Jess Dannhauser
Commissioner

Testimony to the New York City Council
General Welfare, Oversight and Investigations, and Public Safety Committees
April 24, 2023

Oversight: Operational Challenges in Family Court

Good morning. I am Jess Dannhauser, the Commissioner of the Administration for Children's Services (ACS). Thank you, Deputy Speaker Ayala, Chair Brewer, Chair Hanks, and members of the General Welfare, Oversight and Investigations, and Public Safety for holding today's hearing on the "Operational Challenges of the Family Court." I am pleased to be joined today by Alan Sputz, the Deputy Commissioner for Family Court Legal Services (FCLS) at ACS, along with my colleagues from the Law Department, the Department of Probation (DOP) and the Department of Citywide Administrative Services (DCAS).

As you know, all of our agencies, along with many of our legal services and provider agency colleagues, along with Judges and Office of Court Administration staff play important roles in the Family Court. I want to take a moment to thank all of our colleagues, as well as the hard-working, compassionate and committed attorneys and support staff from FCLS, for all that they do each and every day on behalf of children and families.

The New York City Family Court is comprised of 5 Family Courts, one in each borough and is divided into four specialties: 1) Custody, Visitation and Family Offense cases; 2) Child Support; 3) Juvenile Delinquency; and 4) Child Protection. ACS is the New York City agency responsible for protecting and promoting the safety and well-being of New York City's families by providing child protection, prevention, foster care, juvenile justice, child care and other community supports. ACS regularly appears in Family Court on child welfare and some juvenile justice matters, and our testimony today will focus on this work.

Family Court Legal Services (FCLS)

The attorneys of FCLS are responsible for representing ACS in child neglect and abuse cases, permanency hearings, voluntary placement proceedings, destitute minor proceedings, other child welfare-related proceedings, and some post-dispositional juvenile justice proceedings in the New York City Family Courts. FCLS attorneys work collaboratively with Child Protective Specialists (CPS) from the Division of Child Protection (DCP), foster care and prevention agency case planners, ACS's Division of Youth and Family Justice staff, attorneys for parents and children, the Department of Probation, the Law Department and other stakeholders, to further the agency's mission on behalf of children, youth and families. Attorneys provide legal representation and consultation to CPS and foster care agency staff and provide training for attorneys and social work staff on Family Court practice.

There are currently 164 attorneys and managers in FCLS. We have not seen increased attorney caseloads because, as will be discussed more, our court filings continue to decrease each year. FCLS attorneys are critical frontline staff and ACS has had hiring authority to hire new attorneys throughout most of the pandemic.

We are making progress in hiring and retention in 2023. Rather than just focusing on hiring classes of attorneys to start together (usually soon after the bar exam), we are also hiring frontline attorneys on an ongoing basis. Two new attorneys recently started, four more are being processed to start in the coming weeks and we are continuing to make offers to strong candidates. We are also recruiting for our Fall 2023 class. We anticipate that this class will have 45 attorneys and currently the class is over half full, with 24 new lawyers have already accepted offers.

To help us with recruitment, we recently contracted with Simplicity, a program law schools use nationwide to advertise job opportunities, which has helped us make offers to very strong candidates for the fall class. In addition, we are continuing to participate in law school and career events, and retention and attrition are returning to more typical levels.

Training ACS's Family Court Attorneys

ACS has an in-house training unit of 4 highly experienced attorneys who provide trainings for new ACS attorneys, as well as legal training for CPS, provider agency staff and more experienced attorneys.

New FCLS attorneys receive 5 weeks of training, which includes courtroom observation and mock trials in our simulation center, as well as guest speakers representing various perspectives such as parent advocates and prevention providers. After spending some time in the offices, first year attorneys received a more advance training on important topics such as the Interstate Compact on the Placement of Children, Destitute Minors, Kinship Guardianship, immigration, educational issues and Persons in Need of Supervision (PINS). Throughout the year, all FCLS attorneys are required to participate in half-day virtual trainings on topics essential to the work, such as the Family First Prevention Services Act, LGBTQAI+ issues in family court, and the foster care re-entry process for older youth. When FCLS attorneys are promoted to Team Leader, they take a three-part training to help build their coaching and supervisory skills.

Training extends beyond legal skills to professional development. FCLS began a partnership with FranklinCovey in 2019, to help development supervisory, management

and team-building skills for our FCLS managers, as well as our mid-level supervisors and front-line staff.

The FCLS attorneys receive close supervision in and out of court during their first year of practice, with an experienced attorney appearing in court with them and reviewing their written legal work. Supervisors continue to provide guidance, particularly on complex cases and when making critical decisions such as whether to file a new case or whether a child can safety return home.

Trends in Family Court Related to Child Welfare Cases

When someone suspects that a child is being abused or maltreated, they call the New York Statewide Central Register (SCR) and if the state accepts the report, ACS is required to respond. Our CPS then assess the safety of the children, and do so 24 hours a day, 7 days a week, including throughout the pandemic. When needed, CPS seek to work with families to put in place services or supports to help keep children safe. We only file a case in Family Court when we believe that court intervention is necessary to protect the safety of the child: last year, we filed cases in court on fewer than 7% of the child protection cases we conducted.

As the chart below indicates, both the number of child welfare filings (referred to as Article X) and the percentage of child protection cases that resulted in a filing, have continued to decrease each year. This is true despite the fact that the number of reports dropped dramatically in 2020 and started to come back up in 2021 and 2022.

Year	Article X Child Welfare Filings (cases)	Child Protection Cases:	Filings as %
CY 17	7,679	60,839	12.6%
CY 18	6,559	60,013	10.9%
CY 19	6,026	57,148	10.5%
CY 20	4,145	43,881	9.4%
CY 21	4,081	47,645	8.6%
CY 22	3,538	51,099	6.9%

This reduction in filings applies both to the number of removals (placements into foster care) and to the number of court-ordered supervision cases (typically with orders of protection).

Year	Article X Child Welfare Filings (cases, including remands and Court ordered Supervision)*	Court Ordered Supervision (cases)	Remands (cases)
CY 17	7,679	5,352	2,029
CY 18	6,559	4,480	1,775
CY 19	6,026	4,145	1,675
CY 20	4,145	2,774	1,345
CY 21	4,081	2,732	1,348
CY 22	3,538	2,237	1,312

*some cases have both COS and remands.

We are seeing numbers move in the right direction. The number of families experiencing an emergency removal is also down sharply, from 981 in 2019 to 789 last year From 2019-2022 there has been a 46% decrease in the number of cases filed for Court Ordered Supervision (COS), with most of the current COS filings reflecting children living with non-respondent parents and supervision and sometimes orders of protection regarding the respondent parent.... In addition, the number of COS cases active at the beginning of the year declined over 50% from 2019 to 2023, with 7,759 open at the start of 2019 to 3,754 at the start of 2023. We have also seen a continued

decline in the number of children in foster care, and are now at an all-time low of fewer than 7,000 children in foster care.

While there was a slow-down in cases moving through the court process at the height of the pandemic, and the Family Court's decision to focus on emergency proceedings, we are now seeing our child protection and foster care cases moving more quickly through the Family Court process. A look at both ACS and Family Court data[1] show that with regard to child protection cases, the court is now disposing more cases annually than the number that are filed.

While adoptions and KinGAP (subsidized kinship guardianship) slowed during the pandemic, as you can see in the data below, the numbers of children exiting to adoption and KinGAP have been increasing despite the numbers of total children in foster care continuing to decline.

Foster Care Discharges CY19 - CY22

	CY 2019	CY 2020	CY 2021	CY 2022
Reunifications	2169	1521	1782	1643
Adoptions	706	241	437	498
KinGAP	363	212	494	337
Non-Permanency	654	582	544	542
Total discharges	**3892**	**2556**	**3257**	**3020**

While there are more steps that can be taken to move cases more quickly and efficiently through the Family Court process, we are seeing the data move in the right direction.

We are thankful that the State increased the statutory number of Family Court Judges in NYC by 6 this past year, which certainly helps to process cases more efficiently. In addition, we believe that the ability to hold some court conferences and

[1] Microsoft Power BI (powerbigov.us) accessed through Family Court Data | NYCOURTS.GOV

court hearings virtually or hybrid has helped to move cases. Finally, ACS, including CPS and our foster care providers, have been reviewing cases both early in the case (90 days, 120 days) and later in the case, to see if there are ways to progress the cases that we can propose to the other legal stakeholders and the Court.

Virtual Court Proceedings

While there are some proceedings that should typically be held with all litigants in person, and ACS encourages parents to appear in court in person when we are first filing a new case, we greatly appreciate the Family Courts maintaining the flexibility of virtual and hybrid proceedings, so as to best meet the needs of all participants.

For some participants, it is much easier to participate remotely, and the remote option can actually increase access to family court and meaningful participation. Examples include working parents, youth in college, litigants living out of state, and witnesses who cannot spend the full day in court. For ACS caseworkers and our provider agency staff, remote appearances enable them to continue doing much of their work with children, youth and families on the day of a court appearance, as they just need to log on at the scheduled time. With in-person appearances, staff often need to spend much of their day traveling to and from Family Court and waiting for their court appearance.

One important benefit of remote proceedings is that when they are scheduled, there are clear start times and end times, for each appearance. The court and the parties were largely able to maintain these time certains/ends, which made the work we do more efficient, as it eliminated much of the waiting for appearances that occurs with in-person hearings.

As we build a system that includes this flexibility, we need to take additional steps to ensure that remote court appearances best address the needs of clients in a manner that is equitable. With the digital divide and some families struggling with reliable wi-fi, we must ensure that family members (adults and children) are able to participate in remote proceedings. In addition to locations in courthouses and attorney offices, we believe this requires creativity to develop locations in the communities where litigants live. One option to explore is space in local libraries that could provide a computer, reliable wi-fi and privacy. Another option would be to leverage the many community based organizations throughout the city.

PINS Diversion through the Family Assessment Program (FAP)

We know that the best way to intervene positively in the lives of young people is to engage with the whole family and to do so as far upstream as possible. In New York City, ACS's Family Assessment Program (FAP) is a diversion program available to families of youth up to age 18, to help avoid involvement in the juvenile justice or child welfare systems by providing therapeutic services, grounded in a child welfare framework. FAP is located in or near the 5 Family Courts, to more easily facilitate a referral to PINS (person in need of supervision) diversion services, so that a petition in family court need not be filed. In addition, families can voluntarily seek out FAP services.

FAP supports families in addressing challenging teenage behaviors such as missing school, substance use, running away from home and/or those related to mental illness. To minimize court involvement, while providing resources to address the

presenting concerns, families in NYC must first participate in FAP services before a Persons in Need of Supervision (PINS) petition can be filed.

FAP serves approximately 2000-3,500 families each year (2,616 in 2022) and has been effective at reducing the number of children placed in foster care through a PINS petition to about 15 children annually.

FAP providers offer evidenced-based models such as Functional Family Therapy, Brief Strategic Family Therapy, and Multi-systemic Therapy, along with respite care and the MAAP Mentoring and Advocacy Program, which now includes Fair Futures coaches.

ACS's Juvenile Justice Work and Family Court

While ACS is not serving as the attorney for most juvenile justice cases in Family Court, we do play an important role in these matters. ACS operates the two secure detention facilities (Horizon and Crossroads), where 98% of the youth have pending cases in Supreme Court. Nine percent of young people in secure detention have cases pending in both Supreme and Family Court, while only 2% of youth in secure detention have pending cases in only Family Court. ACS contracts for non-secure detention were the majority of youth who are ordered to be detained by Family Court judges reside pending the disposition of their cases (typical census is about 40-50 youth). ACS also contracts for Close to Home, the placement system where youth ordered by Family Court Judges to be in placement at disposition are sentenced to reside and where they receive services and supports to help them return to the community (census is also

about 50 youth.) ACS and our contracted providers play an important role in transporting youth in detention or Close to Home to their court appearances.

Youth placed into Close to Home are technically in foster care placements. Thus, for these youth who are post-disposition on their Juvenile Delinquency (JD) matter, ACS attorneys appear in court for any permanency hearing, extension of placement, family first, or revocation matter.

Finally, ACS also contracts for some of the services available to youth with JD cases. ACS and MOCJ are in the process of collaboratively transitioning the contracts for Alternative to Detention (ATD) programs from MOCJ to ACS, effective July 1st. ACS issued an RFP for the ATD programs and recently announced recommended awards for CASES (Manhattan and the Bronx), the Justice Innovation Center (Queens and Staten Island) and Good Shepherd Services (Brooklyn). An important new component of the model will include court liaisons; the provider agencies will have staff in the delinquency court parts available to help connect youth to the ATD program and provide status reports to the judges.

ACS also administers the Juvenile Justice Initiative (JJI), which serves youth adjudicated as juvenile delinquents who are under probation supervision, as an alternative to placement. Specifically, JJI provides intensive services to youth in their homes rather than through placement in a custodial setting. JJI helps parents develop skills to support their children, enforce limits, and steer them towards positive peers and activities.

There are additional services available and provided to court-involved youth, which our colleagues here today will share more information about.

Conclusion

I want to conclude this testimony where I started—thanking all of the ACS staff and our colleagues from other city agencies, the courts, our providers, and the other legal organizations for all of the work they do each and every day. As you can see from my testimony, this collaboration and commitment is essential for meeting the needs of children, youth and families.

NYC
Department of Probation

Juanita N. Holmes
Commissioner

33 Beaver Street
23rd Floor
New York, NY 10004

212-510-3710 tel

Statement to the NYC Council Committees on
Oversight and Investigations, General Welfare, and Public Safety
By Juanita N. Holmes
Monday April 24th, 10am

Good morning, Deputy Speaker Ayala, Chairs Brewer and Hanks, and members of the committees on Oversight and Investigations, General Welfare, and Public Safety. I am Juanita Holmes, Commissioner of the New York City Department of Probation (DOP). With me today is Deputy Commissioner for Juvenile Operations, Gineen Gray. Thank you for the opportunity to testify about the important work of the NYC Department of Probation in Family Court.

The New York City Department of Probation (DOP) helps build stronger and safer communities by working with and supervising people on probation, fostering positive change in their decision-making and behavior through research-based practices, and expanding opportunities for them to move out of the criminal and juvenile justice systems through meaningful education, employment, health and behavioral health services, family engagement, and civic participation.

Working closely with our partners, Probation plays a critical role in supporting and guiding the court and various stakeholders in determining the most appropriate decisions and recommendations on both juvenile and adult matters including visitation, custody, and child support. Our functions at the various Juvenile Delinquency system points include Intake, Diversion/Adjustment, Investigation, and Community Supervision.

When working with our youth, we strive to promote their well-being and resiliency by guiding them to make positive behavioral changes and sustainable connections to positive community supports. The arrest of a child or teenager should be viewed as a

crossroads moment: an opportunity for redirection as needed on an individual basis that balances both accountability and opportunity.

In 2022, DOP processed 5,792 Intakes and 2,329 Adjustments. By diverting cases that can be better resolved through an out of court accountability process, adjustment can turn an arrest into a learning experience by addressing the choices and behaviors that led to the arrest swiftly, restoratively, and in a "one size fits one" manner, through an individually appropriate response and plan. This is important for the youth and their families and allows the rest of the Family Court system to focus time and resources on the remaining cases.

For those cases where a young person is adjudicated by a Family Court Judge and placed on community supervision, Probation Officers partner with the young person's family, caregivers, credible messengers, police officers, mental health providers, and other partners to effectively engage, hold accountable, and provide opportunities for the youth in the community, with the goal of getting them to move out of the justice system. We also operate a continuum of Alternative to Placement (ATP) programs in partnership with community-based and non-profit providers for the cases needing the highest level of supervision, and in which the youth would have otherwise been adjudicated to out-of-home placement. Last year, DOP supervised **1,070** youth across the city, with a **92% completion rate.**

After a Judge makes a finding in a case, Probation typically performs a court-ordered investigation. Investigations POs work with all of the relevant parties of the young person and their case to provide the court with the full picture, as this will help render the most appropriate decision that balances public safety and what is best for the young person. Our Court Liaison Officers (CLOs), play a crucial role in ensuring we have a positive relationship with the Judges, Law Department, and other parties so that cases can run smoothly. In 2022, DOP prepared **671** Investigations & Reports (I&Rs) and delivered those reports to the court on time at a rate of **95%**.

Throughout all of our functions, we continue to build upon and leverage what works for young people in the justice system. Credible Messengers, formerly justice involved people themselves, are very impactful as mentors for our young people, and are embedded throughout our work. We also utilize Parent

Coaches, whose own children went through the juvenile justice system, to serve as guides for our families who are unfamiliar with navigating this new system. Lastly, we try to think out of the box to anticipate any needs, which is why we are in the process of implementing a partnership with local organizations to provide services to young people who otherwise would have none while their case is referred. All of these measures help to ensure we have a robust variety of age-appropriate services and opportunities so that our young people can develop their unique passions and begin to thrive.

As you know, Probation is just one of many parts in Family Court. Our partnerships and collaborative relationships span the continuum and include the Administration for Children's Services (ACS), the Corporation Counsel/Law Department (LAW), and the Office of Court Administration (OCA) – just to name a few. All are integral to ensuring the best possible outcomes for young people, victims, their families, and their communities. Thank you for the opportunity to testify today. I am pleased to answer any questions you may have.

STATEMENT OF RUTH SHILLINGFORD
CHIEF ASSISTANT CORPORATION COUNSEL
FOR CRIMINAL JUSTICE
NEW YORK CITY LAW DEPARTMENT
BEFORE THE NEW YORK CITY COUNCIL
COMMITTEES ON GENERAL WELFARE, OVERSIGHT AND INVESTIGATIONS, AND PUBLIC SAFETY

April 24, 2023

Good morning. My name is Ruth Shillingford and I am the Chief Assistant Corporation Counsel for Criminal Justice of the New York City Law Department. I am joined by Jennifer Gilroy Ruiz, the Chief of our Family Court Division. I also bring greetings on behalf of our Corporation Counsel, the Honorable Sylvia Hinds Radix. Thank you Deputy Speaker Ayala, Chair Brewer, Chair Hanks and members of the General Welfare, Oversight and Investigations and Public Safety Committees for holding this hearing. We appreciate this opportunity to discuss the dual roles regarding juvenile delinquency and child support matters that the hardworking members of our Family Court Division undertake on behalf of the children, families and communities of New York City every day and night in thirty locations across New York City. It is important to note that in resolving our Juvenile Delinquency cases we must consider both the needs and best interests of the child, as well as the need for protection of the community. Rehabilitation is key.

Initiation of a case

The Family Court Division now handles delinquency matters related to youth who are 12 through 17 years of age, or a person over the age of 7 and less than 11 who is charged with a homicide-related case. Once NYPD takes custody of a youth, they have the discretion to determine whether to issue a Juvenile Report and release the individual or make a formal arrest. If the latter, the youth is then assessed by the Department of Probation to determine whether to adjust the case or refer it to our office.

If Probation refers the youth to us, before we initiate any court proceeding, we determine if it is a valid case. That means investigating the matter through such steps as speaking with witnesses, viewing body worn camera or surveillance videos and social media, and applying for search warrants.[1] If the case is not viable either due to proof or suppression issues, we will decline the matter and dismiss and seal the case. Last year we declined 2,408 cases. Even when a case is declined, however, that young person can be offered voluntary participation in services through a recent collaboration with the Mayor's Office of Criminal Justice and the United Way.

