



NEW YORK STATE BAR ASSOCIATION

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Testimony

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Joint Legislative Public Hearing
on the

Proposed 2014-15 Public Protection Budget

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I am David M. Schraver, President of the New York State Bar Association, the largest voluntary state bar association in the nation. On behalf of our 75,000 members, I thank you for the opportunity to submit testimony regarding the Unified Court System's budget proposal and to address some related issues of importance to both the public and the legal profession.

The New York State Bar Association, with members skilled in all disciplines of the law, is the statewide voice of the profession and an advocate for the public. Our members are involved in every aspect of the legal system, enabling us to speak from a broad and balanced perspective. We hope you will find our comments constructive as you face the challenges of this budget cycle.

BUDGET OF THE UNIFIED COURT SYSTEM

New York's courts adjudicate millions of disputes, both great and small, and guarantee a "day in court" to all people, including the weak, the poor and the unpopular, as well as those who rely on our courts to resolve their business and commercial disputes, which is important to the state's economy and to ensuring that New York continues to be the business, financial and legal center of the world. The effective operation of the court system is crucial to maintaining an orderly society.

The Judiciary is one of the three, co-equal branches of our state's government. And, the Judiciary is comprised of relatively few judges, given the

caseloads that confront them. Nevertheless, New York's judges resolve a substantial number of cases equitably and efficiently. Similarly, our court administrators face significant challenges, given the size of the court system and the number of courts they oversee.

2014-15 JUDICIARY BUDGET REQUEST

New York's Unified Court System is recognized as one of the largest and busiest court systems, not only in the United States, but in the world.

The Judiciary's budget request reflects a balancing between the constitutional duty to ensure access to justice for all New Yorkers and the obligation to reduce costs wherever possible.

This Judiciary budget currently seeks cash funding of \$1.81 billion for General Fund State Operations, to support court operations. This request represents an increase of \$44.2 million, or 2.5 percent.

The State Bar strongly supports the Judiciary's 2014-15 budget request, in large part, because it would end the 4:30 pm closing time for courtrooms, enhance courtroom security, partially restore the functioning of the offices of the clerks, and, in general, rebuild necessary components of the court system's workforce.

A primary concern of the State Bar in recent years has been that budget cuts have resulted in the Judiciary's inability to keep courtrooms open beyond 4:30 pm.

Keeping courtrooms open later necessarily requires some overtime costs. On the other hand, during trials and certain other courtroom proceedings, there is also a cost to closing the courtroom at 4:30 pm. The budget requested by the Judiciary would provide the resources necessary to ensure that appropriate proceedings will not have to be disrupted due to the need to avoid overtime costs.

In addition, we support the Judiciary's proposed budget because it is intended to stop the decline of the workforce of the courts and address the impact of that decline on the operation of the courts.

Over the past five years, the non-judicial workforce has been reduced by almost 2,000 employees, to a current workforce of approximately 14,500 positions. If the Judiciary does not receive the requested amount, continued downsizing will be necessary to live within the budget. This attrition would be required because the court system faces significant cost increases next year, including mandated increments for represented employees and statutorily required increases for criminal indigent defense.

The workforce reduction has already had a significant impact on court operations. In many courthouses there are insufficient court officers and court clerks to fully staff all courtrooms, with reduction in security and resulting delays in courtroom proceedings. At times back office staff has been needed to open

courtrooms, with the result that back office functions are deferred, causing a growing backlog in the processing of judgments and motions.

The loss of court officers greatly impacts the timely delivery of prisoners to courtrooms, affecting the prompt disposition of cases. In light of the fatal shooting in Middletown in 2012, there should be great concern that the additional loss of security personnel may compromise the ability to keep court facilities safe and orderly, a priority that should be paramount.

In sum, the zero-growth budgets in recent years have had a real impact on court operations – an impact felt by litigants and their counsel, by jurors, and by judges and court personnel. These negative impacts would be exacerbated if the Judiciary does not receive the budget it requested.

Two years ago the Association's Executive Committee issued a comprehensive report about the impact of the 2011-12 budget cuts on the court system. The report includes a statewide analysis, as well as findings about each of the thirteen judicial districts.

The Executive Committee's findings included the following:

- Limited courthouse hours delay the resolution of cases, increase backlogs, and increase costs to litigants;
- Reductions in staff attributable to early retirements, layoffs, and attrition have contributed to a decrease in experienced, knowledgeable staff;

- In many areas, fewer staff members are handling higher caseloads due to increased filings;
- Many emergency matters, including domestic violence and family court cases, cannot be heard on the same day that the underlying petition is filed;
- In criminal cases, delays are leading to longer periods of pre-trial incarcerations;
- The reduction in pro se resources has reduced these litigants' chances of success and slowed down the litigation process for all parties; and,
- Educational and community programs traditionally held in courthouses have been limited or eliminated.

