and therefore access to civil justice for New Yorkers living in poverty. We look forward to partnering with the Senate and the Committees to ensure that the civil justice system functions for all New Yorkers and advances economic justice and safety for women living in poverty.

Organizational Background

Through our pro bono first model, Her Justice pairs thousands of well-trained and resourced pro bono attorneys with women who have urgent legal needs in our practice areas of family, matrimonial, and immigration law. Her Justice offers information, advice, brief services and full representation in support, custody and visitation, and order of protection matters in Family Court; divorces in Supreme Court; and immigration matters under the Violence Against Women Act in Federal proceedings. We offer representation for many of the cases other legal services organizations do not have the bandwidth to take on – child and spousal support matters, and litigated divorces, for example. During the long pendency of cases, Her Justice lawyers and the pro bono attorneys who provide representation continue to work with clients and stabilize the cases. This approach has enabled us to assist tens of thousands of women over the years, far more than we could have reached relying exclusively on direct service. By ensuring that more women have lawyers by their side in a system historically designed to have poor people navigate it alone, we ensure their voices and concerns are heard and we begin to break down systemic barriers to justice.

In 2022, Her Justice provided a range of legal help to more than 5,300 women and children in our practice areas of family, matrimonial and immigration law. Among the clients served, 92% are women of color, 83% are survivors of domestic violence and more than half are immigrants.



Over a third of our clients do not speak English, which means they are effectively precluded from the legal system if language resources are not available. Recognizing the systemic barriers facing our clients, Her Justice also advocates for policy reforms in the civil justice system that lift women and their children out of poverty. As a trusted, long-standing organization, Her Justice seeks to elevate the issue of civil justice reform and advance economic justice for women and their children. Our policy work is informed by the lived experience of our clients – women living in poverty whose livelihood and well-being are often determined by the civil justice system. The civil justice system is often invisible to those outside of it, which makes a focus on elevating the reforms to this area that much more essential for our clients and all who depend on it.

Systemic Delays and Inefficiencies Impede Critical Relief in Family Courts

Women living in poverty, particularly Black and Brown women, are forced to rely on a civil justice system that has been historically and systematically under-resourced. They spend immeasurable hours, days and years moving through the Family Courts to secure basic freedoms – personal autonomy, financial independence, and safety from abuse – through orders of protection, financial support from partners, or court-ordered visitation schedules. While the Family Court system was originally imagined as one without lawyers, over time the process has become so complicated that those who are unrepresented often come up short. The founding assumption that litigants did not need lawyers was part of a system designed to make decisions on behalf of low-income people; however, with a lawyer our clients can be part of the debate about their own future. From our years of experience representing women in the civil justice system, we know that the burden of economic instability due to stalled support or custody proceedings too often falls on women like our clients. This burden is even more onerous for our undocumented immigrant clients who are often doubly disadvantaged waiting years for the historically under-funded immigration system to review their applications for legal status and employment authorization documentation (or work permits) which are critical for families’ stability.

The COVID-19 pandemic brought into greater focus existing challenges in the Family Courts. The Family Courts announced a physical closure to the public in March 2020 at the start of the pandemic. More than three years later, the New York City Family Courts have not fully resumed normal operations – creating confusion and uncertainty for litigants – and are now facing a significant backlog of cases.¹ In the New York City Family Courts, the length of time between adjournments is

¹ While not squarely an “operational challenge,” the lack of data transparency around the nature, duration, and outcomes of many types of proceedings in Family Courts poses a significant barrier to identifying solutions to needed reform and to the system’s accountability to those who rely on it. The court administration should invest technological and other resources to engage in data analysis and make that data publicly available. In 2022, the court administration published a Family Court Caseload Activity [dashboard](#) on its website in response to a [report](#) by the New York City Bar Association and the Fund for Modern Courts, to which Her Justice contributed. This dashboard is a promising start toward greater transparency of information about case activity. Additional investment in data analysis and transparency will provide guidance for reform efforts (especially around any lessons learned from the operational challenges that arose during the COVID-19 pandemic), including strategies to avoid needless delays in the adjudication of cases, and for decisions system-wide around allocation of resources such as legal assistance. Ultimately, greater transparency of data about the nature and outcomes of cases will also make the Family Courts more accessible to litigants and enhance the accountability of the court system.



long and unpredictable. Some trials or hearings are held virtually, but some cases suffer scheduling issues which mean trials are held one hour at a time over many months. Delays are not a theoretical problem for the litigants they impact. Not only do they delay justice in individual cases, but they can cause litigants to even lose employment because of missed work – a story we have heard from Her Justice clients.