Diversion

For those cases that remain viable, we assess whether the youth is eligible for our discretionary diversion. Utilizing our Diversion Coordinators, we consider the Risk Assessment Instrument, including school records; the nature of the case; the youth's role in the purported crime; the youth's history; the position of the person harmed; the needs of the youth as expressed by the family/attorney, including any mental health issues; and any other relevant issues. Last year, approximately 335 cases involved Diversion services. This includes cases sent back to Probation for pre and post filing adjustment services; as well as cases that were sent by our office for pre and post filing diversion services. This constitutes approximately 9 % of the cases referred. As we reported in the Mayor's Management Report (MMR), more than 80% of those youth whose cases are diverted do not have another referral one year out from the diversion.

For your convenience, we have annexed as Addenda "A" and "B," lists of providers utilized by the Family Court Division, including the Council Districts that they serve. I want to share that in addition to Diversion Specialists for the youth, we utilize Victim Advocates to assist those

[1] Unlike other prosecutorial offices, we do not have pre-filing subpoena power. We have submitted legislative requests to change this obstacle. As was the case with the District Attorneys' offices who now have tight discovery deadlines, we will need additional resources to meet the demands given the change in the nature of the discovery we now face and are obligated to provide to defense counsel, particularly body worn camera video.

affected by our cases through referrals to organizations and provide support to them as they navigate the court process.

Proceeding to Court

If a case is not diverted, then we file a petition in court, and commence trial preparation as the Discovery phase begins. In 2022, we filed 1183 petitions in Family Court. The timeline and stages of a case are as follows:

Pre-petition detention hearing (pre-filing); the initial appearance (arraignment); probable cause hearing; suppression hearing; fact-finding hearing (trial); and disposition (sentencing). The timelines are strict and short: if the youth is detained on an A, B or C felony, the trial must occur within 14 days of the initial appearance. If it is a lower felony or a misdemeanor, then 3 days. Even where a youth is not detained, the timeline for the commencement of the trial is 60 days.

Cases referred to the FCD

A. JD MATTERS

1. Major Cases

Last year, sixteen and seventeen-year-old adolescent offenders whose cases are removed from The Youth Part to Family Court represented 55 percent of our referrals. Some of the 3812 referrals in 2022 included 22 homicide-related cases, 408 weapon cases, 1033 robberies, 802 assaults, 108 sexual assaults, 149 burglary and 9 arson cases, representing almost 67% of the total. The most serious cases are handled by our Major Case Unit.

And to put these 3,812 referrals in further perspective, they represent a 36% increase from 2,794 referrals in 2021 and a 10% increase from 3,454 referrals in 2020. Furthermore, our ratio of felonies to misdemeanor cases has changed from 60:40 in 2017 to 81:19 in 2022. In addition, we

are finding a greater number of youth who have multiple cases, sometimes in multiple boroughs or jurisdictions.

2. Special Victims Unit (SVU)

Another major part of the work we do, which does not always result in judicial intervention but requires extensive investigation, are the cases handled by our Special Victims Unit (SVU). This Unit handles all sex offense cases; other cases involving young victims under the age of nine; teen dating violence cases; and any case that originates at one of the five Child Advocacy Centers (CAC) which include both sex offenses and serious physical abuse cases involving victims primarily under the age of 12. In 2022, attorneys in the SVU conducted 803 interviews, involving 452 cases at the CACs. They also handled 965 Law Enforcement Referrals from the State Central Registry and oversaw commercial sexual exploitation matters.

3. Domestic Violence

We also handle both Teen Dating Violence cases committed by someone in a romantic or intimate relationship with the survivor, and Family Conflict cases. *See* the annexed Addenda "A" and "B" of service providers for both youth who have committed harm and the survivors/those harmed. In 2022, the Division saw an increase of over 50% in the referrals of cases involving family members as compared to 2021 (from 328 to 505). This increase underscores the necessity of employing a multi-disciplinary team approach to addressing the complex factual and legal dynamics that are present for youth and families in crisis.

B. CHILD SUPPORT MATTERS

Our Interstate Child Support Unit (ICSU) helps local custodial parents seeking child support representation when the non-custodial parent resides in another state or internationally. The Unit also works to support out of state or international custodial parents obtain or enforce child support orders from non-custodial parents based in New York. The

ICSU has legal support professional staff and attorneys in all five borough offices.

While the COVID-19 pandemic negatively impacted the number of cases the ICSU has handled in the past two years, the numbers are once again on the uptick, with a 67% increase in 2022 of 1870 referrals, as compared to 1121 in 2021 versus 3706 incoming cases in 2019.

Conclusion

We understand that everything we do in any case that is referred to us will affect not just the youth accused and the complainant victim but their respective families, and of course, the community. Yet while we tackle attrition, increased and more complex gun and violent felony matters, as well as increasing numbers of family conflict cases, we adhere to the paramount goal of rehabilitation, while protecting the safety of the community, even though some instances ultimately may result in the placement of a young person. We thank our partners in our effort to work collaboratively as we address these important cases, some of whom are here today from Probation and ACS.

Thank you very much for the opportunity to speak with you today and we are happy to take any questions you may have.

NYC Law Department Diversion Programs with Council Districts Update 4 18 2023 (Addendum A)

Name	Address	Council District	Description
Avenues for Justice	100 Centre Street, NY, NY	1	This is a program that provides court advocacy, tutoring and mentorship, and gets participants the drug, alcohol and mental health treatment and job training they need to succeed. We have used this program for firearm diversions.
Young New Yorkers	30 3rd Avenue, Brooklyn, NY	33	This is a restorative arts diversion program.
Youth Impact	Citywide	Citywide	These are youth leadership programs citywide offering a restorative approach, individualized support, mentorship and educational opportunities to youth.
Midtown Community Court	314 West 54th Street, NY, NY	3	Operated by the Center for Justice Innovation (formerly the Center for Court Innovation). We are working with the Manhattan DA's office to pilot a gun diversion program.
Inwood House Second Chances Program (Used on TDV matters)	Citywide	Citywide	Provides a plethora of services to young people. Inwood House has merged with the Children's Village.
SI Youth Justice Center	60 Bay Street, Staten Island, NY	49	Operated by the Center for Justice Innovation (formerly the Center for Court Innovation).
Redhook Community Justice Center	88 Visitation Place, Brooklyn, NY	38	Operated by the Center for Justice Innovation (formerly the Center for Court Innovation).
Queens Hope	162-04 Tuskegee Airmen Way, Jamaica, NY	28	Operated by the Queens Community Justice Center (Center for Justice Innovation – formerly the Center for Court Innovation), this program is a girls empowerment and mentorship program providing one-on-one counseling, a girls group and additional services.
Queens Defenders Youth Program	Operates out of two locations: 19-22 Mott Avenue, Far Rockaway, NY; and 148-20 Jamaica Avenue, Jamaica, NY	31 and 27	Operated by the Queens Defenders organization, this program has workshops several days a week. After the first 6 weeks of regular and consistent involvement, eligible participants can receive stipends for each workshop they attend provided certain requirements are met.

NYC Law Department Diversion Programs with Council Districts Update 4 18 2023 (Addendum A)

JustUs	151 Lawrence Street, Brooklyn, NY	33	This Brooklyn-based program is a gender-responsive diversion program for girls and LGBTQ+ young people involved or at high risk of involvement in the juvenile justice system.
JJI-MST PSB	Citywide	Citywide	While we use this program at disposition, we also use it to divert youth in need of problem sexual behavior (PSB) treatment. It is intensive home-based, evidence-based treatment.
Justice and Empowerment for Teens Initiative (JET)	Serves youth Citywide	Citywide	Justice and Empowerment for Teens (JETS) provides bilingual individual counseling, peer support groups, case management, and pro-social activities for youth ages 13-24 who are vulnerable to commercial, sexual exploitation.
Harlem Community Justice Center	170 E. 121 Street, NY, NY	8	Operated by the Center for Justice Innovation (formerly the Center for Court Innovation).
Getting Out and Staying Out (GOSO)	201A E 124th St, NY, NY	8	This program partners with youth impacted by arrest and incarceration on a journey of education, employment and emotional well-being and collaborates with NYC Communities to support a culture of non-violence.
Exalt	17 Battery Place, NY, NY	1	A program working with youth ages 15-19 which provides structured classes for skill development, individualized support to navigate the education and justice system, and placement in paid internships. We have also used this program at other points in a case including disposition.

Uplift Program	162-04 Tuskegee Airmen Way, Jamaica, NY	28	Operated by the Queens Community Justice Center (Center for Justice Innovation – formerly the Center for Court Innovation), this program is a trauma-informed healing program for young men of color who have experienced exposure to violence, with a special focus on individuals in the justice system. Uplift services are designed specifically to respond to youth with gun charges, violent felonies, and/or gang-related charges. The program uses case management, individual therapy and mentorship to address the needs of young people on these serious matters. We have used this as a gun diversion program in Queens.
New York Counseling for Change (Used on TDV matters)	30-46 Northern Blvd., Long Island City, NY	26	Provides a myriad of services including services to address problem sexual behavior, sexual offenses, and anger management.

NYC Law Department Resources for Victims with Council Districts Update 4 18 2023 (Addendum B)

Name	Address	Council District	About
NY Connects	1901 Coney Island Ave, Brooklyn, NY 11230	48	NY Connects, through NY State, provides free, unbiased information about long term services and supports in NY State for people of all ages with all types of disabilities.
Sanctuary for Families	Citywide	Citywide (see Family Justice Center Location Information)	Provides survivors of domestic violence, sex trafficking and related forms of gender violence.
The Harding Ford Vision, Inc. Food Pantry	157-22 Tuskegee Airmen Way, Jamaica, NY 11433	28	The program offers services primarily to individuals in the South Jamaica Community.
Love is Respect (Special Victims Unit)	Hotline	N/A	Services for youth victims/survivors of teen dating violence.
Day One (Special Victims Unit/For Survivors of TDV)	Citywide	Citywide	This is a non-profit organization offering services to NYC youth ages 24 and under. Their mission is to partner with youth to end dating abuse and domestic violence through community education, supportive services, legal advocacy and leadership development.
NYC Well	Citywide	Citywide	A plethora of services available to address mental health, drug abuse, alcohol abuse, etc.

NYC Law Department Resources for Victims with Council Districts Update 4 18 2023 (Addendum B)

Immigration Law Project	50 Court Street - 8th Floor, Brooklyn, NY 11201	33	Through Safe Horizon, the Immigration Law Project advocates on behalf of immigrant survivors of crime or abuse in NYC to enable them to obtain lawful status for themselves and their families, relief from the threat of removal and working authorization to enhance economic security and access to resources and support.
Family Justice Center: Bronx (For Survivors of TDV)	198 East 161st Street, 2nd Floor, Bronx, NY	16	The Family Justice Centers through Mayor's Office to End Gender Based Violence, provide services to victims and survivors of domestic and gender-based violence
Family Justice Center: Brooklyn (For Survivors of TDV)	350 Jay Street, 15th Floor, Brooklyn, NY	33	The Family Justice Centers through Mayor's Office to End Gender Based Violence, provide services to victims and survivors of domestic and gender-based violence
Family Justice Center: Queens (For Survivors of TDV)	126-02 82nd Avenue, Kew Gardens, NY	29	The Family Justice Centers through Mayor's Office to End Gender Based Violence, provide services to victims and survivors of domestic and gender-based violence
Family Justice Center: Manhattan (For Survivors of TDV)	80 Centre Street, 5th Floor, NY, NY	1	The Family Justice Centers through Mayor's Office to End Gender Based Violence, provide services to victims and survivors of domestic and gender-based violence

NYC Law Department Resources for Victims with Council Districts Update 4 18 2023 (Addendum B)

Family Justice Center: SI (For Survivors of TDV)	126 Stuyvesant Place, SI, NY	49	The Family Justice Centers through Mayor's Office to End Gender Based Violence, provide services to victims and survivors of domestic and gender-based violence
Garden of Hope	Queens/Brooklyn	Confidential Locations	This program dedicates itself to serving, caring and rebuilding the lives of people who have been exposed to domestic violence, sexual assault and human trafficking, specifically targeting its services towards the growing Chinese communities in the NYC region.
Arab-American Family Support Center: Main Office	150 Court Street, 3rd Floor, Brooklyn, NY	33	This organization provides culturally and linguistically competent, trauma-informed, multi-generational social services to immigrants and refugees. They have developed expertise serving the Arab, Middle Eastern, North African, Muslim and South Asian immigrant and refugee communities.
Arab-American Family Support Center: Atlantic Avenue Community Center	384-386 Atlantic Avenue, Brooklyn, NY	33	This organization provides culturally and linguistically competent, trauma-informed, multi-generational social services to immigrants and refugees. They have developed expertise serving the Arab, Middle Eastern, North African, Muslim and South Asian immigrant and refugee communities.

NYC Law Department Resources for Victims with Council Districts Update 4 18 2023 (Addendum B)

Arab-American Family Support Center: Bronx	966 Morris Park Avenue, 2nd Floor, Bronx, NY	13	This organization provides culturally and linguistically competent, trauma-informed, multi-generational social services to immigrants and refugees. They have developed expertise serving the Arab, Middle Eastern, North African, Muslim and South Asian immigrant and refugee communities.
Arab-American Family Support Center: Queens Location 1	37-10 30th Street, 2nd Floor, Astoria, NY	26	This organization provides culturally and linguistically competent, trauma-informed, multi-generational social services to immigrants and refugees. They have developed expertise serving the Arab, Middle Eastern, North African, Muslim and South Asian immigrant and refugee communities.
Arab-American Family Support Center: Queens Location 2	37-14 30th Street, 2nd Floor, Astoria, NY	26	This organization provides culturally and linguistically competent, trauma-informed, multi-generational social services to immigrants and refugees. They have developed expertise serving the Arab, Middle Eastern, North African, Muslim and South Asian immigrant and refugee communities.
The Family Assessment Program (FAP): Bronx	260 East 161 Street, Bronx, NY	16	Through ACS, we refer victims on Family Conflict matters for family services.

NYC Law Department Resources for Victims with Council Districts Update 4 18 2023 (Addendum B)

The Family Assessment Program (FAP): Brooklyn	345 Adams Street, Brooklyn, NY	33	Through ACS, we refer victims on Family Conflict matters for family services.
The Family Assessment Program (FAP): Manhattan	60 Lafayette, NY, NY	1	Through ACS, we refer victims on Family Conflict matters for family services.
The Family Assessment Program (FAP): Queens	151-20 Jamaica Avenue, Jamaica, NY	27	Through ACS, we refer victims on Family Conflict matters for family services.
The Family Assessment Program (FAP): SI	350 St. Marks Place, SI, NY	49	Through ACS, we refer victims on Family Conflict matters for family services.
Child Center of New York	Citywide	Citywide	Provides counseling services.
Safe Space Mental Health Clinic	Various Locations in Queens including in Jamaica and Far Rockaway: 16-00 Central Ave, Far Rockaway, NY; 89-74 162nd Street, Jamaica, NY	31; 24	Provides mental health services.
Catholic Charities	Citywide	Citywide	Provides a variety of services including to families including immigration, housing, food and nutrition, integrated health, disaster relief, social enterprise and foundational services.
The Cope Foundation	Phone Line	Citywide	Provides bereavement services.
Parents of Murdered Children	Online/phone resource	Citywide	Organization that assists families and friends of those who have died by violence.
New York Foundling	Citywide	Citywide	This agency provides crisis and counseling intervention services.
Bronx Works	Administrative Offices: 60 E. Tremont Ave. Bronx, NY 10453	14	This agency provides wrap around services and serves residents of the Bronx.

NYC Law Department Resources for Victims with Council Districts Update 4 18 2023 (Addendum B)

Blanten-Peale Institute and Counseling Center	7 West 30th Street, NY, NY	4	Provides holistic mental health care.
Metropolitan Center for Mental Health	160 West 86th Street, NY, NY	6	Outpatient behavioral health
Bellevue Hospital	462 1st Avenue, NY, NY	4	Provides psychiatric treatment
Mount Sinai Hospital	Various Locations including throughout Manhattan	Various Districts	Provides mental health treatment
Ackerman Institute for the Family	936 Broadway, New York, NY	2	Provides family therapy
Institute for Contemporary Psychotherapy (ICP)	33 West 60th Street, NY, NY	3	Provides individual psychotherapy or intensive psychoanalytic treatment and referral for supportive psychiatric medication treatment for adults.
Jewish Board for Family and Children's Services (JBFCS)	Citywide	Citywide	This health and human services agency provides mental health, housing and social services across the 5 boroughs.
Postgraduate Center for Mental Health	Various locations across Brooklyn, Bronx and Manhattan	Citywide	This organization serves the housing and mental health needs of individuals and families. They also are a major developer of housing for persons with mental illness (owning apartment buildings across the City expanding their commitment to reduce homelessness.
Training Institute for Mental Health	115 West 27th Street, NY, NY	3	Provides mental health services

The Institute for Family Health	230 West 17th Street, NY, NY	3	Provides primary health care in Manhattan, Bronx, and the Hudson Valley. They also provide behavior health care and social services. They operate in communities historically neglected due to racism and poverty.
Community Connections for Youth (CCFY)	369 E. 149 Street, Bronx, NY	17	Works with grassroots faith and neighborhood organizations to develop effective community driven alternatives to incarcerations for youth. The program serves youth and families in the South Bronx.
Puerto Rican Family Institute	145 West 15th Street, NY, NY	3	This is a health and human services agency providing culturally sensitive services to children, adults and families in all NYC communities (and in Puerto Rico).

Henry Street Settlement	265 Henry Street, New York, NY	1	This organization's mission is to open doors of opportunity for Lower East Side residents and other New Yorkers through social services, arts and health care programs. They offer 50+ programs to people of all ages through their Abrons Arts Center/Visual and Performing Arts, Employment, Education, Sports & Recreation, Senior Services, Health and Wellness, and Transitional and Supportive Housing divisions. Programs range from preschool to Meals on Wheels delivery, job readiness training, mental health counseling, supportive housing and theater performances.
NYC Human Resources Administration (HRA)	Citywide	Citywide	Benefits including housing and food assistance.
Girl Vow	Main Office: 40 Exchange Pl, New York, NY 10005	1	Through education, mentorship and life skills training, the program opens doors for girls who have been impacted by juvenile justice, poverty or the NYC foster care system.
Children's Aid Society	Citywide	Citywide	The organization provides comprehensive supports to children, youth and their families in targeted high-needs NYC neighborhoods.
Good Shepard Services	Citywide	Citywide	The organization has over 90 programs to address needs of youth and families across NYC.

Rising Ground	Citywide	Citywide	The organization provides service to strengthen families and individuals in need, education and early childhood services, youth development programming and health and community supports through its various programs.
Hite.Com	Website	Website	Not an organization, but this online resource directory provides youth and families with a list of organizations providing free and low cost health and social services. Youth and families can browse various categories by area of need.
Police Athletic League (PAL)	Citywide	Citywide	The PAL, together with NYPD and the law enforcement community, supports and inspires NYC youth to reach their full potential. They offer an array of recreational, educational, cultural and social programs in NYC.
Brooklyn Center for Psychotherapy	300 Flatbush Ave, Brooklyn, NY	39	Provides mental health services but also has a New Directions program for chemical dependency treatment (NY State OASAS Certified).
Park Slope Center for Mental Health	255 15th St, Brooklyn, NY	39	This is a community-based outpatient mental health clinic regulated by the NY State OMH. The program serves clients throughout the city (not just Brooklyn) and provides individual, family and group therapy, as well as psychiatry and medication management to clients of all ages.