The report stated that the, “dispensation of justice -- like the construction of a courthouse -- is hardly free. There are substantial costs to operating the judicial system -- from running courtrooms to preserving precedents. These costs are borne by the public, which wants in return a sense of confidence in our court system. However, adequate funding is necessary to ensure that ‘essential’ sense of confidence.”

We believe that many of the problems identified in that report continue, as the court system has struggled in recent years with flat budgets but increased expenses.

Among the increased expenses is the necessity of continuing to increase judicial salaries, as approved by the state Special Commission on Judicial Compensation. That Commission rightly recognized the total inadequacy of

salaries that had not been increased since 1999. It noted that judges were resigning over inadequate pay and other well qualified candidates were refraining from seeking to become judges. While the \$8.5 million cost to complete the multi-year increase approved by the Commission is not insubstantial, it is essential if we are to maintain the quality of the judiciary that all of us want and expect.

In sum, we urge funding that addresses the severe impact of previous budget cuts on New York's justice system.

FUNDING CIVIL LEGAL SERVICES

I turn now to an issue that has been among the State Bar's highest priorities for many years: funding for civil legal services. Unfortunately, the need for civil legal services continues to outpace the available resources.

It has long been the position of this Association that it is the obligation of the State to provide a stable funding mechanism for civil legal services. To that end, it is important to reiterate our view that New York State should: 1) create a permanent Access to Justice Fund in the State budget; 2) provide for administration and oversight of this Fund by an appropriate office, such as one within the Judiciary; and 3) work with the legal community to ensure that access to justice receives sufficient support, attention and priority. The proposals in the Judiciary budget request for funding IOLA and civil legal services move us in this direction.

SUPPORT FOR IOLA

As you know, the State Bar was one of the original advocates for the formation of the Interest on Lawyer Account (“IOLA”) Fund. The IOLA Fund, which was created by the Legislature in 1983, is funded by the interest earned on moneys held by attorneys for clients and deposited in interest-bearing accounts at the discretion of attorneys and law firms. The accumulated interest is transferred to the IOLA Fund, where it is used to provide grants to legal service providers around the state. Naturally, we have a great concern over the impact that the weak economy and low interest rates have had on the Fund.

For the past four years the State Bar applauded the Legislature’s approval of the Judiciary’s \$15-million allocation for the IOLA Fund, to help offset declining IOLA revenue due to low interest rates and the decline in the number of real estate transactions. We again applaud the Judiciary for including this item in its current proposal and we thank you and your colleagues in the Legislature for your recognition of the importance of this funding. We strongly urge you to continue your support for this appropriation.

TASK FORCE TO EXPAND ACCESS TO CIVIL LEGAL SERVICES

Chief Judge Jonathan Lippman established the Task Force to Expand Access to Civil Legal Services in New York as part of his efforts to ensure that the courts can meet their constitutional mission of ensuring equal justice for all citizens. The Task Force included judges, lawyers, business executives, and labor leaders from all parts of the state. During the fall, for the fourth consecutive year, the Chief Judge presided over a set of public hearings in each of the state's four Judicial Departments. Members of the State Bar Association assisted in presiding over these hearings. I was privileged to participate in the hearings held in Albany and New York City. These hearings continued to assess the extent and nature of unmet need for civil legal services throughout the state in order to help formulate recommendations to bridge the access to justice gap.

Last November, the Task Force released its fourth comprehensive report on this issue, which, as with the first three reports, provides recommendations to address the need to provide counsel to low-income New Yorkers in civil cases. The findings of the Task Force are overwhelming. The quality of justice in New York's courts is diminished and the rule of law undermined when so many New Yorkers go without legal representation in matters that involve day-to-day life. More than 2.3 million litigants still attempt to navigate the complex civil justice system without a lawyer each year. Representation by counsel is still unavailable

for most low-income tenants in eviction cases and parents in child support matters across the state, and borrowers in thousands of consumer credit cases filed in New York City.