Child support. Timely awards of child support are critical for custodial mothers, especially those already struggling to make ends meet. Most victims of partner violence suffer from economic abuse, making fair child support awards essential to a survivors' ability to seek safety and maintain independence, while rebuilding a stable home for their child. There are typically almost 200,000 filings for child support each year in the New York Family Courts, indicating a broad need for the courts' help with this relief. Yet when the New York City Family Courts closed at the start of the COVID-19 pandemic, child support was not deemed an "essential" case type for which litigants could file petitions. For more than a year and a half, parents living in New York City could not file support petitions, which means they could not start the process to obtain, modify or enforce child support. Particularly harmful for survivors of domestic violence, this pause and resulting uncertainty allowed abusive partners who owed child support to withhold payments without immediate accountability through the courts.² Child support petitions filed pre-pandemic were eventually adjourned well over a year past the original filing date (and in some cases were not heard for two years). Her Justice clients who attempted to file a child support petition by mail or through the court system's Electronic Document Delivery System (EDDS) during 2020 told us that they later learned the petitions were never filed by the court clerks. There remain unacceptable delays in child support cases in the New York City Family Courts.

The lengthy delays in pending cases cause irreparable harm to our clients and often to the noncustodial parent as well since many have been accruing arrears for months or even years before a final order is issued. Take the case of Andrea*, a mother of two, who filed a support petition in July 2018 after being awarded a five-year stay away order of protection from her husband. Though awarded a temporary order of support in August 2018, her husband stopped paying the court-ordered amount in January 2019. The case was scheduled for trial to begin in January 2020, then repeatedly adjourned throughout the year and eventually began in November 2020. The trial lasted a total of four days, with only one day scheduled at a time in November 2020, February 2021, May 2021, and November 2021. Despite both parties being represented since the beginning of the case and the parties timely submitting summation statements in January 2022, Andrea waited almost one year to receive a final order of support, which was almost three years after the trial was scheduled to begin. No parent, custodial or noncustodial, or child should have to endure such delay in receiving critical relief.

² The barrier to seeking child support in the Family Courts appears even more egregious when contrasted with the treatment of debt collection actions in New York City early in the pandemic. Although new consumer credit filings in the five New York City civil courts saw a brief lull between April and June 2020, by July 2020 the City was back up to its regular average of about 6,754 new consumer credit filings per month.



Custody & Visitation. We know that for domestic violence victims with children, co-parenting a child in common with the abuser can be dangerous as it allows contact with the abuser. The public health crisis presented new challenges for separated parents sharing time with children. As with support cases, custody/visitation cases were not deemed “essential” cases for which new petitions were allowed in the early stages of the pandemic. With compounding delays, the New York City Family Court continues to be plagued by a backlog in this area. Some of our clients’ cases that were filed before or early in the pandemic were scheduled for one court appearance, and then adjourned for many months. It remains to be seen how efficiently and effectively the courts will handle the backlog of cases, along with the operations of virtual court appearances for some cases. And we know from our clients’ experiences that even modest delays in getting help from the courts to resolve high-stakes custody disputes can put victims of intimate partner violence at risk of further abuse.

Given the extreme financial hardship for many people living in poverty that worsened during the public health crisis and their reliance on the Family Courts for essential relief, we need to adopt practical solutions to the exponential delays in both Family Court to ensure that all New Yorkers have access to justice.

A Greater “Menu of Options” Would Benefit Families and the Courts Overall

The New York Family Courts generally address legal needs with a “one size fits all solution”: for most case types, individuals must engage in lengthy litigation in an overly complex system which, for those without an attorney, can be exceedingly difficult. But there is an opportunity for the court system to consider a better response to individual legal needs by providing a greater menu of options for dispute resolution that considers the nature of the legal and other issues presented by the family.

An example of advocacy for child support reform. Her Justice believes that the fairness and efficiency of the child support system should be improved to ensure that children receive the most support parents can afford. Informed by extensive experience working with clients and knowledge of systemic barriers to fair child support, in 2017, we set out on a two-year court watching project in which 89 volunteers observed 797 child support case appearances in the New York City Family Courts to get a better understanding of potential outcomes for the more than 90% of parents in these cases who are unrepresented by legal counsel. That project culminated in our March 2021 original Policy Report: [Towards Justice for Parents in Child Support Courts](#). Based on our findings and recommendations for reform, we crafted and advocated for a State legislative proposal to create “a straightforward process for straightforward cases.” The version of the legislation introduced last year (A.5735/Reyes, S.5269/Persaud) would authorize the development of an expedited settlement conference process in New York Family Court for parents whose income is straightforward or undisputed to agree on support rather than litigate in court. For parents who choose to engage in the expedited conference option, the legislation directs that court conference staff would provide parents with certain notices to ensure that they understand the settlement conference process, their



related rights, and the implications of reaching agreement on child support. Importantly, the proposed settlement conference would preserve due process protections for parents – providing court review and confirmation of any agreement reached and, for parents who do not agree on support, the option of a full hearing in Family Court. Further, the proposal includes accountability measures that direct the Office of Court Administration to evaluate the expedited conference process and make publicly available data about the effectiveness and impact of the conference option, helping to ensure that the courts are achieving their mission to deliver Family Court justice fairly and expeditiously while protecting the due process rights of litigants.

Solutions like these can provide additional options for parents, improve engagement in the legal process, and benefit the efficiency of the system overall.

