

Testimony of Western New York Law Center -Senate Committees on the Judiciary, Codes, and Housing, Construction and Community Development Hearing on the Unified Court System and COVID 19

Good morning and thank you for having me today. My name is Amy Gathings and I am the Supervising Attorney of the Foreclosure Department of the Western New York Law Center, a non-profit organization that provides free legal services in the areas of mortgage and tax foreclosure and consumer debt defense.

The Coronavirus pandemic has highlighted the institutional inequities in our society relating to access to justice. Free legal service agencies are facing funding limitations while at the same time the need for these services is at an all-time high. The lack of a civil right to counsel means that many litigants will have to go unrepresented in cases that impact their basic human needs, such as housing, food, etc. The court system faces a significant challenge in balancing the rights of litigants with health and safety concerns but we feel that providing access is crucial as the courts are responsible for determining issues that are essential to people's abilities to survive from day to day and keep their families healthy and safe, including the ability to maintain stable housing.

One of the greatest tools to ensure housing stability that we have in New York State today is the state-funded Homeowner Protection Program, or HOPP, which is a network of free legal service agencies that provide representation to homeowners facing foreclosure. Continued funding of this program is vital to preventing the devastating impacts of foreclosures on families and neighborhoods, especially during this time of widespread economic hardship.

The foreclosure moratorium imposed by NYS was very helpful for our foreclosure clients. A good number of our foreclosure clients continue to face financial hardship due to job losses, reduction in work hours, and difficulties in securing new employment. We support a continued moratorium of the entire foreclosure process with one exception. New York Civil Practice Law and Rules (CPLR) Section 3408 mandates that courts conduct a series of settlement conferences at the outset of the foreclosure lawsuit while putting the rest of the legal process on hold so that the parties can try to reach a mutually agreeable resolution to avoid foreclosure. CPLR 3408 mandatory settlement conferences are invaluable to homeowners' abilities to resolve the foreclosure and avoid losing their homes. As such, these conferences must be allowed to continue in a virtual manner even while the remainder of the foreclosure process is on hold under any moratorium that is put in place. Without these conferences there is often no recourse if a foreclosing entity fails to follow state and federal laws and regulations that govern mortgage servicer behavior and no way to address lack of responsiveness to requests for mortgage assistance or forbearances, imposition of excessive fees, and other such issues.

Furthermore, the initial conference is where most of our clients are connected to our services. Pre-pandemic we were present in court at every initial conference session to provide an informational presentation and conduct intakes. Virtual conferences and/or telephone conferences can be utilized to ensure that foreclosure defendants are able to participate safely in their initial settlement conferences. A virtual meeting facilitated by the Courts between legal services providers and homeowners prior to the first conference would be of great value to replace the informational session and intake meetings that were conducted in person prior to the pandemic.

Vital to ensuring that homeowners can participate in conferences is the sending of clearly and simply written notices sent out well in advance so homeowners can make the appropriate arrangements to be able to participate. Homeowners must have ample notice of the conference so they can make appropriate arrangements, get assistance with technological or logistical questions about how to make the virtual appearance, and seek an adjournment if needed. Simplicity is key to the effectiveness of these notices. In these notices it would be helpful to state that legal rights will be lost in the event of a failure to appear and that an appearance is required regardless of whether or not you are already in negotiations with the mortgage servicer (or even in a forbearance or loan modification plan). Many homeowners are told by mortgage servicers to not attend the conferences if they are already in the middle of applying for assistance and, unfortunately, many homeowners take their mortgage servicers' advice. Even if a homeowner is in the middle of an application process or in a forbearance plan the homeowner must be encouraged to attend the conference and speak to an attorney to be advised about defenses, options, and what is in the homeowner's best interest. These notices should also provide the contact information for legal services agencies that can offer free representation so homeowners can get connected to an attorney as early as possible.

Courts should provide multiple options to homeowners for making appearances including videoconferencing, telephone conferencing, and providing a desk within the courthouse with a computer for those who lack access to computers or phone service. Some homeowners may not have reliable telephone service or internet service where they live, especially those residing in more rural areas so having the option to come to the courthouse to be provided with the technology needed is crucial. Courts must give homeowners multiple chances to make an appearance and should not consider anyone in default for not appearing given technological disparities, childcare issues, rigid work schedules, illness, and all the other abundant obstacles that may stand in the way of a homeowner appearing.

Regarding tax foreclosures, we are concerned about the ability of municipalities to obtain a Judgment of Foreclosure and proceed to auction at this time. There are so few protections in place for tax foreclosure defendants and the tax foreclosure process is fast meaning a home may be auctioned just a few short months after the foreclosure is filed. These difficult times have highlighted the need for increased protections for defendants in tax foreclosure matters, including, a settlement process in which payment plans and other foreclosure avoidance options might be explored.

In consumer debt cases, we are seeing that many consumer defendants have received bank restraints or income executions in the last few months. We believe that no one should be subjected to wage garnishments during the ongoing financial crisis. In some courts it can be time consuming and confusing for these mostly unrepresented consumers to file motions challenging these judgments or enforcement proceedings. In particular, the process to file a motion in Supreme Court is confusing and involves many steps from filing at the County Clerk to getting the court clerk to assign a judge to then delivering papers to the judge and retrieving them once the order to show cause has been signed. It would be helpful if these procedures could be streamlined.

In sum we advocate today for a foreclosure moratorium with continued settlement conferencing in mortgage foreclosure cases as these conferences are the key to ensuring safe affordable housing during the pandemic, as well as greater protections for tax foreclosure defendants, a

moratorium on income executions, and streamlined court processes that are user friendly and simple for pro se litigants in foreclosure and consumer cases. Thank you.