Among the findings of the 2014 Report of Chief Judge's Task Force are the following:

- a. A continuing unmet need exists for civil legal services for low-income families and individuals in all areas of the state.
- b. The continuing unmet need for civil legal assistance in all areas of the state has a negative impact on the functioning of the courts, businesses and government, and a profound impact on vulnerable families and individuals.
- c. New initiatives can streamline and enhance client service delivery, help limit the costs of providing civil legal services, and reduce court expenditures and litigation costs for represented parties.
- d. This year, NERA Economic Consulting updated its previous analyses and found that, as a result of the efforts of the civil legal services providers:
 - The value of federal funds brought into New York State through the provision of civil legal assistance to enable low-income New Yorkers to receive federal benefits (such as Social Security Disability, Supplemental Security Income, federal unemployment, Medicaid and Medicare, Veterans disability, and unearned income tax credit benefits) has risen to \$457.7 million—an \$80 million increase in value relative to the estimate using data only through 2011.
 - Considering the recognized economic multiplier effect of this flow of federal funds on New York State, the total economic stimulus deriving from this provision of civil legal aid to low-income New Yorkers through 2012 comes to \$679 million, compared with a previously estimated economic stimulus of \$561 million for cases

closed through 2011—more than a 20 percent increase in economic benefit for the State relative to the prior year.

- The economic activity resulting from the provision of these civil legal services generated 6,776 jobs—up from 5,600 in the prior year.
- If these economic multiplier effects remain stable, as shown in NERA’s analysis for the 2012 Task Force Report, the inflow of funds in 2012, together with the future value created, result in overall economic benefits to New York State in excess of \$1.5 billion.

The State Bar applauds Chief Judge Lippman and the Task Force for continuing this important work to help address the crisis faced New Yorkers and our court system because of unmet civil legal needs.

Lawyers are committed to doing their share. The bar contributes an estimated two million hours a year in voluntary pro bono legal services to the indigent. Pro bono efforts by the bar have been extensive. However, these voluntary efforts alone are insufficient to meet the needs of the indigent. Ultimately, society as a whole, acting through its elected leaders, must provide adequate public funding to do so.

New York must be able to provide a steady source of funding targeted to the “essentials of life” – housing, preventing or escaping from domestic violence, access to health care – reliably and quickly. Accordingly, the Judiciary’s

proposed budget includes \$55 million to continue to implement the Task Force's recommendations to address the crisis in civil legal services.

In an era when some members of Congress continue to call for the elimination of the Legal Services Corporation, the need for responsible action in New York State is all the more critical. The New York State Bar Association strongly supports the Judiciary's \$55 million request for civil legal services.

**SUPPORT FOR INCREASING THE NUMBER
OF FAMILY COURT JUDGES**

The State Bar also strongly supports the Chief Judge's proposal to increase the number of Family Court judges. Indeed, this issue is among our legislative priorities for 2014. The lack of judges to hear the overwhelming number of cases involving the safety and well-being of children results in long delays, piecemeal trials, uneven access to justice and a public perception that the forum is ineffectual and unworthy of community confidence.

In 2010, the Task Force on Family Court of the New York State Bar Association was appointed by then President Stephen P. Younger to examine the challenges that New York Family Courts face and recommend measures that would better enable the courts to meet the demands placed upon them. In forming the Task Force, President Younger stated:

There may be no place where shaping the future and restoring confidence in our government institutions comes together as clearly as in our family court system. To thousands of New Yorkers, family courts are the face of our legal system but, unfortunately, with overcrowded dockets, too few judges, and far too many delays, these courts resemble hospital emergency rooms and our family law attorneys are forced to perform triage.

Family Court is the place where decisions are made about children, often when parents or other loved ones can't or won't make the difficult decisions for themselves. The court determines paternity for children born outside of marriage. For some, the family-tree begins with adoption and many adoptions are finalized in Family Court. When parents, married or unmarried, separate from one another, their issues of child custody, visitation and child support are heard in Family Court. Issues of family violence are heard in Family Court. When children are accused of committing crimes, their cases are heard in Family Court. Children who are truant or accused of running wild, beyond their parents' control, are petitioned into Family Court. Child abuse and neglect cases are heard in Family Court. Parents' rights to their children may be terminated in Family Court. The Court oversees cases for children throughout the children's stay in foster care.

The issues are as personal and serious as they come -- Family Court determines the fate of our children. Delay is taken most seriously in Family Court. An infant who is removed from his or her mother at birth and spends the first three years of life in foster care will be shaped forever by the experience.

For those who have never been to Family Court and wonder why we care about what goes on there, you need only observe any classroom in any community in New York State. As any school teacher knows, trouble rides the school bus. A child, whose family has problems, brings his or her problems with him or her on the bus and into the classroom. The problems surface on the playground and at childcare. One child's problems affect all of the children around him or her. The quality of decisions made in Family Court affects all of us. It affects the quality of life in a community. The conditions and circumstances in which serious decision-making occurs are an issue for all of us.

