



Empire Justice Center

Making the law work for all New Yorkers

Albany ♦ Rochester ♦ White Plains ♦ Long Island

Joint Legislative Public Hearings on the 2013-14 Executive Budget Proposal:

Public Protection

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Good afternoon and thank you for the opportunity to testify on this year's Executive Budget. My name is Anne Erickson and I am President and CEO of the Empire Justice Center. The Empire Justice Center is a statewide, multi-issue, multi-strategy non-profit law firm focused on changing the "systems" within which poor and low-income families live. With a focus on poverty law, Empire Justice undertakes research and training, acts as an informational clearinghouse, and provides litigation assistance to local legal services programs and community based organizations. As an advocacy organization, we engage in legislative and administrative advocacy on behalf of those impacted by poverty and discrimination. As a non-profit law firm, we provide direct legal assistance to those in need and undertake impact litigation in order to protect and defend the rights of disenfranchised New Yorkers.

Our work cuts across some 30 areas of substantive law and involves three inter-related statewide services:

Training, technical assistance and information sharing. As a backup center for legal services, our staff provides training and support to legal services and other community-based organizations to keep them apprised of any change in law, rule or regulation that will impact their clients. In an effort to use our resources as efficiently as possible, we partner with the Western New York Law Center in running an on-line training center which puts critical training sessions at the fingertips of advocates across the state. In our role as an informational clearinghouse, we also run a cross cutting website, bringing information and legal resources right to the desktops of advocates. Our website saw over 4 million hits in the past two years and over 56,000 unique visitors.

Direct legal representation and impact litigation. We provide a range of legal assistance from our offices in Rochester, Albany, White Plains and Central Islip. We are one of the core legal services providers in the Greater Rochester area, representing clients in the areas of civil rights, Americans with Disability Act (ADA) claims, consumer, foreclosure, disability benefits and special education. In the Capital Region we provide representation to public assistance applicants, targeted immigrants and to a limited number of homeowners at risk of foreclosure who have more complex cases. In the Hudson Valley we provide representation to under-served immigrants in need of a range of legal assistance, including help in adjusting their status and seeking employment authorizations. Our Long Island office provides a blend of individual representation, primarily for immigrants and local policy advocacy aimed at improving programs and service for those in need.

For the fiscal year 2011-12:

- We closed 1,680 individual cases directly impacting 3,584 people. In addition to these individual cases, we handled 26 major cases impacting tens of thousands of low income New York families.
- We secured \$26 million in benefits for our clients along with \$3.4 million in on-going monthly benefits. These benefits and monthly income are spent primarily in upstate

communities as our clients pay their rent, buy food and clothing and make other payments in support of their daily living.

- Through our unique partnership with the United Way of Greater Rochester, we helped 13,299 households collect \$24.8 million in tax refunds and credits.
 - We trained and deployed 450 volunteers through our C.A.S.H program – Creating Assets Savings and Hope.
 - Importantly, in our efforts to truly move people further into economic security, we worked with our clients on longer term financial planning and we are pleased to report that:
 - 170 C.A.S.H. clients chose to purchase US Savings Bonds last year,
 - 90 new savings and checking accounts were opened by our clients, and
 - 640 direct deposit accounts were opened.
 - In addition, our trained volunteers helped hundreds of clients download and review their credit reports.

- **Overall, for every dollar invested in Empire Justice in 2011-12, we returned \$5.75 to New York families, taxpayers and the business community.**

Legislative and administrative advocacy. In order to ensure that the needs of low income families are heard within the state’s policy-making processes, we engage in both legislative and administrative advocacy on a range of issues impacting our clients. We are a resource to the legislature on a broad range of substantive law matters and we work closely with the state’s administrative agencies to identify and help address issues that we see emerging from our work with legal services organizations across the state. We have helped lead the effort to secure funding for legal services since 1993 when the state Assembly first provided general funding for the delivery of legal services in New York.

The Continuing Need for Legal Services

In the best of times, across the country and here in New York State, we have barely met 20% of the civil legal needs of the poor. Add to this the increased need for legal assistance during times of recession, and the need far outstrips all available services. In an effort to assess the ongoing unmet need for civil legal services among low income New Yorkers, in early 2010 Chief Judge Jonathan Lippmann appointed the Task Force to Expand Access to Civil Legal Services in New York.

I am honored to be a member of that Task Force which has assisted in the preparation for the public hearings held in each of the past three years in each of the four judicial departments. Leaders of the New York State Bar Association joined the Chief Judge and other leaders of the Judiciary in presiding over these hearings.

