

- Testimony:** Amy Barasch, Executive Director
- Hearing:** New York State Joint Public Hearing: To examine the re-opening and operation of New York's courts during the COVID-19 pandemic
- Hosts:** Senate Standing Committee on Judiciary (Chair: Senator Brad Hoylman); Senate Standing Committee on Codes (Chair: Senator Jamaal Bailey); Senate Standing Committee on Housing, Construction and Community Development (Chair: Senator Brian Kavanagh)
- Date:** August 21, 2020

Thank you Chair Hoylman, the Committee on Judiciary, Chair Bailey, the Committee on Codes, and Chair Kavanagh, the Committee on Housing, Construction and Community Development. I am Amy Barasch, the Executive Director of Her Justice, a nonprofit organization that stands with women living in poverty in New York City. For 27 years, justice for women living in poverty has been the core of why Her Justice exists. In 2019 alone, Her Justice provided a range of legal help to more than 4,000 women and 5,000 children living in poverty in New York City in the areas of family, matrimonial and immigration law. Our service delivery model makes us unique: our small legal department of 21 (who speak 10 languages other than English) recruits, trains and then serves as virtual mentors to volunteer attorneys from the best firms across the City. These volunteer lawyers then stand side-by-side with women who would otherwise have to navigate the complex legal system on their own. We use a 21-person legal unit to mobilize hundreds of lawyers who deliver more than \$41 million worth of legal services every year.

Our clients are the working poor, with very limited resources. They live in all five boroughs of New York City. More than half of our clients are foreign-born, a quarter of them need interpreters in court, and most are mothers who are, or become, the heads of their households. More than 75% of our clients are victims of domestic violence.

In this crisis, our unique model has positioned us to be able to pivot quickly and smoothly to provide services remotely, leveraging private volunteerism to prepare clients to engage with the courts when they open. Our civil legal services are essential services, preventing greater crises for people living in poverty down the road. We recognize the severe shortage of lawyers available for low-income New Yorkers. In the civil courts, that burden falls with disproportionate weight on women who represent the bulk of the unrepresented in family and divorce matters. 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. Our staff responds to half of the women who contact us with a broad array of legal advice, review of papers, and tools to ensure they get the best outcomes they can on their own. The other half of the women who contact us receive free full representation on their case for as long as it takes. The majority of these cases - 80% - are handled by volunteer attorneys from the City's premiere law firms, with rich assessment, triage, mentoring, training and support from our staff. The remaining 20% of the cases are handled in-house to ensure that we retain the necessary flexibility to respond to emergency situations, navigate particularly complex or lengthy legal issues, and stay fully engaged in the legal issues on which we train and provide support.

Court Closure Exposes the Access-to-Justice Gap

Her Justice is dedicated to the continued success and growth of pro bono legal services in the Family Courts and matrimonial parts of the Supreme Courts, and believes that those services are an essential component of the Office of Court Administration's efforts to close the "justice gap" in our legal system. Her

Justice and our law firm allies are also committed to making the courts work well for judges, administrators and court personnel, for the sake of the system and those who rely on it. We understand that the Family Courts are operating with limited capacity during the coronavirus public health crisis, and we know that it is safest for all – court personnel, attorneys, and litigants alike – to remain at home at this time. During this crisis, the Courts’ commitment to justice for all litigants, particularly New Yorkers with fewer resources to weather the pandemic, is severely challenged. By necessity, all of us have learned a great deal about working in non-traditional ways, including about the efficacy of remote Family Court services. Given the substantial number of unrepresented litigants in Family Court, and the “digital divide” that has been made clear in the pandemic, Her Justice is concerned about how litigants will be able to appear remotely in court if they are expected to. For litigants represented by not-for-profit legal services attorneys or court-assigned counsel with limited resources, appearing in court remotely may be extremely difficult. For pro se litigants, it may be impossible. Moreover, many Her Justice clients cannot safely or privately appear in court by phone or video. And even if courthouses reopen while there is still a public health risk, some litigants will be unable to appear in person because they remain high-risk or are ill themselves.

We believe now is the time for innovation. The public health crisis has presented an opportunity to evaluate the functionality and efficiency of the courts and to better understand how the system does and should respond to the needs of litigants. We understand there are various task forces and other groups involved in discussions about technological and other reforms to the civil court system at this time. Her Justice and our pro bono partners, along with other legal services organizations that serve people living in poverty, can contribute significantly to that dialogue. Adopting reforms now, based on our shared learning experience during the pandemic, could benefit the administration of justice for years to come.

Legal Services are Essential Services

Her Justice provides direct representation and skilled advocacy in an arena that often fails to adequately serve the legal needs of the poor – our civil court system. In this crisis, as in ordinary times, legal services are essential services. The current public health crisis has exposed the access-to-justice gap in new ways. While our offices are physically closed, the Her Justice team continues to serve our clients and support our pro bono attorneys. Every day, our staff attorneys provide women with information about the legal remedies available to them and advise and strategize with clients to help them weigh their options and decide the course that is right for them and their children.

The Her Justice Legal Help Line remains open during its normal hours and calls are answered by trained staff and volunteers via a remote app and information is transcribed into a web-based database system. We connect with clients via phone and video conference. Clients email or send photos of their documents to their attorneys and sign documents electronically. While court closures mean that clients do not have the ability at this time to affirmatively pursue some legal relief, Her Justice continues to provide essential information and advice to our clients through our telephone intake and to prepare them for eventual court openings. We continue to mentor our pro bono attorneys virtually and send regular communications about updates to court closures and other relevant legal information. We have also reached out to our community-based partner organizations to both share information as well as offer support in the form of webinars for their staff and clients. While our services to clients may look different in some ways during this time of court closures, the need for legal support for women living in poverty is as real and urgent as ever.