Litigants and Lawyers Need Clear and Accessible Information

We know that legal information plays a critical role in empowering individuals, and especially survivors of intimate partner violence, to make decisions about when and whether to engage with the legal system. Yet the Family Courts have traditionally failed to provide adequate information to litigants about basic courthouse information and threshold procedural steps in litigation. The Family Court website is difficult to navigate, and the court administration has not innovated other effective ways to communicate about court operations to litigants. (One shocking example of this was when, at the beginning of the pandemic, a Family Court in the city posted a paper sign on its door – only in English – announcing that the court was closed.) This frequently causes litigants to be unprepared to move their cases forward, which only compounds overall delays in the courts.

One key area of confusion for Her Justice clients entering Family Court is the basic steps necessary to serve process on the adverse party. Many individuals who seek assistance from Her Justice have already filed or attempted to file petitions in Family Court. Even for those who have successfully navigated the filing process, many still are unable to effectuate service of papers on the adverse party to provide notice of the action. Parents who file a child support petition in Family Court, for example, receive information about how to deliver legal papers to the other parent, but it can be confusing and overwhelming even if explained in plain terms. Without adequate information, litigants risk attending court on multiple days only to have the case dismissed for lack of service, requiring them to refile. This is a pervasive problem: in our Child Support Court Watch project, Her Justice found that one quarter of the observed appearances that were adjourned were adjourned due to issues with service of process. As a court system designed to be navigated without a lawyer, the courts must innovate to simplify both court forms and processes³ and then ensure clear and transparent communication about critical information to litigants. This will help litigants participate

³ See American Academy of Arts & Sciences, *Civil Justice for All*, at 21 (2020) (noting “Simplification should proceed on the assumption that most people pursuing matters in court are not lawyers and do not have lawyers representing them....”), https://www.amacad.org/sites/default/files/publication/downloads/2020-Civil-Justice-for-All_0.pdf.



more fully and with greater accountability in their cases and will improve the efficiency of the process overall.

An effort by the Family Court to provide more readily accessible and clear information about court processes will also help lawyers who practice there, including pro bono attorneys who may not be as familiar with the unwritten rules of practice and procedure in the courthouse. Any particularized rules or practices of judges, magistrates, and referees should be clearly communicated and easily accessible on the Office of Court Administration website. Pro bono attorneys that work with Her Justice clients have reported frustration with only learning about a judge or magistrate's individual rules or practices after unknowingly violating them. This lack of transparency frustrates attorneys and the court, and it undermines an attorney's ability to effectively represent and advocate for clients.

Advances in Technology Will Increase Access to Justice

Traditionally, Family Court is an "in person" court, requiring litigants to enter the courthouse even to file a petition which the court may not address for many months. This is onerous for New Yorkers, especially those living in poverty, as it may mean missing a day of work with lost wages or incurring extra childcare costs. The advent of e-filing and virtual court appearances in the Family Courts during the COVID-19 pandemic points to opportunities to improve efficiency in the courts and therefore access to civil justice for New Yorkers living in poverty.

E-filing. One positive advancement introduced during the pandemic was the availability of e-filing through the New York State Courts Electronic Filing system ("NYSCEF") and EDDS for certain Family Court matters and in certain Family Courts. Our clients (those we represent and pro se litigants whom we advise), have been aided by the ability to file documents electronically, which provides definitive proof of the filing date and allows cases to proceed with less confusion or delay due to errors in the mail or other administrative errors. With Her Justice's "pro bono first" model, electronic filing has been a big selling point to recruiting more volunteer attorneys who do not live or work in the borough where a case is filed. Her Justice continues to advocate that the Family Court adopt a streamlined system like NYSCEF, that allows for the Court, litigants, and their counsel to access e-filed documents simultaneously, and that this be available throughout the Family Courts and for all case types. We have also advocated for improvements related to electronic filing, in particular in trial litigation, including the adoption and publication of uniform rules for managing proposed exhibits for trial.

Virtual Appearances. The introduction of virtual appearances in Family Courts has gone far in improving access to justice for our clients, many of whom are caring for young children or need to be at work in order to provide for their families. Scheduling time certain appearances rather than the traditional general calendar calls has also increased litigation capacity for attorneys, allowing them to take on more matters and assist more clients. We recommend that the Office of Court



Administration make virtual appearances presumptive (unless the parties agree to in-person appearances) in Family Court cases until the date of hearing or trial, and consider virtual hearings and trials if safe and feasible for litigants and attorneys. We also propose that the Office of Court Administration adopt and publish on the court website a set of uniform rules for virtual hearings and trials (including the handling and exchange of exhibits), to supplement the basic guidelines that have been published, and for the benefit of both attorneys and pro se litigants.

As New Yorkers, we are committed to lifting our community up. When women are lifted, their children and communities rise with them. We thank the Senate and the Chairs and Committees for your commitment to addressing operational and other challenges in the Family Courts where organizations like Her Justice provide essential legal services. We look forward to continuing to work together to remove barriers to civil justice for those living in poverty in New York.

Respectfully,

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**Name changed to protect client privacy.*