NYC Law Department Resources for Victims with Council Districts Update 4 18 2023 (Addendum B)

Brookdale Hospital Psychiatry Department	1 Brookdale Plaza, Brooklyn, NY	42	The program offers both outpatient and inpatient hospital treatment.
Coney Island Hospital Psychiatry Department	2601 Ocean Pkwy, Brooklyn, NY	48	The program offers both outpatient and inpatient hospital treatment.
Woodhull Hospital Mental Health Center	760 Broadway, Brooklyn, NY	36	The program offers both outpatient and inpatient hospital treatment.
TransLifeLine	Hotline	Hotline	The program offers trans peer support.
Callen-Lorde Community Health Center: Manhattan	356 West 18th Street, NY, NY	3	Provides sensitive health care and related services targeted to the NY's LGBTQ community.
Callen-Lorde Community Health Center: Bronx	3144 3rd Avenue, Bronx, NY	17	Provides sensitive health care and related services targeted to the NY's LGBTQ community.
Callen-Lorde Community Health Center: Brooklyn	40 Flatbush Avenue Extension, Brooklyn, NY	33	Provides sensitive health care and related services targeted to the NY's LGBTQ community.
Office of Victims Services (OVS)	Citywide	Citywide	The State OVS provides financial assistance and reimbursement to eligible victims of crime for medical and counseling expenses, funeral and burial expenses, lost wages and support, in addition to other assistance.
Safe Horizon (For Survivors of TDV)	Citywide	Citywide	Organization provides assistance, advocacy and support to victims who have experienced domestic violence, child abuse, sexual assault, stalking, human trafficking, youth homelessness and other crimes.
Brooklyn Center for Families in Crisis	1309-1311 Foster Ave., Brooklyn, NY	40	Provides outpatient mental health services.

Neighborhood Counseling Center	7701 13th Ave., Brooklyn, NY	43	Provides outpatient mental health services.
IDCC- Interborough Developmental & Consultation Center, Inc.	Locations around Brooklyn including 790 Broadway, Brooklyn, NY; 9413 Flatlands Ave., Brooklyn, NY; 2846 Stillwell Ave., Brooklyn, NY; 921 East New York Ave., Brooklyn, NY and 1623 Kings Hwy., Brooklyn, NY	36, 46, 47, 41 and 48	Provides mental health services.

CHAIRMAN
JUDICIARY

COMMITTEES
CHILDREN AND FAMILIES
CODES
CORPORATIONS, AUTHORITIES AND COMMISSIONS
FINANCE
HEALTH
INVESTIGATIONS AND GOVERNMENT OPERATIONS

SENATOR
BRAD HOYLMAN-SIGAL
47TH SENATORIAL DISTRICT
STATE OF NEW YORK

DISTRICT OFFICE:
322 EIGHTH AVENUE, SUITE 1700
NEW YORK, NEW YORK 10001
PHONE: (212) 633-8052

ALBANY OFFICE:
ROOM 310
LEGISLATIVE OFFICE BUILDING
ALBANY, NEW YORK 12247
PHONE: (518) 455-2451

e-mail:
hoylman@nysenate.gov

website:
hoylman.nysenate.gov

TESTIMONY OF SENATOR BRAD HOYLMAN-SIGAL TO THE NEW YORK CITY COUNCIL COMMITTEES ON OVERSIGHT & INVESTIGATIONS, PUBLIC SAFETY, AND GENERAL WELFARE ON OPERATIONAL CHALLENGES IN FAMILY COURT

Thank you for the opportunity to testify about the dire situation facing our Family Courts and litigants. I greatly appreciate Committee Chair Gale Brewer and the City Council's interest in this important topic.

As the chair of the Senate Judiciary Committee, addressing the crisis of Family Court is one of my top priorities. My work has been informed by the Jeh Johnson report on racial inequalities in the court system, the Franklin H. Williams Judicial Commission's report earlier this year on New York City Family Court, the reporting of Melissa Russo at NBC4, and the report of the New York City Bar Association on the impact of COVID-19 on Family Courts. I encourage the members of this committee to review those materials if you have not yet already.

Last year, we in the State Legislature were able to secure four additional Family Court judges for New York City, and, this year, we hope to add as many as a dozen more, which experts like the Williams Commission have said is necessary to begin to fix the system. These new judges will address delays by providing caseload relief to existing judges and reduce the system's reliance on judges elected to Civil Court and temporarily assigned to Family Court, where they may have less interest and less familiarity with the law.

More judges are necessary, but not sufficient. Family Court litigants need competent counsel, and while many litigants qualify for a free assigned counsel, the low rate of compensation for those attorneys has led to an exodus of experienced attorneys and an inability to recruit new talent. My colleagues and I are hard at work in Albany to finally remedy this injustice in this year's budget. The Governor, Senate, and Assembly all agree that compensation rates for 18-b assigned counsel needs to be significantly increased, though there are differences of opinion on details like the exact rate, caps on compensation for individual cases, and whether there should be a uniform statewide rate. I have urged my colleagues that we need to be as close as possible to the compensation rates provided to attorneys under federal assigned counsel programs, with a uniform statewide rate, and that the increase in compensation must be paid for by the State.

I am also fighting for an increase to the Office of Indigent Legal Services' parental representation program, which requires funding of $28 million to uphold our constitutional duty to provide counsel for parents, and a $15 million increase to institutional providers of attorneys for children.

These investments in counsel and judges will go a long way toward immediately addressing the crisis in Family Court, but the State has much more work to do long term to truly do justice to Family Court litigants. We must continue to increase resources for the Commission on Judicial Conduct to address behavior from judges that dehumanizes litigants, provide mandatory annual anti-bias training for judges and court personnel, collect additional data and create more avenues for observation and feedback, and increase other non-judicial resources for the Family Court, along with other procedural fixes to address delays.

I am encouraged that, during our confirmation hearing for new Chief Judge Rowan Wilson, he shared our view that Family Court should be a top priority for his tenure. Chief Judge Wilson said that he would be an on the ground, detail-oriented Chief Judge when it comes to Family Court. I am confident that his administration will implement the internal court changes necessary to improve Family Court.

While many of Family Court's issues can be addressed at the state level, we do need the city's assistance with certain issues.

First, while we can create new Family Court seats, we cannot ensure they are filled, and we cannot control whether the judges appointed reflect the diversity of New York City. The Mayor is responsible for appointing Family Court judges, and just last month he appointed six new, diverse candidates, for which I am grateful. We still have a long way to go, however. In its report earlier this year, the Williams Commission found that while Family Court is largely utilized by people of color, over 60% of New York City Family Court judges identify as white. I urge the Mayor to continue to quickly fill any vacancies and to continue to diversify the bench.

Second, the New York City Department of Citywide Administrative Services owns the Family Court buildings and is responsible for maintaining the courthouses. These buildings need major repairs to their foundation, ceilings, and plumbing systems. DCAS also needs to ensure better regular maintenance to keep the courthouses in a state of good repair. In the longer term, extensive renovations or new buildings will be necessary. The current conditions are demoralizing to court employees and court users, giving the impression that Family Court is a lesser court whose litigants and witnesses are somehow not as worthy as their counterparts in other courts. Any condition that demeans our court users is simply unacceptable.

Thank you again for providing me the opportunity to testify and bringing attention to the myriad issues in Family Court. For too long, Family Court has been allowed to deteriorate in the shadows, and I hope that today's hearing is one more major step to bringing those problems to light and fixing those problems. All New Yorkers deserve to be treated with dignity by our court system, and none of us should rest until that's the case.

Brooklyn Defenders

TESTIMONY OF:

Nila Natarajan
Supervising Attorney & Policy Counsel, Family Defense Practice
BROOKLYN DEFENDER SERVICES

Presented before
The New York City Council
Committees on Oversight and Investigations, Public Safety, and General Welfare

Operational Challenges in Family Court

April 24, 2023

On behalf of Brooklyn Defender Services, we would like to thank the the New York City Council's Committees on General Welfare, Oversight & Investigation, and Public Safety for holding this oversight hearing on Operational Challenges in Family Court, and for looking at the ways in which family court and the Administration for Children's Services impact communities of color and low-income families.

Brooklyn Defender Services (BDS) provides multi-disciplinary and client-centered criminal defense, family defense, immigration, civil legal services, social work support and advocacy in nearly 30,000 cases involving Brooklyn residents every year. The Family Defense Practice has represented parents and caregivers in family court since 2007. Today, BDS' Family Defense Practice (FDP) is the primary provider of legal representation to parents facing allegations of child abuse and neglect in Brooklyn's family court. In over 15 years of service, FDP has represented almost 15,000 parents and caretakers in family court and impacted the lives of over 30,000 children.

I. Conditions in family court dehumanize and traumatize New York City families

It is well established that Administration for Children's Services (ACS) investigations and any subsequent legal prosecutions primarily target Black and Brown families and families living in poverty. The families appearing in family court have been disproportionately surveilled and policed by ACS. A family's race and socioeconomic status make them vulnerable to being

targeted by reporting and ACS investigation[1] As it functions today, the family court does not operate as a check on the over-policing of low-income Black and Brown families or as a vigilant protector of parent or children's fundamental rights. Rather, it often operates as an extension of the surveillance experienced by communities of color at the hands of ACS, and the court process itself causes lasting trauma for the most marginalized families. Together, ACS and its attendant systems, including the foster system, so-called preventive services, and the family court are most accurately described as the family regulation, rather than the "child welfare" or "child protective" system.[2] Although the stated intention of New York City's family regulation system, of which the family court is an integral part, may not be to separate Black and Brown children from their families, Black and Brown families are the most likely to be prosecuted by ACS and separated by the court system. The Report of the Special Advisor on Equal Justice in the New York State Courts issued in October 2020 (the "Special Advisor's Report") confirmed much of our experiences in the family courts. Parents are routinely targeted by racism and overt discrimination by judges, court attorneys, clerks, and court officers.

Parents, caregivers, and children with involvement in the city's family court system have often experienced a lifetime of offensive and harmful interactions with racist government systems that are paralleled and compounded in encounters with the courts. We have witnessed children that ACS seeks to remove from their parents' homes being literally ripped from their parents' arms by court officers; young people who have been criminalized in schools for normal adolescent behavior being presumed guilty, labeled as gang members, and treated with overt aggression; and parents and young people being taunted with racist epithets by court officers.[3]

---

[1] In the state of New York, African American children make up 16% of the general population and 48% of the foster system population. *See* New York Profile Transition-Age Youth in Foster Care. In New York City, African American children account for 27% of the children under the age of eighteen but a staggering 57.1% of the children separated from their families in the foster system. In contrast, 24% of the children in New York City are white, but white children comprise only 4% of the foster care population.Tina Lee, Catching A Case: Inequality and Fear in New York City's Child Welfare System 5-6 (2016). In addition to being more likely to have contact with New York City's family regulation system, families of color fare worse than white families once a case has been opened. Studies show that children of color are more likely to be separated from their families than white families, even under the same circumstances of risk. See, e.g., U.S. Gov't Accountability Office, GAO-07-816, African American Children in Foster Care: Additional HHS Assistance Needed to Help States Reduce the Proportion in Care 8 (2007). Furthermore, the harm of separation is more likely to be exacerbated for children of color because they spend a longer time separated from their families, change placement more frequently, are less likely to receive necessary services, are less likely to ever reunify with their families, and are more likely to age out of foster care without being adopted. *See* Elisa Minoff, Entangled Roots: The Role of Race in Policies that Separate Families, Center for the Study of Social Policy (2018); Fluke, et al., A Research Synthesis on Child Welfare Disproportionality (Jan. 2011).

[2] See Dorothy Roberts, Abolishing Policing Also Means Abolishing Family Regulation, Chronicle of Social Change 2 (2020), chronicleofsocialchange.org/child-welfare-2/abolishing-policing-also-means-abolishing-family-regulation/44480

[3]Reporting from the Special Advisor on Equal Justice in the New York State Courts, https://www.nycourts.gov/whatsnew/pdf/SpecialAdviserEqualJusticeReport.pdf

Families are dehumanized from the moment they cross the courthouse threshold.[4] The people we represent—overwhelmingly low-income Black and Latine New Yorkers—are made to pass through a metal detector to access the court, while staff and attorneys—often white—are able to skip the line. Parents cannot carry snacks for toddlers or access private space to breastfeed. Court officers, attorneys, ACS staff, and judges routinely refer to parents with generic and dehumanizing terms as "birth mom" or "respondent." Court staff and officers are routinely rude, insensitive, and impatient and have reprimand parents for expressing emotion or speaking out of turn. We have witnessed parents muted or removed from virtual appearances for speaking or during proceedings. Far too often parents suffer negative legal consequences because their natural, emotional response to a threat to their family's integrity is interpreted as evidence of mental instability or a danger to their children.

II. Practices of Family Court Legal Services (FCLS) contribute to punitive and prolonged court proceedings

Family Court Legal Services (FCLS) is the legal representative for ACS in Article 10 proceedings. Given the rehabilitative purpose of the Family Court Act, FCLS should uphold ACS' policies and principles, strive to reduce barriers to resources and support, and avoid punishing and separating families. Instead, our experience is that FCLS' approach to prosecuting New York City's most marginalized families often relies on punitive litigation and unnecessary delay. This approach exacerbates the harm families experience in the family regulation system.

Families facing allegations of neglect or abuse in family court, are almost always told, if not court ordered, to complete a litany of services to address ACS' concerns, persuade a court to reunify their family, or achieve a positive resolution of their court case. ACS has agreed that families be provided certain provisions and payment for services. For example, if a family does not qualify for health insurance and therefore must pay out-of-pocket to access recommended or court ordered services, ACS' policies concede that it should cover these costs. However, ACS rarely covers these costs unless they are ordered to do so. And even then, they usually put up a fight. It has been our experience that even when a court orders ACS to cover the costs for a family to travel for visits, provisions like furniture or food, or childcare their attorneys routinely object to these orders even threatening to appeal the court's orders.

Similarly, when a family has been separated by the court, ACS has clear policy that establishes that children should have visits with their parents in the least restrictive environment that ensures the safety of the child.[5] Rather than working with families to expand this visitation - more hours a day, in more child-friendly settings outside of an ACS or agency office, or with less restrictive

[4] Report and Recommendations of the Committee on Families and the Law: Racial Justice and Child Welfare, https://nysba.org/app/uploads/2022/03/Committee-on-Families-and-the-Law-April-2022-approved.pdf
[5] Administration for Children's Services Policy #2013/04, available at https://www.nyc.gov/assets/acs/policies/init/2013/B.pdf

supervision - counsel for ACS often objects to more safe visitation time between parents and children. Such an approach hinders reunification and prolongs court proceedings.

ACS agrees that court orders and resolutions should limit collateral consequences for parents and families, focus on the best outcomes for children, and allow for rehabilitation for parents. Instead, we have experienced FCLS demanding full stay away orders of protection against parents - which may have harmful consequences in immigration proceedings - when a simple order requiring the parent to leave a family's home would effectuate ACS' goals. We have witnessed FCLS requiring a parent to voluntarily accept a finding of neglect - akin to a no-contest guilty plea - before agreeing for a child to return to their home. This approach is counter to the best interests of a child; if ACS agrees that a child is safe to return home, then requiring any sort of punitive settlement puts a parents' unrelated legal choices before the needs of the child, punishes a family for exercising their right to contest allegations at trial, and coerces a parent into an unfavorable settlement and delays children leaving the foster system. By pursuing legal "wins" rather than considering the best interests of children and families, FCLS creates unnecessary instability and barriers to reunification for families.

Article 10 proceedings require FCLS to provide information to the court and counsel regarding the current status of a child's placement in the foster system, the nature of visits between a parent and their child, children' wellbeing, such as schooling and medical care, and the status of services for both children and parents. By law and through discovery demands, ACS is required to provide a range of discovery which forms the basis of the evidence against the parent, such as ACS records, hospital records, shelter records, police records, and educational records. Without the provision of timely and complete discovery from ACS to counsel for parents, families cannot fully be apprised of their legal options and will be unprepared for trials and other hearings. Lack of discovery also makes it impossible for a parent to determine whether they should accept a settlement of the case against them. FCLS often provides discovery at the last minute - days or even hours before a trial or hearing is scheduled to begin. Parents are then forced to make uninformed and rushed legal decisions about whether to pursue a trial, seek an emergency hearing, or to accept a settlement without crucial evidence in their case, or to request adjournments - further delaying family reunification and prolonging court proceedings.

ACS and foster agencies have a responsibility to regularly provide information to the court and counsel regarding the case, the family, visits, and services, which is relied on by the court to make decisions about families, including how much time they can spend together and if they should be reunified. These reports are often not provided at all, or are routinely provided on the day of a court appearance, with little time for counsel to review the reports and discuss with their clients. The delay in turning over these reports result in further delays. Similarly, parents are frequently provided last-minute settlement offers, often minutes before a trial is scheduled to begin. This leaves parents to make vital decisions for their families as they are walking into the

courtroom - deciding between exercising their legal rights, resolving traumatic legal proceedings, and reunifying their families.

In our experience, FCLS practices are not consistent with ACS' stated policy or goals, disempower families, prolong court proceedings and family separation, and undermine the Family Court Act's stated goals of rehabilitation and pursuing the best interests of children.

III. NYC's interdisciplinary parental defense model shortens foster placements and saves resources

In order to meaningfully work with and defend parents and families, BDS and other providers around the city have created a robust interdisciplinary model of defense that empowers families to make the best decisions for themselves; avoids some of the most traumatizing harms of investigations; avoids court proceedings entirely; keeps families together; and if separated, returns child home faster.

This model of legal representation, which New York City has been invested in, works. Our success in reducing the length of time children languish in the foster system by empowering their parents for their return is well documented. The largest study of parental representation in family court, conducted by Casey Family Programs and New York University School of Law, found that holistic, interdisciplinary representation and services by our offices reduced children's time in the foster system by nearly four months and saved New York City $40 million in foster care expenditures per year. The study found that these outcomes were achieved without any difference in safety to children.[6]

BDS provides comprehensive legal and social work services, and our multidisciplinary teams ensure the best outcomes for the parents we represent and their families. Our social workers work closely with parents to listen and understand what they may be seeking assistance with and to offer them support in obtaining those resources. Together, we identify needed resources and supports for families, and make connections to these supports. Our advocates connect families to community-based programs like substance use treatment, mental health treatment, and parenting support for families with special needs. We also assist families to access tangible resources such as assisting a family in signing-up for public benefits and health insurance, navigating the complex web of public housing systems, obtaining food at food pantries and accessing other supplies for children. We accompany clients to meetings with ACS, foster agencies, and service providers to ensure parents' lived experience and expertise is centered, that any barriers to resources are addressed, and court orders are followed.

[6] https://www.sciencedirect.com/science/article/pii/S019074091930088X

At the same time, our attorneys are working on a parent's legal case, appearing in court to litigate complex trials and hearings; providing in-depth legal counsel to parents; negotiating with counsel for ACS; and filing motions to address a complex variety of issues, such as the frequency of family visits, reunifying families, and addressing the failures of ACS and foster agencies to fulfill their obligations to families. Our attorneys and advocates are often stepping in to support families when ACS, foster agencies and their counsel place unneeded and punitive barriers between children, their parents, and the resources and supports they need.