Victims of Intimate Partner Violence. Many of our clients must engage with the New York City Family Courts to get legal relief that is critical to their safety and well-being; for example, orders of protection, financial support from partners, or clear schedules for access to children. All of these remedies are particularly essential for victims of partner violence – orders of protection are important, but only part of the legal response to violence in families. The New York City Family Courts are currently providing virtual access for certain types of matters that have been deemed “essential,” including applications for temporary orders of protection, motions for urgent issues that arise in pending cases, and more recently modification of child support orders.

While we understand the challenges facing the courts, prohibitions on the filing of some new family and matrimonial matters does mean that certain critical court relief is unavailable to domestic violence victims at this time.

Like all those living in poverty, victims of domestic violence find themselves in an even more precarious economic situation at this time. Her Justice runs a consumer debt advocacy program to enhance the services we offer our clients. For victims of domestic violence, we provide safety planning around issues stemming from financial abuse – the control by one intimate partner of the other’s access to economic resources, which diminishes the victim’s capacity to support themselves and forces them to depend financially on the abuser. In general, consumer debt and low credit scores trap women in poverty. These financial barriers may impose particular challenges if the debt arose from partner abuse, such as the withholding of assets, identity theft, and coercive debt. Debt and damaged credit as a result of financial abuse make it even more difficult for victims to leave the relationship – with a low credit score, women cannot rent an apartment, get a job or buy a house or car. We advise clients on how to obtain, review, and request security freezes on credit reports; how to report fraudulent activity to the FTC and other appropriate agencies and to write dispute letters to the reporting agencies, and advocacy letters to creditors; and to change PIN numbers on financial accounts and remove abusers as authorized users. As a complement to our work with individual clients, Her Justice has advocated for protections against enforcement of money judgments and debt collection in this fragile financial time.

Family and Matrimonial Issues Persist for Families in Poverty

Although current access to the courts is limited at this time, it is essential that we continue to provide critical information and advice to clients about choices available to them, and to prepare their legal cases for the time when the courts reopen.

Child support. For single mothers living in poverty, child support can mean the difference between providing a stable life for children and resorting to public assistance. Victims of domestic violence may have been estranged from abusive partners in order to remain safe and, therefore, have been shouldering the burden of supporting children. For these women, fair and consistent child support could mean the difference between remaining safe and independent or returning to a dangerous situation. In ordinary times, there are more than 70,000 filings for child support in the New York City Family Courts each year. But during this crisis, court closure means that many families have no access to this needed support. Other avenues for obtaining child support may be foreclosed to some families as well. Federal stimulus checks, while not available to undocumented immigrants without Social Security numbers or those in mixed status households, can be intercepted to satisfy child support arrears. However, for families that receive or did receive public assistance, these funds are payable first to the State to satisfy public assistance child support debt, rather than directly to the families that so desperately need support at this time. Further, for some parents who are obligated to pay child support, the current public health crisis is causing financial hardship that impacts the ability to pay full support ordered. We have urged the New York Family Courts to consider allowing filing of initial child support petitions by email, even if the courts cannot adjudicate the matters at this time, so that parents can preserve filing dates to which final support orders or modifications of orders would be retroactive. While the New York City Family Courts recently expanded to accept modification petitions, they have not begun to accept filings to establish child support or enforce orders of support that are not being paid, putting these families deeper in crisis.

Divorce. Going through a formal legal process in divorce (rather than just separating) is especially important for women who are typically the lesser-earning spouse; the legal process should ensure a fair child or spousal support award which gives single mothers a critical safety net. Unfortunately, the barriers to and risks from divorce increase exponentially for women who are victims of domestic violence. At this time, New York City’s Supreme Courts do not have a policy to accept new divorce filings. Nevertheless, our clients continue to need legal assistance around divorce issues. These cases represent two-thirds of our practice, and we continue to meet the need for information and advice about these issues through our legal helpline

each week. For the 477 clients we have with ongoing matrimonial cases, Her Justice lawyers and the pro bono attorneys that provide representation continue to stabilize the cases and work with clients to prepare for litigation – including organizing financial documentation related to marital assets and debt – to be ready for the eventual opening of the courts.

Immigrant Women Are Particularly Vulnerable

Our immigrant clients – all of whom are survivors of gender-based violence – are met with particular challenges during this time. Our immigrant clients are in a precarious financial situation and need services and support now more than ever. Our undocumented clients whose immigration applications are pending for years and who do not yet have employment authorization, are ineligible for unemployment insurance benefits. Some immigrant clients and their families are not eligible for federal stimulus monies. The unpredictable and threatening climate of the last several years has endangered the immigrant community, making them less likely to seek help. We applaud the Legislature’s passage of the Protect Our Courts Act, which will go a long way toward providing protections for immigrants who need safe access to the courts. While we reach many immigrants in need, we know that there are many others who are trapped in abusive situations and afraid to reach out for help, or lack the needed technology or literacy skills to do so.

Thank you for the opportunity to highlight the particular challenges for the most vulnerable New Yorkers without access to the civil courts during this public health crisis, along with the opportunity for reform. We are grateful for the Legislature’s support for the essential legal services that we provide to women living in poverty in New York City and its commitment to improving access to justice for all New Yorkers.

Respectfully,

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