As a result of these hearings, the Task Force learned that there are an estimated 2.3 million New York residents who come before our courts each year without a lawyer, and 70% of all civil matters that come before our courts involve family law, consumer credit, and housing-related cases. According to the 2010 Task Force’s findings:

- 99% of tenants in New York City and 98% of those outside New York City are unrepresented in eviction proceedings.
- 97% of parents are unrepresented in child support proceedings in New York City; 95% of parents in child support proceedings throughout the rest of the state face these proceedings without representation.
- 99% of consumers facing credit problems and debt collection cases are unrepresented in New York City.¹

Under the auspices of the Fund for Modern Courts, the Task Force also engaged the services of Lake Research Partners, a nationally recognized polling and research firm, to conduct a survey of the legal needs of low income households in New York. Defining low income as households living at or below 200% of the poverty line, Lake Research found that 1.2 million low income New Yorkers had three or more legal problems over the course of the previous year, problems that were defined as issues that could have been resolved with the help of legal intervention. During that same time frame, legal services organizations across the state closed approximately 265,000 cases – or about 22% of the need when compared to the Lake Research findings.

Changing Legal Needs

The most significant reported changes in the substantive law areas in which people are seeking assistance in 2010 included housing and consumer debt. Ninety percent (90%) of the legal services organizations participating in the survey reported an increase in homeowners seeking assistance in foreclosure matters, 85% are seeing an increase in tenants seeking assistance with evictions, and 81% reported an increase in consumers seeking legal assistance with credit and debt issues.

- **Housing and Homelessness.** Issues relating to housing and homelessness were among the legal issues generating the greatest increase in demand. Sixty one percent (61%) of those responding reported an increase in the number of people seeking legal assistance to address housing code violations; 85% reported an increase in those needing legal assistance to assist in eviction prevention, 91% in

¹ The Task Force to Expand Access to Civil Legal Services, Report to the Chief Judge of the State of New York (2010), available with all related materials at: <http://www.nycourts.gov/ip/access-civil-legal-services/>.

foreclosure assistance, 77% in homelessness, 71% in tenant rights and 61% in utility shut-offs.

- **Consumer Issues.** Of those reporting an increase in demand, every area of consumer law saw a reported increase in demand: credit/debt issues 81%, bankruptcy 78%, non-mortgage loans 70%, medical debt 68%, rent to own issues 54% and tax problems 64%.
- **Domestic Violence.** In the area of family law, 67% of those responding reported an increase in demand among those seeking legal assistance for issues related to domestic violence.
- **Employment and Economic Support.** Almost 70% (69%) of those responding reported an increase in clients seeking assistance in employment insurance claims. Over 50% (54%) reported an increase in demand for legal assistance in dealing with wrongful termination issues. In the area of income supports, 63% of those responding are seeing an increase in requests for legal assistance on issues related to public assistance, 76% are seeing an increase in those dealing with emergency assistance and 60% are seeing an increase in those seeking legal assistance for issues dealing with Food Stamps/Supplemental Nutrition Assistance Program.
- **Immigrants and Immigration.** In the area of immigration law, 59% reported an increase in those seeking assistance in securing special visa protections (for crime victims and victims of human trafficking for example) and 53% reported an increase in immigrant victims of domestic violence seeking legal assistance to pursue protection under the Violence Against Women Act (VAWA).

New York's Approach to Ensuring Access to Justice

In 1983, New York created the Interest on Lawyer Account (IOLA) fund based on a national model to generate funding for the provision of legal assistance. Driven by the interest rates paid on lawyers' escrow accounts, IOLA funding took a nose dive in 1993, at which point the state Legislature first included general fund support for civil legal services in the state budget. Overall IOLA funding dropped by approximately \$12 million at that point, made up by a \$3 million allocation from the state Assembly.

Since then, New York's commitment to ensuring access to justice in civil matters has been a combination of IOLA funding and legislative commitment, led primarily by the New York State Assembly under the leadership of Speaker Sheldon Silver and Judiciary Chair Helene Weinstein. The state Senate in recent years has joined in the effort, investing specifically in legal assistance for victims of domestic violence.

Historically, state funding for legal assistance has been caught in the annual budget debates between the Executive and the Legislature, with each year's funding eliminated in next year's

proposed budget. This caused constant uncertainty and undermined any ability to effectively plan. Legislative funding, which stood at \$13.2 million in the 2009-10 state budget, has been reduced significantly in recent budgets, dropping to \$4.1 million in the 2011-12 state budget – a loss statewide of over \$9 million.

The Legislature took another step forward in 2003 with the creation of the Legal Services Assistance Fund (LSAF), supported by a designated revenue stream from payments for criminal records searches. While initially intended to support the delivery of civil legal services, these funds have been used on an annual basis to support aid to prosecution, aid to defense and a loan forgiveness program originally restricted to district attorneys but later opened to attorneys in legal services who are carrying incredible law school debt. The Legislature also designated approximately \$1.2 million from the Criminal Justice Improvement Account to support legal assistance specifically for victims of domestic violence.

In 2010, Chief Judge Jonathan Lippman embraced the need to support civil legal services as a component of the state's justice system. Noting that access to justice is core to our fundamental principles, Chief Judge Lippman has been tireless in his efforts to determine the level of unmet civil legal needs and to generate support for the critical new investments within the budget of the Unified Court System to meet more of those needs.