Our work with parents is highlighted in our representation of Ms. R. ACS removed Ms. R's son from her care due to concerns about instability in her mental health. Ms. R was committed to stabilizing her mental health and reunifying with her son. Rather than build a rapport with Ms. R, make a holistic assessment of her needs based on conversations with her, and connect her to services and resources - ACS and the agency made minimal referrals to generic services that did not meet the specific needs of our client. In contrast, our office worked closely and tirelessly with Ms. R - getting to know her and her family, earning her trust, and working with her through the challenges of advocating with her mental health treatment team to find the best course of treatment to meet her needs. Vitally, when it became clear Ms. R's underlying need was safe housing that accommodated her physical and medical disabilities, our office helped her apply for supportive housing. With stable housing and mental health support, Ms. R grew as a parent and made tremendous strides towards reunifying with her son.

New York City's interdisciplinary parental defense model ensures that parents are empowered to make the best decisions,- with the support of counsel and social work support - for their families during an investigation and legal proceedings. This model centers families in family court proceedings and ensures their needs are met in and outside of court.

IV. Families have better outcomes when parents know their rights

Families and parents have a statutory and constitutional right to counsel in Article 10 proceedings. It is vital they have access to advice throughout the course of an ACS investigation. Even where allegations of maltreatment are meritless, ACS investigations subject families to invasive, stressful, and traumatic treatment. Similar to the ways in which the criminal legal system was exposed for using pretext to "stop-and-frisk" a person based on their race or the neighborhood they live in, an initial investigation can lead to further invasive involvement by the family regulation system, including surveillance of a family, and even the removal of children from their home.[7] This type of pretextual surveillance and punishment within the family regulation system may apply to a range of behaviors or indicators of poverty that are stigmatized

[7] Burrell, Michelle. "Child Welfare Needs to Have It's 'Stop-And-Frisk Moment.' *The New School Center for New York City Affairs*. http://www.centernyc.org/child-welfare-needs-to-have-its. June 27, 2018.

and "othered."[8] Families living in homeless shelters or under incredible economic stress, are living under the fear that one argument between parents or one moment of impatience with a child may lead to a knock on their door from an ACS worker. School attendance interrupted by homelessness, or an angry landlord seeking to evict a family illegally can result in a call to the authorities and begin an investigation into a family. The trauma of these investigations is amplified because parents do not know of their rights during this process and are unable to make informed decisions. When parents receive advocacy and support at the outset of an investigation, and are informed of their rights, families are less likely to face prosecution in family court, experience the harm of separation and have better outcomes.

Funded by City Council, the **Right to Family Advocacy Project** provides low-income parents access to legal representation early in ACS investigations, to ensure legal support, understanding and the resources needed to navigate these frightening and high stakes investigations. Our office, along with The Bronx Defenders, Center for Family Representation and Neighborhood Defender Services of Harlem, offer parents and caregivers advice about their rights and options, and the consequences of decisions during an investigation; assistance and advocacy in communications and meetings with ACS and help identifying the challenges that brought their children to the attention of ACS and assistance in accessing services, resources, and benefits to meet family needs. This early representation helps ease some of the fear and confusion that these investigations create for families and also allows parents to make informed decisions that protects their families from some of the most traumatic parts of an investigation, keeps their families together, and avoids further legal prosecution.

The Council must continue to invest in programs that inform parents of their rights, and pass legislation including Int. 294-2022 (Ung) and Int.1736-2019 (Rivera) which will require ACS investigators to inform parents of their rights during an investigation.

Passing this legislation will ensure that all New Yorkers, regardless of income or neighborhood, understand their rights during an ACS investigation. This legislation does not create new rights and does not hinder ACS' authority to immediately intervene in an emergency – but instead ensures that all parents know their rights and are able to make the best and most-informed decisions about their families. These investigations are serious government invasions of families' privacy and may infringe on their right to family integrity, resulting in the parents' loss of the care and custody of their own children.

In our practice, we regularly meet with parents who have been dealing with ACS for weeks or months without the benefit of counsel or information about their rights. Without legal guidance, parents receive no explanation of their rights during an investigation, are rarely informed of the allegations against them, and are not told of their right to speak to an attorney. They are often

[8]https://imprintnews.org/child-welfare-2/time-for-child-welfare-system-to-stop-confusing-poverty-with-neglect/40222

subjected to drug and alcohol testing without informed consent; their mental health and medical providers are contacted without informed consent; and their children are interviewed, strip-searched, and photographed at all hours of the day and night—including while they are at school—without their parents' permission.[9] These invasive investigative procedures – with no oversight – are unnecessary and harmful to children and their families.

New York has robust safeguards in place to ensure that ACS can conduct a thorough investigation into allegations of child maltreatment. Nothing in this legislation curtails these protections or limits the legal mechanisms available to ACS during an investigation. Under Section 1034 of the Family Court Act, child protective agencies can seek court orders to help them facilitate an investigation and protect children even before they have filed a case in court. In those rare situations where there is credible evidence to believe a child is in immediate danger, ACS has legal authority to take a child into custody without a court order.[10] It is notable that these legal mechanisms are rarely used. Instead, ACS routinely enters homes without meaningful consent and imposes its authority inappropriately.

Ensuring that parents have access to their rights during an investigation will allow parents to make informed decisions for their family and will make this investigation process less frightening and traumatizing for the whole family.

V. Investment in Family Defense

The city's family defense representation is not currently funded adequately to meet the state's statutory and constitutional mandates. We ask that the Council work with Mayor Adams, Mayor's Office on Criminal Justice, and the state to expand funding to ensure high quality family court representation for low-income parents and caregivers. Specifically:

- We ask the city to add to the mayor's budget $30 million to be distributed across the family defense providers (BDS, The Bronx Defenders, Center for Family Representation, and Neighborhood Defender Service of Harlem) so that we can begin to meet the caseload standards for parents' attorneys. In 2021, the Office of Indigent Legal Services promulgated caseload standards that ultimately show the city should be allocating $80 million to this function. In FY23, $50 million was allocated. We are asking the City Council to bring the total to $80 million in FY24, or at minimum, that $80 million be allocated in FY25 and a substantial step forward in FY24 with an additional $15 million.
- Increase funding for the Right to Family Advocacy Initiative which provides support, guidance, and counsel to parents in ACS investigations, avoids family separation and court filings, and provides representation to parents in SCR hearings that allow them to

[9] Rise, *Surveillance Isn't Safety- How over-reporting and CPS Monitoring Stress Families and Weaken Communities* (Sept. 17 2019).
[10] NY FAM CT § 1024 (Permitting the child protective agency to remove a child from their home without a court order in the event of a true emergency).

find employment. The modest increase in funding is to enable our offices to increase capacity and address the increase in program costs. BDS submitted a joint request for $825,000, which is $3.3 million across the four providers, to fully fund the Right to Family Advocacy Initiative.

The city is mandated with the obligation to provide adequate services for this function by law and must meet this responsibility through increased funding for family defense contracts immediately. The City Council should demand that the mayor's budget be amended to add these funds to the city budget in FY23.

Anyone facing the possibility of being separated from their children, or fighting to reunify with their families, would want - and deserves - to have well-resourced attorneys by their side; attorneys who have the time and expertise to dedicate to their clients. Families also need access to social workers and advocates who can help them navigate the vast variety of complex bureaucratic systems necessary to ensure their families have the resources they need to thrive and be safe.

If you have any questions, please contact Nila Natarajan at nnatarajan@bds.org.

CENTER FOR FAMILY REPRESENTATION
Every Family Matters

www.cfrny.org ♦ 212.691.0950 ♦ info@cfrny.org
Bronx: 190 East 162nd Street ♦ Bronx, NY 10451 ♦ Fax: 212.691.0951
Manhattan: 40 Worth Street, Suite 605 ♦ New York, NY 10013 ♦ Fax: 212.691.0951
Queens: 89-14 Parsons Boulevard, 2nd Floor ♦ Jamaica, NY 11432 ♦ Fax: 718.291.4360

Center for Family Representation (CFR)
Oral Testimony of Jennifer Feinberg
Presented Before
The New York City Council Committee on Oversight & Investigations Jointly with the Committee on Public Safety and the Committee on General Welfare

Hearing Date: April 24, 2023

Subject: Oversight - Operational Challenges in Family Court

My name is Jennifer Feinberg and I'm the Litigation Supervisor for Policy & Government Affairs at the Center for Family Representation. Thank you Chair Brewer, Chair Ayala, Chair Hanks and the Committees for holding this hearing today and considering the ways that the operations of our family courts and the players who practice in it, so often fail to deliver the justice and fairness that NY families deserve, and instead perpetuate racism and harm on the communities they are meant to serve.

CFR is the county-wide indigent defense provider for parents prosecuted for neglect and abuse by ACS in Queens and Manhattan family courts, and as of 2022, a conflict provider in the Bronx. 90% of our clients are Black, brown, and people of color, and all of them are poor.

The 2020 Report from the Special Adviser of Equal Justice in the New York State Courts found that NY's family courts provide "a second-class system of justice for people of color in New York State." Three years later, following a pandemic that disproportionately impacted these same communities, that has not changed. Black and brown families continue to be separated for too long, or even sometimes permanently, as the family courts fail to administer justice.

Unnecessary delays undermine the procedural and substantive due process right of families, extending separation, and making it more likely that a family will be permanently separated by termination of parental rights given strict statutory timelines. Family Court Legal Services, or FCLS, attorneys representing ACS, consistently fail to provide timely discovery and court reports, and request repeated adjournments when their witnesses do not appear to testify. Those adjournments are almost always granted, while adjournments are rarely given when a parent is not present. Long adjournments prevent the adjudication of cases and make it more difficult for families to work towards reunification. On the other hand, any absence by a parent is held against parents and seen as proof that they are not invested in their families, even if their absence is due to work or a childcare issue.

The Family Court itself perpetuates the harms of the family regulation system, often failing to work as a check on the family regulation system, and prioritizing adoption and family separation over what is best for children and families. "Standards and goals" set for judges prioritize how quickly judges complete fact-findings, dispositions, and termination of parental rights cases, instead of focusing on reunification and the best outcomes for families, which sometimes means giving parents more time to meet the requirements of a burdensome service plan to address

complicated problems, like substance abuse, which may take years to resolve. The courts repeatedly fail to prioritize emergency hearings requesting reunification, called 1027s and 1028s, which are statutorily required to be held expeditiously. Long adjournments and inadequate hearing times often cause these hearings to last for weeks, if not months.

These are some of the issues families face in family court that hinder families' access to justice. We will discuss other issues, including language access and technology issues, and unwelcome spaces, in our written testimony. Thank you.

40 WORTH STREET, SUITE 605 89-14 PARSONS BLVD, 2ND FLOOR
NEW YORK, NY 10013 JAMAICA, NY 11432
MAIN NUMBER: (212) 691-0950 MAIN NUMBER: (212) 691-0950
FAX NUMBER: (212) 691-0951 FAX NUMBER: (718) 291-4360

Center for Family Representation (CFR)
Oral Testimony of Sandeep Kandhari
For Oversight Committee re: Operational Challenges in Family Court

Hearing Date: April 24, 2023

Good morning, and thank you for allowing me to speak on behalf of the children and families we represent everyday at the Center for Family Representation also known as CFR. My name is Sandeep Kandhari, Director of Litigation for CFR's Youth Defense Practice. I have been representing young people in Family Court since 2006 and I have had the privilege of working in all five boroughs over the course of my career so I'm very familiar with how this system treats our families. CFR uses an interdisciplinary practice, which means that every client who meets us, adult or youth, is assigned both a lawyer and a social worker from the first day we meet them. This model is why I joined CFR because I've seen how many different systems are involved in our families' lives and that providing social support is just as, if not more important to helping our clients avoid ever coming back to court.

As your committees consider ways to improve Family Court, I want to focus your attention on a few issues.

The City is Failing Crossover Youths

First, children who are removed from their families and placed in the foster system are not doing well. The citywide high school graduation rate is 77%, that rate drops to 60% for children who don't have stable housing, but it is only 25% for children in ACS custody.[1][2] Think about what that says about the quality of care ACS is providing for our most vulnerable children. ACS has deemed these children victims of neglect or abuse, but then chronically fails to provide the support they deserve. Too often, teenagers are deemed hard to place and languish in the Children's Center or in Youth Residential Centers where they are not only displaced from their families but also from their schools. The Children's Center in particular is not an appropriate placement for teenagers but there are so few placements for adolescents who exhibit behavioral problems so they will have to stay at the Children's

[1] https://www.nyc.gov/assets/cidi/downloads/pdfs/Education_Outcomes_May19_2022.pdf
[2] https://www.nytimes.com/2022/10/26/nyregion/nyc-homeless-students.html

Center because there's nowhere to send them. The Children's Center doesn't have a school onsite, and there's no programming for children, but teenagers are not even allowed to have their cell phones, so what are they supposed to do all day as they wait for their long-term placement? Too often I've met with children in ACS custody who aren't being provided support in going to school, having their special educational needs reviewed or enforced and these destabilized children sometimes get arrested when they don't have the appropriate services.

Family Court refers to these children as "crossover" cases because they have simultaneous family regulation and juvenile delinquency cases. Too often, when these children get arrested they receive far less support than I see from children who live with their families. Caseworkers often fail to go to the precinct to speak with the NYPD, and often nobody even comes to court when the child comes to court. An ACS liaison who is already working in the building will arrange for transportation for the child to be brought back to their facility. Sadly, from my experience, the caseworkers who do appear in court often share negative information about the child, acting more as an arm of the government rather than a support for the young person. If the child is 16 or 17 when arrested for a felony and under Raise the Age brought to criminal court, there isn't even an ACS liaison in that building and often nobody appears for the child and nobody is there to pick them up.

In sum, ACS is not a very good parent for adolescents and then doesn't do enough to support them when they get in trouble.

Pandemic has had a Large Impact on Children

As we're thinking about how we can best serve children and families, I'd direct the committee's attention to think about the impacts of the pandemic on our young people, especially those with the greatest need. By some estimates, as many as 59,000 children have fallen out of the school system but aren't registered as home-schoolers nor have they moved. They've just stopped going to school. That's a staggering number of children, and young people out of school are more likely to get arrested.

There is a false narrative being propagated by some that children are committing more violent crime than ever, that is categorically false. Everyone should read John Jay's report in February of this year, but the rates of children are actually lower than in the past two decades. There was a spike in youth and adult gun violence in 2020 and 2021 but that has largely subsided.

Our client families come from the poorest and most neglected communities across NYC. Communities with failing public housing, inordinate gun violence and the highest rates of Covid deaths. These families need our support.

I've spoken with so many parents who believe their children are struggling with mental health needs and don't know where to turn. Parents who are seeking support for their children in the richest city in the country should be able to find it. I don't want their children to have to get a court case before they can get family therapy, nor should the first mental health evaluation they get be from a court-ordered psychologist. But the wait times to get evaluations can be weeks or months, there are not enough mental health counselors available for our poor communities and unfortunately these services are often hard to attain.

We Need to Invest in Services

As your committees seek ways to improve court operations, think about what these families truly need to avoid coming to Family Court altogether. Many need stable housing, others need access to mental health services, many need better school placements for their children with special needs and many parents simply need affordable childcare so they can help their older children. We need to help poor families get support outside of court.

Since Raise the Age started having 16/17 year-olds appear in the Youth Parts, there was only one alternative-to-incarceration program available, Esperanza. Sadly, Esperanza lost their funding this year and recently shuttered their operations, leaving children in the Youth Part without any services available through the court other than probation monitoring. In Family Court, we have a few more service options available and I'm grateful for the programs we have. I ask the committee to think big because we are in an era of change post-pandemic.

I'd also urge you to consider your funding priorities outside of this hearing to improve access to mental health services for families. Adolescents are struggling, and need access to good mental health services that also work with their caregivers so they can better support their children. ideally at no cost. The City Council needs to do more in the communities where our families come from. We need to invest in community providers so that families can trust the services they're receiving. A courthouse is not the most conducive environment for understanding people.

If the Council is going to add funding to Family Court your committees should fund an educational advisor to be placed in Family Court, akin to the DOE welcome center, to help families better

understand their rights and options for their child's education and to help them get the appropriate school placement. This service should be available to any family that comes to Family Court.

Finally, when it comes to crossover youth, children in ACS custody who incur juvenile delinquency cases, I believe our city has the deepest burden to serve them. I don't believe any teenager should ever go to the Children's Center. I also believe that any child who is arrested while in the Children's Center should have their case automatically diverted by the Dept of Probation, and the main goal should be to connect the young person to an appropriate school setting and supportive services. These children cannot be seen as a victim at one minute and then immediately turned into a perpetrator the next. We have to do better by these children. Ideally, we can avoid separating them from their families by providing support for the families as early as possible. I don't want our city to continue throwing money at the same agencies who have been running things for years and expect better outcomes. We need to think bigger.

Thank you for listening and I'd be happy to answer any questions.

Center for Justice Innovation

520 Eighth Avenue, New York, NY 10018
p. 646 386 3100
f. 212 397 0985
innovatingjustice.org

Courtney Bryan. Executive Director

Center for Justice Innovation
New York City Council
Committee on General Welfare Jointly with the Committee on Oversight and Investigations and the Committee on Public Safety
Oversight - Operational Challenges in Family Court
April 24, 2023

Good morning, Chair Ayala, Chair Hanks, Chair Brewer, and esteemed Council Members of the Committees on General Welfare, Public Safety, and Oversight and Investigations. Since its inception, the Center for Justice Innovation ('the Center') has supported the vision embraced by Council of a fair, effective, and humane justice system. The Center's long-standing partnership with Council over the past 25 years has helped bring this vision to life through evidence-based and racially-just programming that spans the justice continuum, including through ongoing partnership with New York City Family Court.

Our firsthand experience operating direct service programs and conducting original research uniquely positions us to offer insights that Council can look to as it considers the development of initiatives that support all New Yorkers in family court proceedings. In each instance, our aim is to provide a meaningful and proportionate response, treat all people under our care with dignity and respect, prioritize public safety, and produce much-needed cost savings for the City. And, as an anti-racist organization, we work to ensure the needs of marginalized New Yorkers are addressed.

Operational Challenges in Family Court

The Center has identified several operational challenges in family court which stem from a lack of adequate resourcing:

- Staff shortages (attorneys, Judges, clerks, court officers, and child support Magistrates) have resulted in large caseloads and delays in justice for the families we work with.
- Lengthy child welfare proceedings are particularly detrimental, as they result in delays connecting families to services, supporting parent-child contact, and family reunification. Lack of resources for supervised visitation prevents cases from moving forward and the strengthening of parent child relationships.
- Timely issuing and enforcing of child support orders is critical to the financial empowerment of survivors of intimate partner violence. Child support Magistrates

are not able to provide enough oversight to engage non-custodial parents to address barriers to payment.
- Delays in adjudicating custody and order of protection cases compromises safety and leads to uncertainty and instability for children and survivor parents.

The delays in family court in New York City are caused by a complex set of factors. One of the primary causes is the lack of resources, which permeates legal representation in family court. This includes the diminished 18B ranks, lawyers assigned to those unable to afford their own, which has resulted in further delays for families. It's difficult to assign lawyers and schedule cases due to the shortage of legal staff and funding resources. Parent defense groups have stepped in to fill some of these gaps, but they also require additional resources to continue supporting families effectively. Moreover, the lack of support for supervised visitation is another enormous barrier to adjudicating cases in family court. In cases where there are safety issues, courts must order visits to be supervised, but long wait lists and the scarcity of providers, particularly therapeutic providers, delay family reunification. This can have significant emotional and psychological consequences for both parents and children. Furthermore, there is a lack of mental health information to inform judicial decision-making and case planning. This deficiency creates significant problems for the court, as mental health information is often necessary to understand the unique needs of each family and make appropriate judgments. Without access to this information, the court may struggle to provide the best possible outcomes for families.