Family Court has jurisdiction over child custody and visitation cases, child and spousal support cases, adoptions, proceedings to determine paternity of children, family offenses, PINS and juvenile delinquency matters, child abuse and neglect cases, termination of parental rights petitions and foster care reviews. The safety and well-being of children are at the heart of these controversies.

The proposed Judiciary budget addresses the critical and widely recognized need for additional Family Court Judges. Over the past three decades, the caseload of the Family Court has nearly doubled, from 366,000 filings a year in 1983 to more than 698,000 at the end of 2013. This shocking statistic does not tell the whole story – over the years new statutory requirements, such as database checks in custody and visitation cases, and a mandated increase in hearings in

permanency cases, have greatly increased the time and resources required by each case. Despite this dramatic growth in the work of the Family Court, few new Family Court judgeships have been established.

Over the past 30 years, while the filings have increased by 90 percent, the number of Family Court judgeships has been increased by only 8.8 percent. None have been created in New York City since 1990, and only one was created anywhere in the State in the last decade.

Lengthy delays in hearing and disposing of cases, multiple adjournments as well as the inability to hear cases to conclusion on consecutive days are systemic problems that result from too few judges. Without an increase in the number of Family Court judges, the system-wide challenges of the court will not be fully or successfully addressed. To abide a system which is understaffed is to accede to the conclusion that problems of child welfare and family violence are unimportant and unworthy of serious government attention.

PROPOSED EXECUTIVE BUDGET

INDIGENT CRIMINAL DEFENSE

At the request of then Chief Judge Judith S. Kaye, the Commission on the Future of Indigent Defense Services examined New York State's county-based indigent criminal defense system. The Commission concluded that there is "a crisis in the delivery of defense services to the indigent throughout New York State and that the right to the effective assistance of counsel, guaranteed by both the federal and state constitutions, is not being provided to a large portion of those who are entitled to it." This is an alarming and disheartening finding in a state once lauded for its progressive policies to ensure that people of lesser means are not marginalized.

In 2010, the Office of Indigent Legal Services (Office) was created. The State Bar views the Office as a step in the right direction toward establishment of an independent indigent defense commission with comprehensive powers to oversee and supervise the operation of New York's public defense system.

Given the important function of the Office – to provide support and relief to localities in fulfilling the mandate of the U.S. and New York constitutions – the Legislature should appropriate the funds necessary to expand the operation of the Office and maximize the funds appropriated from the Indigent Legal Services Fund (ILSF) to county governments.

We look forward to working with the Governor, the Assembly and the Senate to ensure that the Executive Budget appropriates sufficient funds to further the cause of making the constitutional guarantee of effective assistance of counsel a reality for all.

PRISONERS LEGAL SERVICES (PLS)

I commend the Governor for including in the proposed Executive Budget funding for an important program that the Association helped initiate after the Attica riot -- Prisoners Legal Services ("PLS").

Based on the concern that prisoners in New York State lacked access to lawyers in order to deal with civil legal matters, in 1976 the Association helped establish PLS. One year later, the Supreme Court of the United States ruled that the states have an affirmative obligation to ensure that convicted felons have adequate, effective and meaningful access to courts, *Bounds v. Smith*, 430 U.S. 817 (1977). In 1978, the State of New York began to fund PLS as a state program.

PLS helps to provide equal access to our system of justice for those who are incarcerated and would otherwise be deprived of such access. The program reflects one of the State Bar's highest priorities -- the concept that the impoverished or unpopular individual should be able to invoke the power of the world's most advanced legal system to protect his or her rights.

We believe that PLS helps inmates resolve problems and reduce tensions

associated with incarceration. Also, we submit that PLS helps to foster a sense of fairness and to enhance the positive attitudes and behavior of prisoners. It also helps in the development of sound correctional policy. One of the greatest values of PLS is that it works to avoid conditions of confinement that resulted in the devastating Attica riot.

PLS is -- and should remain -- a vital, integral part of the state's correctional policies and a critical component of public safety.

We respectfully urge that you work with the Governor to ensure adequate funding for PLS in the 2014-15 Executive Budget.

CONCLUSION

Access to justice has been the primary focus of my remarks, and it is the centerpiece of the Association's legislative priorities. We submit that the court system should be adequately funded to ensure access to justice for the poor, the weak, and the vulnerable. In addition, sufficient judges are needed, especially in the Family Court, to allow these courts to dispense justice in a timely manner. The ability of an impoverished or unpopular individual to invoke the power of the world's most prestigious legal system to protect his or her rights is, and should continue to be, a source of great pride and great strength for all New Yorkers. We urge you to remain committed to protecting access to justice and to ensuring the public's trust and confidence in our justice system.