Three Core Funding Streams at the State Level: Current Dynamics

New York now has basically three pillars of funding to support the general delivery of civil legal services: IOLA, the Judiciary's funding for Civil Legal Services and the Legal Services Assistance Fund (LSAF) distributed by the Legislature.

As noted in the 2012 report of the Chief Judge's Task Force to Expand Access to Civil Legal Services, the IOLA Fund, dependent as it is on interest income, saw its revenue plummet as the recession hit in 2008 dropping from \$32 million on an annualized basis to \$7 million last year. This loss of \$25 million was thankfully off-set by an infusion of \$15 million from the Chief Judge in the OCA budget in each of the past few years, but IOLA finances remain contracted by approximately \$10 million.

Chief Judge Lippman has again woven into the Unified Court System's budget a balanced approach to addressing the need for stable, on-going funding for legal services so that we can relieve some of the pressure on the courts and better ensure access to justice in this state. In this year's budget he requests \$40 million in funding for civil legal services to continue the investment in these critical services.

On the Legislative front, the Executive Budget proposes to eliminate the legislative programming of approximately \$3.7 million from the Legal Services Assistance Fund. As proposed, the Executive, rather than the Legislature would decide where those funds would be directed. In addition, the Executive Budget would eliminate the \$1.2 million in the Criminal Justice Improvement account that is now directed by the Legislature toward legal services for

victims of domestic violence. We cannot afford to lose this support nor do we believe the Legislature should be excluded from determining the distribution of the funds they have fought so long to maintain.

Impact on Empire Justice

AS CEO of a statewide legal services organization, I can share with you the intense struggles of trying to plan and deliver critical services when faced with constant uncertainty. In 2010, we faced the loss of overall IOLA funding and were unsure of whether the new OCA funding would materialize. We also recognized that any new funds would be distributed through a competitive RFP process and so there were no assurances of funding for any specific organization. So while we all applauded the work of the Chief Judge and the infusion of historic funding into the legal services delivery system as a whole, at an organizational management level we all confronted the immediacy of losing significant funding, the timing of a dramatic cut in legislative funding, the potential loss of IOLA funds and the uncertainty of any new funding being awarded to our work.

In order to effectively manage our finances, Empire Justice was forced to respond by imposing an across the board salary freeze, increasing our employee cost-sharing for health coverage, shifting several staff to part time and imposing 11 days of unpaid furloughs on all staff – basically a two week pay cut – so that we could tread water and pay the bills until the dust settled and we could see where things landed. Our staff were amazing through it all, but it was heartbreaking to watch the struggles: from those in their mid-careers facing their children’s daunting college costs, those nearing retirement now suffering economic losses and those starting out with young children and seemingly insurmountable law school debt all trying to absorb these cuts.

Ultimately, the funding provided through the IOLA “rescue” funds and the new Judiciary Legal Services Funding, combined with the annual support of the Legislature through the LSAF has proven to be a life line for our organization and for the community as a whole.

As the new funds became available, we were able to bring staff back to full time; we were able to unfreeze salaries this past October and to give slight increases for the first time since 2010. In addition, we have been able to begin investing in new staff and with that, we have been able to start broadening our services. With the new OCA funding, we have been able to expand into essential areas including public benefits, low wage worker protections, health care access and ADA issues. We have been able to deepen our services on Long Island in the area of language access, working with the Long Island Language Advocates Coalition and with the Suffolk County police to improve services and supports for those with limited English proficiency.

With our continued legislative funding through the LSAF, we have been able to provide the community with very specialized training, including cross-over training for the domestic violence and disability communities so they better understand the legal rights of those who are both living with disabilities and who are victims of domestic violence. We were able to provide

training to community based organizations working with immigrants, helping them understand the legal issues surrounding immigrant access to public benefits. We have been able to work on language access issues in Family Courts, specifically on Long Island; we are developing statewide resource materials for DV advocates working with clients who have limited English proficiency; and we are expanding our legal assistance for those seeking economic stability.

Clearly we are not alone in confronting these economic uncertainties nor are we alone in the steps we had to take to address these challenges.

We are certainly not alone in our deep appreciation for the work of the Chief Judge and the Legislature in doing all that can be done to meet the needs of those seeking civil justice in New York. We are honored to be part of that system.

As we confront this year's budget, we again urge the Legislature to help stabilize the legal services delivery system statewide and meet as much of the unrelenting need for legal assistance as we can. Specifically, we urge the Legislature to:

- **Support the full budget as presented by the Chief Judge including funding for Civil Legal Services and the IOLA "rescue" funds, and**
- **Maintain and distribute LSAF and Criminal Justice Improvement Account funds in the same manner as last year.**

Thank you for your time and we look forward to working with you as the budget process continues to unfold.

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