The overall under-resourcing of family court prevents streamlined coordination across interconnected agencies that impact the lives of families such as the Administration for Children's Services (ACS), Department of Homeless Services (DHS), New York City Housing Authority (NYCHA), Human Resources Administration and community-based service providers. The Center recommends adequately resourcing Family Court and supporting the work of specialized third party providers like the Center, who through programs like the Strong Starts Court Initiative and Midtown Community Court's Youth Weapons Diversion Program fill gaps to meet the needs of all New Yorkers moving through family court proceedings.

Strong Starts Court Initiative

The Center's Strong Starts Court Initiative ('Strong Starts') has been successful in addressing some of the gaps in the child welfare system, but it is important to note that the program is funded almost entirely with private foundation support, which means that it is available to only a fraction of the total cases that could qualify for its services. Strong Starts enhances the capacity of family court to bring positive changes to court-involved babies and their families, serving children from birth to three years of age who are subject to child protection proceedings filed by ACS and under the jurisdiction of the New York City Family Court.

A challenge faced by families involved in the child welfare system is the issue of case delays. Court cases can be prolonged by adjournments due to the many parties involved needing more time to coordinate, which can further exacerbate the challenges that families are facing. However, the Strong Starts Court Initiative has implemented a number of strategies to address case delays and ensure that cases are moving as quickly as possible. One of the key strategies is the use of monthly case conferences, which bring together all stakeholders involved in a case to

address any issues or concerns and ensure that the case is progressing in a timely manner. The stakeholders include the family, alternate caregivers, attorneys, case workers, and service providers. These case conferences allow for more efficient communication and coordination among stakeholders, reducing the need for adjournments and streamlining the case process. This approach not only benefits families by reducing the length of time they spend in the child welfare system, but also benefits the court system by reducing the backlog of cases.

There is a strong focus on collaboration and problem solving that impacts the culture and the way in which the Courts, ACS, the family, and their clinical service providers work together, share information, and resolve family and systems problems. By coordinating all parties, Strong Starts streamlines case processing and problem solving prior to appearing before the Judge. Additional support for families also eases the burden on attorneys, who are often expected to act as social workers without the training to do so. Strong Starts Judges have repeatedly attested to the marked differences in their Strong Starts cases. The Strong Starts Judge in the Bronx has noted a complete culture change in the court over the short time that Strong Starts has been in place, now that evidence-backed infant parent relational therapies have taken the place of court-ordered solutions, no longer relying on ineffectual parenting classes.

Another gap in Strong Starts funding that is currently filled by limited support is ongoing child and family assessments by experienced clinicians that help determine the services needed to restore safe and nurturing parenting and to promote healthy developmental trajectories for children. Families are connected to high quality, trauma-informed services that specifically target the problems that brought them into the child welfare system. And Strong Starts is able to provide critical clinical information to the Judge to inform decision-making. These fundamental services are associated with reduced likelihood of future abuse or neglect petitions.[1] Strong Starts has been operating out of the Bronx since 2015 and is now in all five boroughs. To date, the program has prevented the removal of a significant number of infants from their parents, has effectuated the return to their parents or families of infants who were in foster care, has prevented the removal of children from foster homes and thereby has reduced further attachment disruptions and instability in their young lives. In its operations and in its expansion, Strong Starts assures families have strong and evidence-backed services during the course of their child welfare case and once they are reunited.

Midtown Youth Weapons Diversion

The Center has a history of unique knowledge and expertise in working to reduce violence and increase public safety. The Center's research team evaluates programs that address violence and recently conducted a unique study examining why young New Yorkers carry guns.[2] This work has provided the Center with lessons learned for effectively reaching target populations. Launched as a pilot in early 2021, the Center's Midtown Youth Weapons Diversion program offers young people the opportunity to avoid prosecution on weapons possession charges by participating in restorative community-based programming. The Midtown's Youth Diversion program serves as an official partnership between the Law Department and an external

[1] https://www.innovatingjustice.org/publications/helping-youngest-start-life-strong
[2] https://www.innovatingjustice.org/publications/gun-violence-NYC

organization that provides an early off-ramp from the traditional Family Court process for adolescents (ages 14-18) arrested on weapons-related charges.

In the program, staff, including a Credible Messenger with lived experience of the criminal legal system, co-create an action plan with each participant based on their stated needs and interests. Throughout the 60-90 day program, the Midtown team supports the young person and their family to work towards their goals. Grounded in restorative practices, the model includes a support circle where participants, families, and community-based support people come together to understand the young person's action plan and wrap around them to support success.

In our inaugural year, nearly every eligible participant referred to Midtown's Youth Weapons Diversion program has chosen to enroll in the program, and 90% of participants have completed the full program.[3] Successful completion of this diversion program leads to a non-filing of the case, which diverts the young person away from family court proceedings, or a dismissal if the case was already filed, thereby avoiding the full criminal process and its collateral consequences. In addition to providing a critical diversion opportunity that addresses the root causes of gun violence, this program will provide educational support and job skills development, offer connections to health and wellness and other holistic services, and build youth connections to the community.

Conclusion

The Center stands ready to continue implementing proven programming which connects individuals moving through family court to the services they deserve, working with Council to forge creative solutions and adaptations. The Center thanks Council for its partnership and is happy to answer any questions you may have.

[3] Center for Justice Innovation. (2023). [Midtown Community Court data file]. Retrieved from the Justice Center Application case management system.

New York City Council Oversight Hearing on the FY23 Preliminary Budget
Committee on Oversight and Investigations
Jointly with the Committees on General Welfare and Public Safety

Submitted Testimony of Rodney Lee, Deputy Division Director
& Michael Wagner, Senior Director of Permanency
Monday April 24, 2023

Thank you Chair Diana Ayala, Chair Gale Brewer, and Chair Kamillah Hanks and the members of the Oversight and Investigations, General Welfare, and Public Safety committees for the opportunity to present testimony to you today about the impact of Family Court operations on permanency for children and families served by Children's Aid.

For nearly 170 years, Children's Aid has been committed to ensuring there are no boundaries to the aspirations of young people, and no limits to their potential. We are leading a comprehensive counterattack on the obstacles that threaten kids' achievements in school and in life. We have constructed a continuum of services, positioned every step of the way throughout childhood that builds well-being and prepares young people to succeed at every level of education and every milestone of life. Today our nearly 2,000 full and part time staff members empower 45,000 children, youth and their families through our citywide child welfare, family services, and network of 40 locations, including early childhood education centers, public schools, community centers and community health clinics, in five New York City neighborhoods – Harlem, Washington Heights, the South Bronx, Central Brooklyn and the north shore of Staten Island.

As a multi-service human services agency, we employ a holistic strategy that serves children and their families at every stage of development—from cradle through college and career—and in every key setting—home, school, and community. This cross-sector approach is more vital than ever, as the COVID-19 pandemic destabilizes the communities we serve and exacerbates existing racial and socioeconomic inequity. In this critical period, children, youth and their families need a trusted partner like Children's Aid to provide a network of resources they can turn to when experiencing the relentless challenges that have permeated this crisis—from food insecurity, anxiety and stress to the grief that comes with losing a loved one. Our staff has the expertise and tools to help our families overcome these struggles, keeping them on track to realizing their promise.

As an agency with a strong city advocacy agenda, we are members of and support the platforms of the Campaign for Children, Council of Family and Child Caring Agencies (COFCCA), Fair Futures, the Human Services Council, and the New York City Coalition for Community School Excellence. Together, we are on a mission to connect children with what they need to learn, grow, and lead, assuring successful, independent lives.

Background

As an ACS contracted child welfare agency, Children's Aid staff and families regularly appear in Family Court. Family Court plays a pivotal role in the progression of cases in the child welfare system. Its capacity to operate efficiently and judiciously is at the center of each milestone of a family's child welfare case. While there have long been challenges with Family Court operations, the onset of the pandemic in 2020 greatly exacerbated these challenges. Since courts closed down in March 2020, decision making on many cases -except for the most urgent matters - halted completely. As Family Court was not fully able to implement virtual hearings, many cases languished as agencies, families and attorneys waited for cases to move again. Families who had made significant progress and steps toward permanency and a pathway out of the child welfare system, found their cases to be static. In many cases, families did not see a judge for over a year. This halt had and continues to have long-term harmful effects for permanency.

Family Court's Impact on Permanency

In general, permanency hearings should take place every 6 months to check in on the status of a case and to make key decisions around such topics as visitation, permanency goals, and discharge options. During the height of the pandemic many cases were not seen for extended periods of time due to the need for Family Court to close physically and the lack of fully virtual options. While Family Court has resumed normal functioning, permanency hearings continue to see extensive delays. In actuality, children and families are often met with adjourn dates of 3-6 months, meaning it is not uncommon for there to be as many as 9 months between permanency hearings. Consequently, it is not uncommon for children to remain in care upwards of 3-5 years as a result of long wait times between hearings. As Family Court has jurisdiction over key steps in the permanency process, without timely hearings, families languish longer in the foster care system regardless of the progress that they may have made. This is contrary to the intention of the Adoption & Safe

Families Act (ASFA), which looks to find permanency for children as quickly as possible and to use foster care as a temporary solution.

In addition to extensive delays for routine permanency hearings, we have also experienced delays in other Family Court proceedings such as fact finding and Termination of Parental Rights (TPR) proceedings. While cases await fact finding, the children and families still face the trauma of a separation without a decision on whether or not the allegations of their case are indeed true. In some cases, the family may best be served by preventative services, however, as the case awaits fact finding family bonds are eroded. For cases that are approaching permanency through an adoption, Kinship Guardianship agreement, or reunification, delayed proceedings indefinitely prolong permanency to the detriment of children and families. As families see repeated and extended delays in the court process, their trust and hope at the prospects of permanency erodes.

As a provider agency, we see this breakdown of hope result in disruptions in placements, particularly for many of our young adults. In two separate cases with youth age 17, these young adults were placed in pre-adoptive homes that were identified through Wendy's Wonderful Kids (WWK). While the matches seemed to be a great fit, after an extensive wait for court dates, both placements were disrupted. As the youth continued to hear that their adoption would take place soon, they no longer trusted this would happen or that they were wanted. These feelings can be difficult to navigate without any added factors, but Family Court delays exacerbate them. Additionally, in cases where TPR petitions had been filed, the documentation and cause were no longer valid or timely, and/or staff who were knowledgeable about the facts of the case left the agency or shifted roles. In these cases the process of filing a TPR or reaching an alternate path to permanency had to begin all over. In any of these circumstances, children and families unfairly suffer due to lack of timely court dates.

Though the impact on families is the same - a lack of timely permanency - there are a myriad of reasons for the delays families face. Delays can be caused by workforce turnover, staffing shortages, and overbooked calendars among other reasons. As court returned to full operation, jurists had an influx of proceedings on their calendars, and simply could not meaningfully accommodate them all. Additionally, the long backlog of hearings meant that attorneys and staff were in high demand across many venues. As attorneys or staff were not able to be in multiple places at once, this often meant that court dates were pushed

back. This can happen if any of the parties - parents, children (if age-appropriate), attorney for the child, provider agency staff, attorney for the parent, FCLS, or jurist - that needs to be present does not have availability. With various staff shortages and workforce turnover, this can happen numerous times.

While the virtual format allowed needed flexibility during the pandemic, the mandate of a full return to in-person work has impacted retention for attorneys and created undue delays, making it more difficult to keep time-certains. With packed calendars, the rush to and from court rooms can be a significant enough delay to lead to an adjourn date. Additionally, salaries for attorneys do not all reflect pay parity, creating an additional barrier to retaining attorneys and increasing caseloads.

Also of note regarding virtual hearings, families do not always have sufficient technology to access hearings. An equitable Family Court system must provide technology access for all participants and use virtual proceedings when possible to fairly expedite processes. Similar to Family Team Conferences , we have seen that with proper technology access, the virtual format increases families' participation in Family Court.

Recommendations

The real ability of the Court to address all of these challenges will require adding resources to the system to ensure that cases can return to regular hearings with short adjourn dates. A better resourced Family Court system and efficient decision-making process will allow families to more speedily achieve permanency and protect the legal and civil rights of all parties are prioritized and respected. Given the extensive delays and detrimental impacts on family and children, the following recommendations can support Family Court's improved operations to bring timely permanency to children and families:

- ***Hire more jurists to preside over Family Court proceedings***: While jurists are funded by the state, the City Council can use its power to pass a resolution urging the state to further increase the number of jurists to meet the demands of our city's Family Court system.
- ***Utilize referees for more routine proceedings:*** As court calendars are heavily filled with cases, prioritizing which proceedings are seen by judges versus referees may

allow proceedings such as TPRs or finalizations of Kinship Guardianship agreements to proceed more timely.

- ***Increase access to technology for virtual hearings:*** The virtual format can increase participation in hearings, however, families do not always have sufficient technology. Ensuring access to sufficient technology for virtual hearings allows this to continue to be a viable option for proceedings, when it is appropriate for a given case.
- ***Support pay parity between attorneys:*** While there are several attorneys involved in the Family Court process there is not pay parity across attorneys representing different parties. For instance, attorneys representing children often cite lack of pay parity as one of the reasons leading to workforce turnover.
- ***Expand Family Court Hours of Operation:*** Family Court has much more limited hours than other Court entities, expanding these hours would allow for more time for cases to be heard and easier access for children and families juggling other commitments, such as mandated services.

Closing

Children's Aid is fiercely committed to advocating for and reaching permanency for our child welfare involved families. We sincerely thank the New York City Council for your vigorous support of foster care involved children, youth and families in New York City. As Family Court is an integral part of the child welfare and permanency process, it is imperative that we evaluate its operations to best justly provide permanency to children and families.

Thank you again for the opportunity to submit testimony on this critical issue impacting child welfare involved children and families in New York City. If you have any questions about this testimony, please contact Yolanda McBride, Director of Public Policy at ymcbride@childrensaidnyc.org.

Family Legal Care
Justice for All. One Family at a Time.

Family Legal Care's Testimony to the New York City Council's Oversight and Investigations Committee, Public Safety Committee, and General Welfare Committee on Operational Challenges in Family Court

Monday, March 24, 2023
Remote Hearing
Gale Brewer, Chairperson

My name is Cathy Cramer and I am the Chief Executive Officer at Family Legal Care, formerly Legal Information for Families Today. Thank you to Chair Brewer and members of the General Welfare and Public Safety Committees for the invitation to testify about the operational issues families with cases in New York Family Court are facing.

On behalf of Family Legal Care, I'd like to thank the New York City Council for its continued support and focus on issues impacting New York's parents and caregivers in Family Court.

Family Legal Care's mission is to increase access to justice in New York State Family Court. We combine legal guidance, easy-to-access technology, and compassionate support to help unrepresented parents and caregivers self-advocate on critical family law issues, while working on reform that improves the system for everyone. We reach approximately 25,000 individuals throughout the state every year through our Family Law Helpline, legal consultations with both Family Legal Care staff and pro bono attorneys, community outreach workshops, Tech Hubs and digital justice tools, and our Legal Resource Guide library. Our work focuses on the cases where there is usually no right to assigned counsel, including child support, custody and visitation, and domestic violence.

Our organization was launched inside the Manhattan Family Courthouse in 1996, where we answered questions and distributed Know Your Rights pamphlets from a table in the lobby. **Today, we are the only legal services organization dedicated solely to empowering parents and caregivers to represent themselves in New York Family Court.** Our model of providing limited scope legal services is unique: we have found that when we help pro se litigants get started on the right track, and provide additional support as needed throughout their case, they are able to achieve positive outcomes for their families without full representation. In this way, we maximize the number of clients we can serve, both broadening and deepening our impact. Thanks to our decades of experience providing on-the-ground services, there is no organization that has a better understanding of the challenges pro se litigants face and the needs that are not being met by the Court.

I want to make clear that in discussing the challenges pro se litigants face, my intention is not to disparage Family Court. We work very closely with the Courts, and know that many caring,

dedicated people are doing the best that they can with the very limited resources they are given. The issues in Family Court are systemic, a result of an unnecessarily complicated Court structure and decades of underfunding, which you see in other courts across the state as well. However, the Family Courts in particular are understaffed and overburdened. 80% of litigants come to Family Court without a lawyer. These unrepresented litigants are disproportionately low-income, from communities of color, often undocumented immigrants, or speak monolingual Spanish or some other language. They are all navigating emotionally charged, extremely personal issues.

The Family Court was originally set up as a pro se court. The goal was for it to be user-friendly, and "the people's court." It is supposed to be a place where you can get justice for your family without a lawyer and without paying the expensive filing fees.

But the reality of this setup is that, as Jeh Johnson, Special Advisor on Equal Justice to the NY State Court system, has said, the Family Court, which mostly serves low-income families and people of color, is perceived as a "second-class court" and is "dehumanizing." Fixing the Family Courts is a racial justice issue.

The Family Courts have been understaffed for decades, with not nearly enough jurists or support staff to handle the more than 200,000 cases filed in NYC every year. As a result, Family Court jurists have extremely high caseloads, which means extensive delays are common. Often, parents and caregivers end up waiting months for their hearing, and then have just ten minutes in front of a jurist to decide on their case. Jurists are shuffled in and out of Family Court, assigned there on a temporary basis. The understaffing of the Courts is especially pronounced now after the many retirements during covid. Our clients tell us that they struggle to get support from the court staff, and some clients have had their cases delayed because of inaccurate information received from court staff.

Implementing uniform standards and rules, and communicating them to litigants when they first begin their cases would help reduce delays in Family Court. Delays are common because of the lack of uniformity in how cases are filed, and little to no communication about court procedures when litigants are beginning their cases in Family Court. Procedures vary across the state, in each of the city's borough courthouses, and even from jurist to jurist within the same county. Every jurist is given discretion about the process in their court, but since litigants are not told at the outset what the expectations are, and since pro se litigants are held to the same standards of an attorney without the benefit of a legal education or training, many cases get dismissed on technicalities. Litigants must then start over. And when jurists leave, either because they were only assigned to Family Court temporarily or because they retire, their caseloads are reassigned to another jurist. For a litigant, this usually means delays, and the rules and process they had used earlier no longer apply.

Additionally, many families come to Court to address multiple issues. For example, someone may need to establish paternity for their child, so they can establish a custody arrangement, which will make it possible for them to obtain child support. Each of these issues are handled

separately in different cases, decided by different jurists, with different procedures for each of them, even though all these cases are tied so closely together.

The Courts also do not make child support a priority, but it is extremely important to families, and is a factor in 40% of the cases the Family Court hears. With child support, a custodial parent can meet the basic needs of their child – to pay for food, or housing, health insurance, and clothes. Having child support can be life-changing for a family. **We strongly believe that child support is a powerful but underutilized poverty prevention tool**, and that adequate child support can help prevent other issues before they need to be handled in Family Court, including domestic violence and abuse cases. In fact, many times the withholding of child support is another tactic that abusers use to maintain control in their relationship. Even so, child support is continually put on the back burner in Family Court. Many of our clients have filed Orders to Show Cause in their cases, asking for sooner court dates, or for temporary remedies to be put in place or suspended, but these are often denied.

During the pandemic, the New York City Family Court was only hearing cases that they deemed "essential," but without clear guidance on what cases were "essential" or "emergencies." The Court stopped hearing cases related to child support altogether, as they were clearly deemed "non-essential." Custodial parents had no way to file for much-needed child support. And parents who were losing jobs and could not pay their child support orders could not seek any relief from the family courts, so child support debt continued to accumulate. In most child support cases, after an Order of Support is entered, they are administrated through the Office of Child Support Services. OCSS also handles administrative enforcements for non payment of orders. During the pandemic there was no pause for these administrative enforcements without a modified court order, but the Court that was not entertaining these cases. Family Legal Care in many ways acts as a bridge between Family Court and OCSS. We meet with them bimonthly and help facilitate and fast-track cases, but of course a small organization like ours cannot meet the overwhelming demand for relief.

