

ORAL TESTIMONY ON
THE UNIFIED COURT SYSTEM AND COVID-19

PRESENTED TO:
NEW YORK STATE SENATE

PRESENTED BY:
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HEARING DATE: AUGUST 21, 2020

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Thank you to the New York State Senate Committees on the Judiciary, Codes, and Housing, Construction and Community Development for holding this hearing to examine the reopening and operation of New York's courts during the COVID-19 pandemic. The Brooklyn Bar Association Volunteer Lawyers Project, Inc. (VLP) commends the Senate for seeking testimony on this important topic.

My name is Sidney Cherubin and I am the Director of Legal Services at the VLP. Since its founding in 1990, the VLP has harnessed the powerful pro bono commitment of the private bar to provide critical civil legal services and equal access to the justice system to thousands of Brooklyn residents. The mission of the VLP is to ensure that the legal system is accessible to those who, because of special needs or the overwhelming burdens of poverty, would not otherwise have their rights protected or their voices heard.

The VLP provides direct civil legal services, education and outreach to low-income Brooklyn residents, assisting them to overcome legal challenges to their health and security, including family breakdowns, threatened homelessness, devastating debt, immigration status, and ongoing predatory practices that overwhelmingly target the poor, the elderly, and persons with disabilities. By arming clients with legal information and representation, the VLP levels the playing field and ensures success in court, stabilizing lives – for adults and children – and strengthening the community.

In addition to providing direct representation and pro se assistance, the VLP staffs and supervises several courthouse and community clinics that provide immediate and brief legal services and limited scope representation to assist unrepresented litigants as they struggle to navigate their way through the judicial process. The VLP's programs dramatically reduce the problems courts face in handling overburdened dockets flooded with pro se litigants.

Today I am here to speak on behalf of unrepresented consumer debt litigants, the Civil Legal Advice and Resource Office (CLARO), and Consumer Debt Volunteer Lawyer for a Day (VLFD) programs.

Over 100,000 consumer credit lawsuits are filed in New York State courts every year. The VLP, in partnership with Brooklyn Law School, created the first CLARO program in the state. CLARO is now a city-wide project. CLARO was created to assist the courts in handling overburdened dockets with their ever-increasing number of unrepresented litigants. The CLARO clinic at Kings County Civil Court is staffed and supervised by the VLP every Thursday from 2:30 to 4:30 pm and 6 to 8 pm. Volunteers work with unrepresented litigants to ensure that they have the tools to defend themselves against aggressive and often abusive tactics of creditors. In 2019, 1,721 pro se litigants visited Brooklyn CLARO. From January 1, 2020 until March 12, 2020, when Brooklyn CLARO was suspended due to COVID-19, 508 unrepresented litigants had sought legal information and advice.

In 2009, the Consumer Debt Volunteer Lawyer for a Day (VLFD) Access to Justice Program was developed, a natural progression from CLARO. The VLP's consumer attorney is present four days a week in Kings County Civil Court working with volunteer attorneys, law graduates, and law students to provide limited scope representation to pro se litigants in consumer debt actions. In 2019, the VLP provided limited scope representation on 1,510 VLFD matters. In 2020, from January 1st through March 12th, the VLP provided limited scope representation on 341 VLFD matters.

Prior to the pandemic, consumer debt cases presented a true crisis in New York City, with 2018 data showing consumer credit actions increasing dramatically over the prior year and over 96% of defendants unrepresented. We anticipate a surge in filings in the wake of the

extensive economic distress caused by the pandemic, especially for low-income communities and communities of color.

As it has become increasingly clear, communities of color and people of color have been disproportionately affected by the pandemic in terms of contraction rates and loss of lives. These are the very same communities and people who experience disproportionately higher rates of debt collection and economic distress due to their economic marginalization.

Over the last few months, while debt collection efforts have come to a standstill, the anxiety being felt by our clients has not. At least twice a day, I hear from concerned litigants, uncertain about where their case stands: should I go to the courthouse? Will I have my case dismissed if I do not appear? These questions appear to stem from the unknown. Clients simply do not know what is going on in the courts, and it is not always clear to lawyers, either. When litigants are unrepresented, the confusion is even greater. It is important that there be improved messaging and communication to litigants – and advocates – regarding court operations and expectations for unrepresented consumer defendants.

This week alone, attorneys at the VLP spoke to twelve (12) litigants that stated they had not received any notification that their cases had been postponed.

Earlier this year, I assisted a pro se litigant with an Order to Show Cause in a consumer debt matter. Her matter was adjourned to August 8th and she was never notified as to what to do and whether her case was going to move forward. She was told that the motion was not likely to be heard on August 8th, but she went to the courthouse anyway for her scheduled appearance because she was nervous that she would be found in default if she did not appear. “I was told to go, so I went,” she said. She is elderly and was recovering from a minor surgery. She told me that she had to take a taxi to the courthouse, and when she got there, she was turned away at the

door. She is still very nervous about the outcome of her case. This scenario could have easily been avoided with proper communication.

When the VLP recently reached out to the Civil Court for clarification on the filing of Answers, we received contradictory responses. One clerk said that Answers can be filed in person at the courthouse, and another clerk said no one is allowed to enter the courthouse and that Answers must be mailed to the courthouse.

This lack of information has forced litigants to take undue health risks to navigate the legal process, including traveling to the courthouse to access court files, file papers, and attend court hearings, risking contracting or transmitting the coronavirus.

It is important to recognize the extreme digital divide for significant numbers of unrepresented litigants. While we may take for granted access to a computer, email, internet and WIFI, many of our clients do not have email addresses, let alone smartphones or access to stable internet connections. As we move towards a virtual world, the Court needs to be prepared for the challenges that these litigants face.

As the courts start to reopen for new filings and more matters are being calendared for hearings, now, more than ever, there is a gap in access to justice. Unrepresented litigants no longer have in-person, easy access to self-help clinics like CLARO and VLFD. These programs help to ensure that litigants' rights and defenses are protected. Without easy access to these programs, pro se litigants will find themselves at a disadvantage when faced with plaintiffs with far greater experience, resources, and representation. Low-income clients who do not have access to technology need to find ways to meaningfully and fully participate in virtual court—we need the Court's help to ensure that these clients are not left by the wayside and slip further through the justice gap.

I often refer to CLARO and VLFD as my happy place because of the impact we have made over the years and the sense of relief that litigants have after meeting with our volunteers. While I would love to be back in the courthouse helping clients, I recognize that the safety of all is paramount. I also recognize and appreciate the efforts the Court has taken thus far to protect the health and safety of court users and court personnel, as well as the challenges they face. Going forward, the Court should make the commitment to (1) have improved messaging and communication to litigants and legal advocates regarding court operations and expectations for unrepresented consumer defendants, (2) develop policies, procedures, and access to technology for unrepresented litigants – many of whom are low-income, elderly, or have barriers that make participation in the legal system difficult – for meaningful participation in virtual court options and (3) ensure that access to justice remains a priority.

Thank you for your time and consideration.