Organizations like Family Legal Care and others have worked closely with the Court to close the serious justice gaps, but significant issues remain, and the Court's bureaucracy ties our hands every day. Family Court cases are tracked through a portal called the Universal Case Management System (UCMS). When a litigant has a lawyer, either private representation or a court-appointed lawyer, everything related to their case, including information about scheduled hearings to previous decisions of the Court, is easy to find in the UCMS portal. However, legal services organizations like Family Legal Care, who provide legal advice and guidance but do not appear in Court with the litigant or on their behalf, do not have access to UCMS. This lack of access limits our ability to gain a clear understanding of a litigant's case history, which in turn limits the level of advice and assistance we can provide unrepresented litigants. Our staff attorneys spend a significant amount of time in each consultation just trying to understand the facts of the case and explain it to the clients before we even get to providing legal advice and guidance. In addition to giving us valuable information about the outcomes of our clients' cases, **increasing access to UCMS would make our work more efficient, and most importantly, increase access to justice for pro se litigants.** It would also reduce the number of unnecessary

or incorrect filings, ultimately speeding up proceedings, which would benefit litigants and jurists alike.

Another common barrier to justice for pro se litigants is outdated technology, particularly the Family Court website and lack of electronic filing system. **The Family Court needs to build an effective, user-friendly website (including mobile website) that comprehensively informs the public of current court operations and provides guidance to unrepresented litigants.** The website should be available in multiple languages. The Family Court sections of the current Unified Court System website provides limited, unclear, outdated, and inaccurate information. It is extremely difficult to navigate from the homepage to the Family Court section and even more difficult to find forms litigants need. The forms that are available are hard to fill out without a computer or PDF-editing software, but many pro se litigants only have access to a mobile device. The website is mostly in English and excludes non-English speakers from obtaining crucial information. Family Legal Care has created digital justice tools to help fill the gaps in the Court's online resources. Our Family Law Navigator helps litigants understand which forms they need for their specific situation, and our Guided Court Forms make it easy to fill out this paperwork from a mobile device.

Additionally, Family Court does not use an electronic filing system, and currently uses a submission portal called EDDS. However, this system does not provide litigants or attorneys with document access or issue a docket number of a summons. **Family Court should speed up adoption of NYSCEF,** the electronic filing system used throughout much of the New York State Court system, in Family Court to the fullest extent permitted by law, with appropriate support for unrepresented litigants.

Currently, most hearings and trials for the unrepresented litigants we serve are happening virtually. For the litigants who have access to technology, this is a positive change. They no longer have to take a day off work, secure childcare, and spend hours traveling to and waiting in a courthouse. But what about the many parents and caregivers whose only access to Wi-Fi is at their closest library or subway station?

Family Legal Care developed the Tech Hub Program to help these parents and caregivers. At our Brooklyn, Queens, and Bronx Tech Hubs, we have all the computer equipment an unrepresented litigant will need to attend their virtual hearing or submit documents related to their cases. By providing a safe, quiet space with computer equipment and a stable internet connection, we are able to increase access to the Courts for litigants who have nowhere else to turn.

Thousands of pro se litigants are impacted by the digital divide, and the Court must do more to make virtual proceedings more accessible for all litigants using the Courts to seek justice for their families.

Our recommendations to fix the systemic issues in Family Court are as follows:

1. End the “two-tiered system” and provide a sense of dignity, fairness, and partnership by enacting uniform procedural rules and standardized procedures across the Family Court system.
2. Provide more funding to hire additional jurists, translators, clerks and other personnel.
3. Address court delays by requiring an initial hearing related to custody and visitation and child support to be held within a reasonable deadline from the date that a petition is filed.
4. Provide UCMS access to Family Legal Care and others providing legal assistance for pro-se litigants.
5. Improve the pro-se litigant experience.
    - Better communication and education about court procedures.
    - Clear and simple forms, in multiple languages.
    - Clear explanations of how to prepare for their case.
    - Create a welcoming and safe environment with jurist training, particularly in cultural competency and interacting with pro-se litigants.

The communities with the fewest resources, a disproportionate number of whom identify as people of color, are bearing the brunt of the Court’s systemic failures. The Court’s decisions touch the lives of thousands of children and families with profound, long-lasting effects on their safety, economic security, health, and well-being.

I would like to share the story of one our clients with you. Lidia is a monolingual Spanish-speaker and undocumented immigrant. She has four children with her estranged husband, the non-custodial father. There was abuse throughout their relationship with the father, and a temporary order of protection was in place when she called us. The father had not been providing any financial support for the children, leaving Lidia to pay all the back rent and other expenses, even though she works part-time while he has two steady jobs and earns much more money. She reached out to Family Legal Care for help with filing for child support. Our Staff Attorney explained how child support was calculated, what documents to submit, procedure related to the Office of Child Support Services works, and how to serve the father the required documents. They also helped draft the petitions, provided step-by-step instructions for finalizing and filing, them, and provided some of our Spanish Legal Resource Guides. We also referred her to the City Bar Justice Center to help her get legal representation in housing court for an issue with her landlord. She said that before Family Legal Care, she had no idea what the process would be, and was very nervous since the forms were in English only. With our help, Lidia will be able to initiate her case and self-advocate to get the financial support her children deserve.

Strong families are essential to the welfare of our great city, and fixing these operational challenges in Family Court is vital to increase families’ access to justice.

Thank you for your time and support.

HER JUSTICE
Shift the Power

Testimony: Rachel L. Braunstein, Esq., Director of Policy, Her Justice

Hearing: City Council Oversight Hearing – Operational Challenges in the Family Court

Host: Committees on Oversight and Investigations, Public Safety, and General Welfare

Date: April 24, 2023

Thank you, Chair Brewer and the Committee on Oversight and Investigations, Chair Hanks and the Committee on Public Safety, and Chair Ayala and the Committee on General Welfare, for the opportunity to submit testimony on the critical matter of operational challenges in the New York City Family Courts. For 30 years, Her Justice has stood with women living in poverty in New York City, committed to advocating for them in the Family Courts which they must access for legal relief that can provide essential security and stability to them and their families. We are grateful for the opportunity to describe what we view as the need for change based on our experience working with litigants, and how innovations like the advent of e-filing and virtual court appearances in Family Court cases during the COVID-19 pandemic point to opportunities to improve efficiency in the courts and therefore access to civil justice for New Yorkers living in poverty. The Family Courts have faced operational challenges for some time: the impact of COVID both exacerbated those challenges, and provides some possibilities for future improvement. We look forward to partnering with the Council and the Committees to ensure that the civil justice system functions for all New Yorkers and advances economic justice and safety for women living in poverty.

Organizational Background

Through our pro bono first model, Her Justice pairs thousands of well-trained and resourced pro bono attorneys with women who have urgent legal needs in our practice areas of family, matrimonial, and immigration law. 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. During the long pendency of cases, Her Justice lawyers and the pro bono attorneys who provide representation continue to work with clients and stabilize the cases. This approach has enabled us to assist tens of thousands of women over the years, far more than we could have reached relying exclusively on direct service. By ensuring that more women have lawyers by their side in a system historically designed to have poor people navigate it alone, we ensure their voices and concerns are heard and we begin to break down systemic barriers to justice.

In 2022, Her Justice provided a range of legal help to more than 5,300 women and children in our practice areas of family, matrimonial and immigration law. Among the clients served, 92% are women of color, 83% are survivors of domestic violence and more than half are immigrants. Over a third of our clients do not speak English, which means they are effectively precluded from the legal system if language resources are not available. Recognizing the systemic barriers facing our clients, Her Justice also advocates for policy reforms in the civil justice system that lift women and their children out of poverty. As a trusted, long-standing organization, Her Justice seeks to elevate the issue of civil justice reform and advance economic justice for women and their children. Our policy work is informed by the lived experience of our clients – women living in poverty whose livelihood and well-being are often determined by the civil justice system. The civil justice system is often invisible to those outside of it, which makes a focus on elevating the reforms to this area that much more essential for our clients and all who depend on it.

Systemic Delays and Inefficiencies Impede Critical Relief in Family Courts

Women living in poverty, particularly Black and Brown women, are forced to rely on a civil justice system that has been historically and systematically under-resourced. They spend immeasurable hours, days and years moving through the Family Courts to secure basic freedoms – personal autonomy, financial independence, and safety from abuse – through orders of protection, financial support from partners, or court-ordered visitation schedules. While the Family Court system was originally imagined as one without lawyers, over time the process has become so complicated that those who are unrepresented often come up short. The founding assumption that litigants did not need lawyers was part of a system designed to make decisions on behalf of low-income people; however, with a lawyer our clients can be part of the debate about their own future. From our years of experience representing women in the civil justice system, we know that the burden of economic instability due to stalled support or custody proceedings too often falls on women like our clients. This burden is even more onerous for our undocumented immigrant clients who are often doubly disadvantaged waiting years for the historically under-funded immigration system to review their applications for legal status and employment authorization documentation (or work permits) which are critical for families' stability.

The COVID-19 pandemic brought into greater focus existing challenges in the Family Courts. The Family Courts announced a physical closure to the public in March 2020 at the start of the pandemic. More than three years later, the New York City Family Courts have not fully resumed normal operations – creating confusion and uncertainty for litigants – and are now facing a significant backlog of cases.[1] In the New York City Family Courts, the length of time between adjournments is

[1] While not squarely an "operational challenge," the lack of data transparency around the nature, duration, and outcomes of proceedings in Family Courts poses a significant barrier to identifying solutions to needed reform and to the system's accountability to those who rely on it. The court administration should invest technological and other resources to engage in data analysis and make that data publicly available. Data analysis and transparency will provide guidance for reform efforts (especially around any lessons learned from the operational challenges that arose during the COVID-19 pandemic), including strategies to avoid needless delays in the adjudication of cases, and for decisions system-wide around allocation of resources such as legal assistance. Ultimately, greater transparency of data about

long and unpredictable. Some trials or hearings are held virtually, but some cases suffer scheduling issues which mean trials are held one hour at a time over many months. Delays are not a theoretical problem for the litigants they impact. Not only do they delay justice in individual cases, but they can cause litigants to even lose employment because of missed work – a story we have heard from Her Justice clients.

Child support. Timely awards of child support are critical for custodial mothers, especially those already struggling to make ends meet. Most victims of partner violence suffer from economic abuse, making fair child support awards essential to a survivors' ability to seek safety and maintain independence, while rebuilding a stable home for their child. There are typically almost 200,000 filings for child support each year in the New York Family Courts, indicating a broad need for the courts' help with this relief. Yet when the New York City Family Courts closed at the start of the COVID-19 pandemic, child support was not deemed an "essential" case type for which litigants could file petitions. For more than a year and a half, parents living in New York City could not file support petitions, which means they could not start the process to obtain, modify or enforce child support. Particularly harmful for survivors of domestic violence, this pause and resulting uncertainty allowed abusive partners who owed child support to withhold payments without immediate accountability through the courts.[2] Child support petitions filed pre-pandemic were eventually adjourned well over a year past the original filing date (and in some cases were not heard for two years). Her Justice clients who attempted to file a child support petition by mail or through the court system's Electronic Document Delivery System (EDDS) during 2020 told us that they later learned the petitions were never filed by the court clerks. There remain unacceptable delays in child support cases in the New York City Family Courts.

The lengthy delays in pending cases cause irreparable harm to our clients and often to the noncustodial parent as well since many have been accruing arrears for months or even years before a final order is issued. Take the case of Andrea*, a mother of two, who filed a support petition in July 2018 after being awarded a five-year stay away order of protection from her husband. Though awarded a temporary order of support in August 2018, her husband stopped paying the court-ordered amount in January 2019. The case was scheduled for trial to begin in January 2020, then repeatedly adjourned throughout the year and eventually began in November 2020. The trial lasted a total of four days, with only one day scheduled at a time in November 2020, February 2021, May 2021, and November 2021. Despite both parties being represented since the beginning of the case and the parties timely submitting summation statements in January 2022, Andrea waited almost one year to receive a final order of support, which was almost three years after the trial was scheduled to

---

the nature and outcomes of cases will also make the Family Courts more accessible to litigants and enhance the accountability of the court system.

[2] The barrier to seeking child support in the Family Courts appears even more egregious when contrasted with the treatment of debt collection actions in New York City early in the pandemic. Although new consumer credit filings in the five New York City civil courts saw a brief lull between April and June 2020, by July 2020 the City was back up to its regular average of about 6,754 new consumer credit filings per month.

begin. No parent, custodial or noncustodial, or child should ever have to endure such delay in receiving critical relief.

Custody & Visitation. We know that for domestic violence victims with children, co-parenting a child in common with the abuser can be dangerous as it allows contact with the abuser. The public health crisis presented new challenges for separated parents sharing time with children. As with support cases, custody/visitation cases were not deemed "essential" cases for which new petitions were allowed in the early stages of the pandemic. With compounding delays, the New York City Family Court continues to be plagued by a backlog in this area. Some of our clients' cases that were filed before or early in the pandemic were scheduled for one court appearance, and then adjourned for many months. It remains to be seen how efficiently and effectively the courts will handle the backlog of cases, along with the operations of virtual court appearances for some cases. And we know from our clients' experiences that even modest delays in getting help from the courts to resolve high-stakes custody disputes can put victims of intimate partner violence at risk of further abuse.

Given the extreme financial hardship for many people living in poverty that worsened during the public health crisis and their reliance on the Family Courts for essential relief, we need to adopt practical solutions to the exponential delays in both Family Court to ensure that all New Yorkers have access to justice.

A Greater "Menu of Options" Would Benefit Families and the Courts Overall

The New York Family Courts generally address legal needs with a "one size fits all solution": for most case types, individuals must engage in lengthy litigation in an overly complex system which, for those without an attorney, can be exceedingly difficult. But there is an opportunity for the court system to consider a better response to individual legal needs by providing a greater menu of options for dispute resolution that considers the nature of the legal and other issues presented by the family.

An example of advocacy for child support reform. Her Justice believes that the fairness and efficiency of the child support system should be improved to ensure that children receive the most support parents can afford. Informed by extensive experience working with clients and knowledge of systemic barriers to fair child support, in 2017, we set out on a two-year court watching project in which 89 volunteers observed 797 child support case appearances in the New York City Family Courts to get a better understanding of potential outcomes for the more than 90% of parents in these cases who are unrepresented by legal counsel. That project culminated in our March 2021 original Policy Report: *Towards Justice for Parents in Child Support Courts.* Based on our findings and recommendations for reform, we crafted and advocated for a State legislative proposal to create "a straightforward process for straightforward cases." The version of the legislation introduced earlier this year (A.5735, Reyes/S.5269, Persaud) would authorize the development of an expedited settlement conference process in New York Family Court for parents whose income is straightforward

or undisputed to agree on support rather than litigate in court. For parents who choose to engage in the expedited conference option, the legislation directs that court conference staff would provide parents with certain notices to ensure that they understand the settlement conference process, their related rights, and the implications of reaching agreement on child support. Importantly, the proposed settlement conference would preserve due process protections for parents – providing court review and confirmation of any agreement reached and, for parents who do not agree on support, the option of a full hearing in Family Court. Further, the proposal includes accountability measures that direct the Office of Court Administration to evaluate the expedited conference process and make publicly available data about the effectiveness and impact of the conference option, helping to ensure that the courts are achieving their mission to deliver Family Court justice fairly and expeditiously while protecting the due process rights of litigants.

Solutions like these can provide additional options for parents, improve engagement in the legal process, and benefit the efficiency of the system overall.

Litigants and Lawyers Need Clear and Accessible Information

We know that legal information plays a critical role in empowering individuals, and especially survivors of intimate partner violence, to make decisions about when and whether to engage with the legal system. Yet the Family Courts have traditionally failed to provide adequate information to litigants about basic courthouse information and threshold procedural steps in litigation. The Family Court website is difficult to navigate, and the court administration has not innovated other effective ways to communicate about court operations to litigants. (One shocking example of this was when, at the beginning of the pandemic, a Family Court in the city posted a paper sign on its door – only in English – announcing that the court was closed.) This frequently causes litigants to be unprepared to move their cases forward, which only compounds overall delays in the courts.

One key area of confusion for Her Justice clients entering Family Court is the basic steps necessary to serve process on the adverse party. Many individuals who seek assistance from Her Justice have already filed or attempted to file petitions in Family Court. Even for those who have successfully navigated the filing process, many still are unable to effectuate service of papers on the adverse party to provide notice of the action. Parents who file a child support petition in Family Court, for example, receive information about how to deliver legal papers to the other parent, but it can be confusing and overwhelming even if explained in plain terms. Without adequate information, litigants risk attending court on multiple days only to have the case dismissed for lack of service, requiring them to refile. This is a pervasive problem: in our Child Support Court Watch project, Her Justice found that one quarter of the observed appearances that were adjourned were adjourned due to issues with service of process. As a court system designed to be navigated without a lawyer,

the courts must innovate to simplify both court forms and processes[3] and then ensure clear and transparent communication about critical information to litigants. This will help litigants participate more fully and with greater accountability in their cases and will improve the efficiency of the process overall.

An effort by the Family Court to provide more readily accessible and clear information about court processes will also help lawyers who practice there, including pro bono attorneys who may not be as familiar with the unwritten rules of practice and procedure in the courthouse. Any particularized rules or practices of judges, magistrates, and referees should be clearly communicated and easily accessible on the Office of Court Administration website. Pro bono attorneys that work with Her Justice clients have reported frustration with only learning about a judge or magistrate's individual rules or practices after unknowingly violating them. This lack of transparency frustrates attorneys and the court, and it undermines an attorney's ability to effectively represent and advocate for clients.

Advances in Technology Will Increase Access to Justice

Traditionally, Family Court is an "in person" court, requiring litigants to enter the courthouse even to file a petition which the court may not address for many months. This is onerous for New Yorkers, especially those living in poverty, as it may mean missing a day of work with lost wages or incurring extra childcare costs. The advent of e-filing and virtual court appearances in the Family Courts during the COVID-19 pandemic points to opportunities to improve efficiency in the courts and therefore access to civil justice for New Yorkers living in poverty.

E-filing. One positive advancement introduced during the pandemic was the availability of e-filing through the New York State Courts Electronic Filing system ("NYSCEF") and EDDS for certain Family Court matters. Our clients (those we represent and pro se litigants whom we advise), have been aided by the ability to file documents electronically, which provides definitive proof of the filing date and allows cases to proceed with less confusion or delay due to errors in the mail or other administrative errors. With Her Justice's "pro bono first" model, electronic filing has been a big selling point to recruiting more volunteer attorneys who do not live or work in the borough where a case is filed. Her Justice continues to advocate that the Family Court adopt a streamlined system like NYSCEF, that allows for the Court, litigants, and their counsel to access e-filed documents simultaneously. We have also advocated for improvements related to electronic filing, in particular in trial litigation, including the adoption and publication of uniform rules for managing proposed exhibits for trial.

[3] See American Academy of Arts & Sciences, Civil Justice for All, at 21 (2020) (noting "Simplification should proceed on the assumption that most people pursuing matters in court are not lawyers and do not have lawyers representing them…."), https://www.amacad.org/sites/default/files/publication/downloads/2020-Civil-Justice-for-All_0.pdf.

Virtual Appearances. The introduction of virtual appearances in Family Courts has gone far in improving access to justice for our clients, many of whom are caring for young children or need to be at work in order to provide for their families. Scheduling time certain appearances rather than the traditional general calendar calls has also increased litigation capacity for attorneys, allowing them to take on more matters and assist more clients. We have recommended that the Office of Court Administration make virtual appearances presumptive (unless the parties agree to in-person appearances) in Family Court cases until the date of hearing or trial, and consider virtual hearings and trials if safe and feasible for litigants and attorneys. We have also proposed that the Office of Court Administration adopt and publish on the court website a set of uniform rules for virtual hearings and trials.

****

As New Yorkers, we are committed to lifting our community up. When women are lifted, their children and communities rise with them. We thank the Council and the Chairs and Committees for your commitment to addressing operational challenges in the Family Courts where organizations like Her Justice provide essential legal services. We look forward to continuing to work together to remove barriers to civil justice for those living in poverty in New York.

Respectfully,

Rachel L. Braunstein, Esq.
Director of Policy, Her Justice
rbraunstein@herjustice.org

**Name changed to protect client privacy.*

JCCA | Repair the world child by child

The New York City Council:

Committee on Oversight and Investigations

Committee on Public Safety

Committee on General Welfare

TOPIC: Operational Challenges in Family Court

Monday, April 24, 2023

250 Broadway, 19th Floor Hearing Room

Testimony by

Ronald E. Richter, Chief Executive Officer

JCCA

Good morning Chair Brewer, Chair Hanks, Chair Ayala, and members of the Committees on Oversight and Investigations, Public Safety, and General Welfare. Thank you for calling this hearing and inviting me to testify on behalf of the children and families we serve.

I am Ronald E. Richter, CEO and Executive Director of JCCA. I have been honored to serve previously as New York City's ACS Commissioner and as a judge of the Family Court. I have spent much of my career either practicing in Family Court or working in other roles on behalf of children and families with active family court cases. Today I am here to highlight some institutional shortcomings of the Family Court that ill-serve the children and families of New York City.

JCCA is a child and family services agency that works with about 17,000 of New York State's children and families each year. We provide foster and residential care, preventive services, educational assistance and remediation, and behavioral health services. JCCA was founded 201 years ago as an orphanage for Jewish immigrants who could not care for their children. Over those two centuries, the demographics of those in the child welfare system changed dramatically. According to Child Trends, in New York State, African Americans comprise 39% of the foster care system but only 15% of the general child population, while white children comprise 48% of the general child population but only 26% of the foster care population.[1] Although the specific recommendations that I make today do not directly relate to race, the disproportionate involvement of black and brown families in the Family Court must be kept in mind.

I. Court Availability

The Family Court's hours and availability are designed for court staff, as opposed to the individuals and families who come before the Family Court Judges. Currently, Family Court hours of operation are 9AM to 5PM, much shorter than civil and criminal courts, which remain open until 1AM on most, if not all, days. This schedule limits the Court's ability to respond to emergency situations, where delays can cause further harm or burden to families. If a New Yorker needs an Order of Protection, they should not be forced to wait until court re-opens the following day. The schedule also reduces the amount of time judges can spend considering the needs of each family that appears before them. We support current efforts to change the

[1] See https://www.childtrends.org/publications/state-level-data-for-understanding-child-welfare-in-the-united-states

Family Court's hours, such as Senator Felder and Assembly Member Rosenthal's bill to extend the hours of operation of Family Court until midnight, once a week.[2]

It is also not an equitable structure for our young people and hard-working families that may have to choose between going to court and going to work or school. Extended hours would help ease this burden, especially among low-income communities and communities of color.

II. Orders to Remove Children

According to the Administration for Children's Services FLASH Report, 50% of children removed from their homes, are removed without a court order.[3] Most in the child welfare community share the view that we want to eliminate unnecessary removals. Currently many removals are driven by institutional logistics. If a call is made to the State Central Register in the afternoon, by the time a Child Protective Specialist is assigned the case, they will likely visit the family in the evening, after court is closed. Although the law provides for a judge to determine whether there is ***imminent*** risk to a child prior to removal, in New York it has become operationally easy and standard for a judge to support an order *after* removal. This commonplace acceptance of removals without seeking prior court approval is due in part to the limited hours that judges are available. Expanding judges' ability to decide imminent risk would allow for more careful consideration of each circumstance, and potentially reduce unnecessary removals.

III. Family Court Staffing

The Family Court strongly discourages overtime. Staff begin to wind down for the day at 4:30pm, and if a hearing extends past that time, approval from the Supervising Judge is needed. Consider a 1027 hearing where a child was removed without a court order. No judge wants to adjourn that hearing if 4:30pm is approaching. Where does the child in question go

[2] See S2355 (Felder)/A1785 (D. Rosenthal) at https://www.nysenate.gov/legislation/bills/2023/s2355

[3] See https://www.nyc.gov/assets/acs/pdf/data-analysis/flashReports/2023/03.pdf at p.12.

that night? The court's operational challenges deeply add to the trauma, frustration, and helplessness experienced by children and their parents, even if for only one night.

IV. 18B Attorney Salaries

Pursuant to Article 18B of the County Law, Assigned Counsel struggle financially in the representation of parents. Raises for 18B attorneys are painfully overdue, and the low wages deter people from doing this vital work on behalf of parents. Institutional providers, such as Center for Family Representation, Brooklyn Defender Services, and Bronx Defenders, have robust services and provide a critical alternative for parents seeking representation, but New York owes it to our 18B Attorneys to provide a living wage for the critical role they play in family court proceedings.

V. Remote Hearings

Since the pandemic, remote hearings have become increasing popular, but there is wide discrepancy in how they are used. Rather than issuing institutional rules to govern the use of remote hearings, individual judges and referees are forging their own paths, creating inequity and unpredictability among individuals and families in Family Court. Moreover, for individuals whose cases are held by remote hearings, there is widespread variation in their access to reliable technology and appropriate meeting spaces. A parent should not have to contend with the noisy background of a crowded McDonald's with free WiFi while participating in a Family Court Hearing. New York City should have kiosks in the local community with a confidential, technologically equipped space that honors the importance of the relationships and decisions addressed in these hearings.

Conclusion

Thank you for exploring the operational challenges in family court and the dramatic impact these institutional shortcomings have on children and families. There is no question that family court judges, referees and court staff do critically important, difficult work. In partnership with the

Office of Court Administration and so many other family court participants, we can strengthen the system for families.

THE LEGAL AID SOCIETY
JUVENILE RIGHTS

Juvenile Rights
Special Litigation and Law Reform Unit

Alan Levine
President

Twyla Carter
Attorney-in-Chief
Chief Executive Officer

Dawne A. Mitchell
Attorney–in–Charge
Juvenile Rights Practice

Lisa A. Freeman
Director,
Special Litigation and Law Reform Unit

TESTIMONY

Oversight – Operational Challenges in Family Court

New York City Council
Gale A. Brewer, Chair, Committee on Oversight and Investigations
Kamillah Hanks, Chair, Committee on Public Safety
Diana Ayala, Chair, Committee on General Welfare

THE LEGAL AID SOCIETY

199 Water Street
New York, NY
10038

April 24, 2023

Prepared by:
Kimberly Schertz
Anna Blondell
Lisa Freeman
Special Litigation and Law Reform Unit,
Juvenile Rights Practice

Laura A. Russell
Citywide Director
Family/DV Unit
Civil Practice

Justice in Every Borough.

Introduction

The Legal Aid Society (LAS) welcomes this opportunity to testify before the New York City Council Committees on Oversight and Investigations, Public Safety, and General Welfare regarding operational challenges within New York City's family courts. We thank: Gale A. Brewer, Chair of the Committee on Oversight and Investigations; Kamillah Hanks, Chair of the Committee on Public Safety; as well as Diana Ayala, Chair of the Committee on General Welfare, for offering the opportunity to highlight some of the critical issues in this area.

About The Legal Aid Society

The Legal Aid Society, the nation's oldest and largest not-for-profit legal services organization, is more than a law firm for clients who cannot afford to pay for counsel. It is an indispensable component of the legal, social, and economic fabric of New York City – passionately advocating for low-income individuals and families across a variety of civil, criminal, and juvenile rights matters, while also fighting for legal reform.

The Legal Aid Society operates three major practices — Civil, Criminal and Juvenile Rights Practice through a network of borough, neighborhood, and courthouse offices in 26 locations in New York City. With its annual caseload of more than 300,000 legal matters, The Legal Aid Society takes on more cases for more clients than any other legal services organization in the United States, and it brings a depth and breadth of perspective that is unmatched in the legal profession.

Legal Aid's Juvenile Rights Practice ("JRP") provides comprehensive representation as attorneys for children who appear before the New York City Family Court in abuse, neglect, juvenile delinquency, and other proceedings affecting children's rights and welfare. Each year, LAS staff represent approximately 34,000 children. The Family/Domestic Violence Unit of The Legal Aid Society works with survivors of domestic violence, handling orders of protection, custody, visitation, child and spousal support, as well as uncontested and contested divorces. We also work closely with various community-based organizations to make sure all have access to safety and to court. Our perspective comes from daily contact with children, parents, and families, and also from our frequent interactions with the courts, social service providers, and State and City agencies.

In addition to its individual representation, The Legal Aid Society also seeks to create broader, more powerful systemic change for society as a whole through its law reform representation. These efforts have benefitted some two million low-income families and individuals in New York City and the landmark rulings in many of these cases have had a state-wide and national impact. Our experiences engaging in courtroom and other advocacy on behalf of our clients as well as through coalition building with other stakeholders informs our testimony.

The Legal Aid Society's extensive history representing children and families throughout the family courts in all five boroughs places it in a unique position to speak directly to the operational challenges faced by attorneys and our clients alike.

Court Delays Exacerbate Trauma Experienced by Children and their Families

Families who are separated by the family regulation system spend months, even years, awaiting a fact-finding and resolution of the Family Court proceeding. One mechanism to check wrongful removals or separation of children from their parents is provided by way of a hearing pursuant to Family Court Act §§ 1027 and 1028.[1] However, this essential statutory protection is routinely rendered ineffective due to court congestion.

Prior to the pandemic, Family Courts throughout New York City were already overburdened by caseloads. However, when COVID-19 blanketed our communities, courts closed to all but the most essential matters, only to slowly expand, contract, and expand again. The result was caseloads far larger than our under-resourced and understaffed judges could handle and an overwhelming backlog of all matters not deemed "urgent" enough to be heard. Due to this unaddressed court congestion in Family Court, we are still seeing egregious delays that are impeding our clients' rights to due process. Although "emergency" 1027 and 1028 hearings are required to be conducted on an expedited basis within three business days of the application to remove children from their parents, many are started, but adjourned, taking months to resolve. Fact-finding hearings, too, are being scheduled witha half a year – sometimes more – of delay, particularly given the backlog of custody and visitation hearings overtaking the calendar in the trial parts in some boroughs. And custody and visitation matters still take 2-3 years to resolve, as the backlog continues to grow.

These delays are further exacerbated by ACS's failure to timely prosecute child protective proceedings – issues that pre-date the pandemic. Whether due to understaffing, inadequate enforcement of policies, or other reasons, complete discovery is often withheld from the attorneys for children and their families until the last minute. In Staten Island, for example, ACS's Family Court Legal Services attorneys often delay the handing over of discovery until the eve of fact-finding, and much of the material is concealed by unexplained redactions. Furthermore, far too often families arrive to court conferences, permanency hearings, or even trial dates to find that the agency

[1] A hearing pursuant to FCA § 1027 is held at the moment the ACS requests to remove a child from his/her family or within a day of an "emergency removal." Oftentimes, a respondent parent or child may waive such a hearing – not necessarily because there is consensus that this is truly what's best for the child, but often because there is minimal likelihood that a particular jurist would deny ACS's request for a removal. In such circumstances, the respondent parent and child preserve their right to ask to be reunified through a hearing held pursuant to FCA § 1028. In the meantime, a plan to return the child to the parent is supposed to be put in place and the parent may make their best attempts to overcome waitlists, language barriers, scheduling constraints, and other obstacles to participate in services to build their case for a successful application for reunification through a § 1028 hearing. This is because they only get one shot – if parents or children ask for a § 1027 or § 1028 hearing and lose, they cannot ask for such a hearing again. The result is that families are often forced to wait until the fact-finding hearing is concluded to renew their request at the dispositional stage unless ACS agrees to the return of the children prior. Unfortunately, ACS rarely does so.

is missing a crucial report or the assigned caseworker. When reports are provided, they are frequently outdated or rife with inaccuracies. As a result, adjournments are requested, further delaying child protective proceedings.

Finally, these delays caused by the systemic issues within Family Court ultimately punish families and the children we are charged with representing. Delayed reunification or progress on a case means that children tragically remain in the Children's Center or foster care placements far longer than they should and at a great detriment to their present and future wellbeing.

The sad reality is that these delays disproportionately impact indigent families of color, particularly when judges don't have the opportunity to "slow down, unpack the case before them, look at it from multiple angles and 'surface their own biases and reactions' to the individuals involved."[2] The lengthy delays undermine the confidence of litigants in the system, further disincentivizing them from appearing, and perpetuating the biases that jurists may had against them from the outset.[3] The well-known phrase that "justice delayed is justice denied"[4] is even truer when children are the subject of proceedings.

City Council should urge NYS to provide adequate judicial resources to Family Court and should hold ACS and its contracted foster care agencies accountable to laws, regulations, and their own policies regarding discovery, reports, and caseworker court appearances.

Family Court Must Use Technological Advances to Increase Accessibility to Litigants and Attorneys

Over the course of the COVID-19 pandemic, court functions transformed to appear virtually in court for many proceedings. We have just passed the three-year anniversary of the pandemic, and while the world has surely begun to resume its new "normal," many of the technological advances in Family Court remain. However, there is no uniform policy on how and when virtual court proceedings must be conducted – an omission which leads to varying litigant experiences depending on the judge presiding over their case. This disparate treatment opens the door to inequity and limits access to due process protections.

Historically, young people and their families mired in the Family Court system, most of whom are poor, Black, and Brown, have not only been forced to jump through hoops attending services at various locations in order to stay together or reunify, but they were further punished by being forced by Family Court to sacrifice entire days to come to court – and somehow remain

[2] Jeh Charles Johnson, State of New York Unified Court System, *Report from the Special Adviser on Equal Justice in the New York State Courts*, at 56 (October 1, 2020), available at https://www.nycourts.gov/whatsnew/pdf/SpecialAdviserEqualJusticeReport.pdf.
[3] Id. at 57.
[4] Id.

economically afloat. As Jeh Charles Johnson's Report on Equal Justice in the New York State Courts notes, such sacrifices come at the expense of being subjected to a "'dehumanizing' and 'demeaning cattle-call culture' in New York City's highest volume courts," which disproportionately impacts people of color.[5] Yet, the pandemic showed us that the court system could function by means of virtual appearances. Being system-involved didn't mean that they would have to miss work or school.

However, to ensure that we are truly meeting the needs of court-involved families in this "post" pandemic era, it is critical that the City require and fund an evaluation of the litigant experience and specifically examine case outcomes as well as process. An evaluation and assessment centering impacted children and parents will best inform this body of their concerns, needs, and barriers to accessing court services. Such an evaluation is necessary to have a better understanding of whether and in what circumstances those who are directly affected by the Family Court system are meaningfully benefitting from this technology. It is important to ensure that parties do not feel coerced to appear virtually when they would prefer an in-person appearance. It is equally important to know whether there are certain types of court appearances (e.g. case status conferences) where it may be more beneficial for a litigant to have the option to appear virtually. Additionally, it's also crucial to know whether operating virtually has interfered with children or parents' ability to understand the proceedings and communicate with their attorneys; how it has functioned for unrepresented litigants; whether individuals have been able to access confidential spaces and reliable internet connections to use remote technology; whether it has been utilized by one party to delay a case; and what litigants would need to effectively participate virtually. Ultimately, our clients' voices must be centered in the consideration of any standardized policies surrounding the use of virtual appearances. Certainly, no such policy should permit a party to be required to utilize virtual appearances over their own objection. It is essential to answer these questions for the Family Court system to create just, effective, and uniform procedures. As such, a City-funded evaluation is necessary to gather such information.

Furthermore, recent limitations on access to the Unified Court Management System ("UCMS") have also had a significant impact on the ability of litigants and their attorneys to access court records necessary for effective advocacy in Family Court matters. UCMS permits individuals to check if their case has been calendared, find their next court date, and immediately view and print all signed orders and documents in their matter. However, in the past couple of years, UCMS has restricted its search function to only allow searches by case docket, and has restricted access by attorneys to only a particular borough. Parties with newly filed petitions often do not have or know their docket number and so cannot use the system. In addition, attorneys who routinely represent clients in Family Court can see only the docket they are assigned to, depriving them of a full picture of a client's cases and history. The lack of full UCMS access has also made it impossible for institutional providers to conduct full, comprehensive conflict checks as we are unable to get

[5] Jeh Charles Johnson, State of New York Unified Court System, *Report from the Special Adviser on Equal Justice in the New York State Courts*, at 54 (October 1, 2020), available at https://www.nycourts.gov/whatsnew/pdf/SpecialAdviserEqualJusticeReport.pdf.

information regarding the full breadth of our clients' other cases. The lack of access causes direct harm to the parties involved, results in further racial and economic inequity, and impedes access to justice.[6] City Council must urge the NYS Office of Court Administration to reinstate the ability to search by client name and to search all boroughs.

Inadequate Court Facilities for Constitutionally Protected Attorney-Client Communications During Arraignments

I. Lack of Confidentiality During Attorney-Client Interviews

Confidential communication with an attorney is a lynchpin of the right to be represented by counsel. However, youth who are arrested as juvenile delinquents and brought to court for possible arraignment on nights and weekends are denied confidential spaces in which to communicate with their attorneys. Confidential attorney-client interview space is necessary for attorneys to obtain the information they require to adequately represent their clients including information to address parole/remand arguments before the judge, to initiate necessary evidence collection and investigation, and to advise the client on what to expect. Our young clients must be able to understand that attorneys are their personal representatives in whom they can confide confidentially and who can reassure them during this often-traumatic time. Without confidential interview space, none of these essential practices can take place, denying our clients their right to counsel under the New York State and United States Constitution.

As such, it is incumbent upon the Department of Citywide Administrative Services ("DCAS") to ensure that all holding areas are constructed with the utmost confidentiality. However, such construction is woefully lacking in at least three courthouses: the New York County central night and weekend arraignment holding areas at 100 Centre Street, the juvenile detention holding area in the Richmond County Family Courthouse at 100 Richmond Terrace, and the Kings County juvenile detention holding area at 330 Jay Street.

By way of example, night and weekend arraignments of youth facing juvenile delinquency charges take place in the Manhattan Criminal Court building at 100 Centre Street. All attorney-client communication in the interview spaces for boys and girls can be overheard by staff employed by the Administration for Children's Services' Division for Youth and Family Justice ("DYFJ"), other youth, and court staff. This is unacceptable. The girls' interview space is a plexiglass booth inside the girls' detention room. The booth, which barely fits two chairs, has an open grate/grill at the top

[6] See The Impact of COVID-19 on the New York City Family Court: Recommendations on Improving Access to Justice for All Litigants, The New York City Family Court COVID Work Group A Joint Project of the New York City Bar Association and The Fund for Modern Courts, (Jan. 2022) https://s3.amazonaws.com/documents.nycbar.org/files/Final_Family_Court_Report_22.2.4.pdf); see also, Letter to Judge Ruiz Regarding Equitable Access to Justice in the NYC Family Courts, The Council on Children (July 20, 2021) https://www.nycbar.org/member-and-career-services/committees/reports-listing/reports/detail/letter-to-judge-ruiz)

and is not soundproof. DYFJ staff sit at a desk a few feet from the plexiglass wall of the booth. As a result, other girls in detention as well as staff can hear conversation between an attorney and client in the booth. Probation also uses this booth to interview girls, and confidential information from those interviews can be heard by others in the room. Conversation by staff can also be heard inside the booth, reinforcing the lack of confidentiality. Further, this configuration and lack of space prohibits the use of interpreters. In addition, the bathroom for the courtroom is located inside the girls' detention area, a short distance from the booth, and is used by all court personnel -- including, on occasion, the judge – further undermining confidential attorney-client communication.

The boys' interview space has three booths, each of which has an open mesh grate at the top of the wall behind the client, as well as behind where the attorney or interviewing probation officer sits. The boys are detained in a room opening into the client side of the booths. Even if the door to the booth is closed behind the client, sound travels from inside the booth into the detention area due to the open grate. As a result, conversations between an attorney and client can be heard by other boys in detention. The DYFJ staff sit immediately outside a door to the boys' detention area, and the door is often kept open. The wall with the door also has the mesh grill at the top, so even if the door is closed, there is no soundproofing. As a result, all attorney-client conversations, as well as confidential information in probation interviews, can be overheard by staff as well as other youth in detention. Again, this is unacceptable.

II. Inadequate Staffing in DYFJ

Second, the ongoing shortage of DYFJ staff to assist at the courthouses in Staten Island and Manhattan during weekday arraignments has negatively affected our clients. At times, youth have had to wait to be accepted into DYFJ custody from the NYPD, due to a lack of DYFJ staff, forcing the youth to wait significant, unnecessary periods of time in custody and delaying the ability of other parties, including Department of Probation staff, to perform their jobs. Of great concern are numerous incidents where our clients were not produced in time for their time-certain court appearances, requiring adjournments, necessitating delays, and infringing on the youth's right to a speedy fact-finding. Furthermore, such failures to ensure our clients appear in court put youth awaiting a court ordered release to enter drug treatment programs at risk of losing their bed and, generally, keep youth who are up for parole or non-placement dispositions in detention longer than necessary.

Finally, we also have a number of clients who have not been taken to school in both non-secure and secure detention facilities, presumably as a result of staffing shortages. We have received reports regarding some clients who are concerned about being prepared for the statewide exams and others who are not even receiving their school work.

The City must hold DYFJ accountable by requiring them to submit a report in 60 days documenting staffing levels, including specifically which positions remain open, and all measures taken to address the staffing shortage.

Additionally, it is imperative that caseworkers from the Administration for Children's Services (ACS) be on-call during night and weekends. Far too often, youth are arrested stemming from a family altercation and their parents refuse to come to court. Unfortunately, the common result is that judges remand the youth to detention, even though they have not found the necessary legal standard – that the youth is likely to commit another delinquent act or fail to return to court[7]--has been met. When our clients fear returning home, face familial rejection or lack the support of extended family, they should have the option of entering ACS' custody.

III. Insufficient Availability of ATD/ATP Programs that Meet the Needs of Court-Involved Youth

It is well established that Alternatives to Detention (ATD) and Alternatives to Placement (ATP) are essential tools for a just and effective juvenile legal system. Detention increases the risk of deeper system involvement. Programs that connect youth to pro-social services and a network of people who can provide support are some of the most protective factors that ensure a young person's future success. The success of an ATD or ATP program may depend largely on the appropriate matching to the needs of the young person and/or his family. For example, particularly for youth engaged in problematic behaviors stemming from challenges in their environment, Multisystemic Therapy (MST) is a community and family-based therapeutic model scientifically proven to disrupt problem behaviors in at-risk youth. As such, programs such as Esperanza and Juvenile Justice Initiative (JJI) that offer MST have been critical for court-involved youth. Unfortunately, Esperanza has now closed its doors due to lack of funding and it is our understanding that JJI cannot accommodate new youth at this time. While we applaud the Center for Alternative Sentencing and Employment Services (CASES) for stepping into the ATD/ATP field, simply replacing a program like Esperanza with CASES, which involves different treatment models, is not sufficient to meet the needs of all court- involved youth. Therefore, New York City must increase funding for JJI and put forth requests for proposals for programs that offer MST.

[7] Family Court Act § 320.5

Conclusion

Thank you again to the Committees on Oversight and Investigations, Public Safety, and General Welfare for looking closely at how to improve Family Court operations. We are happy to answer any questions.

CONTACT:

Lisa Freeman
Special Litigation and Law Reform Unit
Juvenile Rights Practice
The Legal Aid Society
199 Water St.
New York, NY 10038
lafreeman@legal-aid.org

Testimony Submitted by

The Committee For

Modern Courts

Public Hearing

before the

New York City Council Committees on

Oversight & Investigations,

General Welfare, and Public Safety

April 24, 2023

William C. Silverman
Chairman
Committee for Modern Courts
387 2nd Avenue, No. 608
New York, NY 10010
Justice@moderncourts.org
www.moderncourts.org

My name is William C. Silverman, Chairman of the Committee for Modern Courts. On behalf of Modern Courts, thank you for providing us with the opportunity to submit this testimony regarding operational challenges in the New York City Family Court.

In February 2023, Modern Courts issued a report jointly with the New York City Bar Association entitled, The Impact of COVID-19 on the New York City Family Court: Recommendations on Improving Access to Justice for All Litigants, to shed light on the crisis in the Family Court, document and analyze steps that were taken (or not taken) in order to ensure access to justice during and subsequent to the worst months of the pandemic, and make recommendations for meaningful reform based on lessons learned.

To be clear, the pandemic has been as unprecedented as it has been cruel, and nothing here is meant to suggest that the Family Court reasonably could have met the challenges faced by litigants without, at least initially, some disruption of service. What followed from COVID-19, however, was a significant shutdown of service in the New York City Family Court for a large number of litigants for an extended period of time. In other words, our findings and recommendations are a product of the deep inequities in Family Court that this crisis has laid bare.

When COVID-19 struck New York City in March 2020, the Family Court operated much as it had for decades. While other trial courts in New York, such as the Supreme Court, had embraced electronic filing, the Family Court had not. Prosecution of an action required the filing of a physical petition and in-person court appearances. Similarly, for those who wanted a copy of a court document, and for those unrepresented litigants who sought help filing papers, the Court was only accessible in

person. Moreover, Court personnel were not equipped with the technology to enable them to work from home. Thus, at the start of the pandemic, when safety protocols led to the closure of public buildings, the Family Court faced enormous hurdles to simply function.

Given its limited technological and logistical capacity, once the pandemic hit, the Family Court allocated its resources to a limited number of "essential" cases, such as orders of protection and certain child protective and delinquency proceedings, which it heard remotely. Virtually all other cases—including most visitation, custody, adoption, guardianship, and support matters, as well as many child protective and termination of parental rights proceedings—were deemed "nonessential" and "nonemergency" and did not proceed. The bulk of pending "nonessential" cases therefore stagnated for months, many for almost a year, before being scheduled to be heard, and most new cases like these were not even accepted for filing. Although the Family Court accepted some applications deemed "emergencies" in these "nonessential" matters, it never defined what constituted an "emergency." Accordingly, while some creative lawyers were able to fashion their cases as "emergencies," the vast majority of litigants—especially unrepresented litigants who make up 80% or more of the court population—had virtually no access to the Family Court.

In the end, the distinction between emergencies and nonemergencies became a false dichotomy, rationalizing delays that caused harm to thousands of families. For example, a child support matter is indeed an emergency for a family without financial support suffering from housing or food insecurity regardless of whether the Family Court deemed the matter to be an "emergency." Similarly, an emergency exists for a victim of domestic violence who is not receiving child support and thus has no means

to leave their abusive home regardless of how the Family Court characterizes the filing. And while it might have seemed necessary to exclude most custody and visitation proceedings from the category of "emergencies," that is of no comfort to the parents and children who have not seen each other for months, or to children in physically or emotionally harmful custodial arrangements. At a time of crisis, when the vulnerable populations who routinely appear in Family Court needed help the most, the courthouse doors were largely closed.

Making matters worse, the Family Court struggled to develop an effective system to disseminate updates and guidance to the public. People were turned away from courthouses with limited information. Even now, the Family Court's website provides limited and often unclear information on the status of the Court's operations and offers only limited guidance for unrepresented litigants.

The website is just one example of the Family Court's technological challenges. The Family Court struggled with its transition to remote proceedings given staffing shortages, the challenges staff faced working remotely, and the use of cloud-based conferencing platforms ill-suited to their purpose. Of grave impact was the inability of many lawyers to access orders or documents electronically on their cases. The Court's decision to not authorize widespread access to its Universal Case Management System ("UCMS"), which is not an electronic filing system but does enable users to immediately view and print all signed orders and documents, imposed an impossible burden on providing effective representation. While some institutional and agency lawyers have access to UCMS, many do not. Even during "normal" times, lawyers and unrepresented litigants should have access to court files electronically as they do in the Supreme Court. But during the pandemic—when physical access to court documents has been limited—

it became a problem of utmost urgency that the Family Court still seemed to be struggling to address. Nor has the Court yet implemented a system to facilitate electronic filing and to eliminate UCMS as a relic of a bygone era.

What distinguishes the Family Court, of course, is that the litigants are primarily unrepresented. Pre-COVID, the Help Center, or pro se petition room, served a critical role assisting the public, including helping file various court documents. Since the beginning of the pandemic, that essential assistance has been greatly curtailed. Moreover, remote proceedings have presented special challenges to some unrepresented litigants who lack adequate access to technology. While nonprofit organizations have helped to some degree, unrepresented litigants continue to have difficulty navigating the system and getting information about their cases. This is especially problematic given the long delays resulting from the substantial backlog of cases now facing the Family Court.

Our main recommendations are as follows:

- adopt NYSCEF, the electronic filing system used throughout much of the New York State Court system, in Family Court to the fullest extent permitted by law, with appropriate support for unrepresented litigants;
- provide the public with regular statistical reporting, by court Term, on all Family Court proceedings;
- build an effective, user-friendly website (including mobile website) that comprehensively informs the public of current court operations and provides guidance to unrepresented litigants;
- enable litigants without access to adequate technology to participate in remote proceedings by providing access to the appropriate technology;

- adopt a communications strategy to ensure litigants and attorneys are kept up to date on the status of their cases as well as the status of Court operations generally;
- provide enhanced training for jurists in case management strategies and techniques;
- assess the Court's needs with respect to remote proceedings to ensure that it purchases and utilizes up-to-date technology best suited for courtroom protocols, and provide sufficient user training and support;
- move judges, staff, and other resources from other trial courts as necessary and appropriate to tackle backlogs and delays;
- enact uniform procedural rules; and
- engage with stakeholders on a plan for the complete reopening of the Family Court.

Testimony of Zainab Akbar, Managing Attorney, Family Defense Practice, Neighborhood Defender Service of Harlem

Presented before

The New York City Council Committees on General Welfare, Oversight and Investigations, and Public Safety

Oversight hearing: Operational Challenges in Family Court

April 24, 2023

My name is Zainab Akbar and I'm the managing attorney of the Family Defense Practice at Neighborhood Defender Service of Harlem. Thank you Chairs and members of the committees for this opportunity to testify with my colleagues from Bronx Defenders, Brooklyn Defender Services and Center for Family Representation about the Family Court system. We collectively represent the agencies who provide public defense in New York City's family courts.

We are here to ask the committees to focus not on nameless faceless standards and goals, but instead on the real impact that the current functioning of the Family Court and ACS has on your individual constituents, their families, their communities, and the city at large.

Our organizations have affirmatively adopted the phrase "Family Policing System" or "Family Regulation System" to describe what has traditionally been called the "child welfare system" to reflect the system's prioritization of surveillance, punishment, and control of low-income, Black and Brown and other marginalized communities rather than genuine assistance to families. I'm here to provide a background and history to our collective and joint testimony.

Just like our modern police systems are directly descended from slave patrols, the Family Policing System's origins are in the separation of enslaved Black children and parents to profit from their labor, and in the government-supported separation of indigenous children from their parents, meant to destroy the communities whose land the government was seeking to colonize.

Today, Black, and brown children are separated from their parents by ACS and placed in the foster system at rates hugely disproportionate to their presence in the total population of New York City's children.

This isn't an accident. Widespread research, including two recent internal investigations commissioned by ACS itself, consistently and reliably demonstrate that Black and brown families are targeted by the family policing system. These internal reports also demonstrate that

ACS caseworkers are pressured to coerce vulnerable families to relinquish their constitutional rights before a court is even involved.

The current system of mandated reporting unnecessarily funnels huge numbers of low income Black and brown families into intrusive investigations without any evidence that this system actually helps families or prevents or reduces harm to children.

What harms children is being separated from their families. What harms children is entering a system that literally guarantees higher delinquency rates, higher teen birth rates, lower earnings, increased likelihood of juvenile justice system involvement and increased likelihood of needing emergency healthcare within a year of their parents' being investigated.

This system creates a "stop and frisk" dynamic that entangles vulnerable families into a system of child safety theater, where families are torn apart by the Court and ACS instead of supported. The idea of an innocent person being wrongly incarcerated is intolerable to New Yorkers; the same logic applies in this system – even one child wrongfully torn from their parents is one child too many.

New York City should have a children and family services institution that turns to prosecution and separation as an absolute last resort and which serves families based on self-identified needs, not system-identified needs.

Testimony of

Lauren Wolfinger

Trial Attorney, Juvenile Defense Unit

New York County Defender Services

Before the

New York City Council

Committee on Public Safety
Committee on General Welfare
Committee on Oversight and Investigations

Joint Oversight Hearing: Operational Challenges in Family Court

March 27, 2023

My name is Lauren Wolfinger and I am an attorney at New York County Defender Services in the Juvenile Defense Unit. I represent children aged 13 to 17 who are first charged as adults under the Raise the Age Statutes, and if these matters are removed to Family Court as delinquency matters, I continue to represent children there as well.

Representing teens in this context, I often encounter ACS workers and workers from their contracted foster care agencies. Children in foster care are at an increased risk of coming into contact with the either the criminal court system or the delinquency court system. Unfortunately, it is not at all rare for children in ACS care to come into contact with the criminal legal system.

A foster child's need for support as they navigate the criminal side of court systems begins immediately after arrest. If you were not aware, children as young as 13 under our current laws can end up in adult night arraignment settings based on the nature of their charges. These vulnerable youth need their ACS workers and Agency workers to appear at their arraignments. When a child is in the care of ACS or a Foster Care Agency, that is the entity that must appear to allow a child to be released. Criminal court judges are understandably hesitant to release a child late at night without an adult present, so when workers do not come to court for children remanded

to their care, there is no real alternative but remand to secure detention. Failure to appear by a worker should never be a reason for a child to be held on remand status when they otherwise would have been released.

Additionally, ACS or an assigned foster care agency will often send a transporting worker to arraignments or with a youth to their subsequent court dates. Transporting workers often have no knowledge of the child's background, history, or care plan. This worker may not be able to answer questions a judge might have about any potential service plans or placement plans. A worker's ability to explain what supports a youth might have to ensure their next appearance is vital to ensuring a child stays out of detention. In that sense, ACS and Agencies are negatively impacting efforts to keep kids out of detention when they send poorly informed representatives to court for children in their care.

ACS and Agencies must find better ways to use their resources and programming to support children with criminal court and delinquency contacts. Children first charged as adults have limited ways to get their cases removed to family court, where frankly, all of them belong. However, under our current laws, children are, in many ways, tasked with making their own best cases for removal on consent from the ADA's office. They do this primarily by participating in services and programming. Children cannot be expected to do this alone. They need better, proactive planning from ACS and Agencies who can already provide things like individual therapy, tutoring and school support, or referrals to mentoring programs. They need consistent encouragement from their foster parents or congregate care settings to participate in the same. They need ACS and Agencies to provide dedicated services geared towards youths who have become court involved.

ACS and Agencies are the proper entities to provide these services. Children engaging in programming through ACS and their welfare cases can continue to do so without interruption if their cases are removed to family court. Currently, when children begin programs or services on the adult criminal court side, if their cases are removed, they may be disconnected from their services. Without getting into the minutiae of every program option and how each is funded and who provides each program—simply put, when a child moves across systems, sometimes that results in loss of access. This can be avoided if the services are provided by the welfare agencies outside of the criminal justice process. Children who do not experience service interruption when their cases are transferred to family court have a much better chance of earning better settlement offers or getting betting disposition recommendations.

Finally, ACS and Agencies must plan proactively for foster care or group home placement for children remanded to detention. Too often, once ACS or an Agency has failed to attend court dates and a child has ended up in detention, ACS and Agencies see no urgency in finding foster homes, group home settings, or RTCs for children who are still legally remanded to their care. This is unacceptable. Judges reviewing detention settings for children in family court consider whether a child has access to a less restrictive setting where they can be successful. ACS and Agencies are the gatekeepers of that access.

In sum, ACS and Agency workers need to come to court dates for children. Every court date. The workers who appear need to be more than just "transporting workers," and they need to appear with substantive knowledge of the child's case and background. Workers need to participate

meaningfully in providing service options and placement alternatives even if a child is in detention. All of these asks are already part of ACS and Agency obligations. ACS and Agencies should see themselves as partners with defense counsel in achieving the least restrictive alternatives for kids. I hope they will join us in our advocacy to keep kids out of adult courts and out of harmful detention settings.

Thank you for considering this testimony. Please feel free to contact our office at policy@nycds.org if there are any questions.

Legislative Affairs
120 Broad Street
New York, NY 10004
212-607-3300
www.nyclu.org

Testimony of the New York Civil Liberties Union
to
The New York City Council Committees on General Welfare,
Oversight and Investigations, and Public Safety
regarding
Operational Challenges in Family Court

April 25, 2023

The New York Civil Liberties Union (NYCLU) respectfully submits the following testimony with respect to the New York City Council Committees on General Welfare, Oversight and Operations, and Public Safety hearing regarding operational challenges in family court.

I. Introduction

The NYCLU, an affiliate of the American Civil Liberties Union (ACLU), is a not-for-profit, non-partisan organization with eight offices throughout New York State and more than 180,000 members and supporters. The NYCLU's mission is to promote and protect the fundamental rights, principles, and values embodied in the constitutions of New York and the U.S. This includes the constitutional guarantee of equal protection under the laws and the right to privacy and personal autonomy, including in the realm of family life.

New York City's family court system – which hears a wide range of matters, from custody disputes to juvenile delinquency proceedings to child neglect petitions – has a direct and significant impact on the lives of New Yorkers. Family courts exert a tremendous amount of power over the most intimate aspects of people's lives, issuing decisions on whether children will be removed from their parents' care and whether youth accused of offenses will be detained. As the Council examines operational issues within the family court system, it must not lose sight of the people and families whose lives hang in the balance of the court's decisions. To that end, the Council must address not only bureaucratic issues and reforms, but also the broken systems of family regulation and policing that funnel parents and children into family court, further burdening the system and exposing families to lasting trauma.

While many types of cases are adjudicated in family court, our testimony focuses on matters involving allegations of neglect made against parents by the New York City

Administration for Children's Services (ACS) – part of what many rightly refer to as the family regulation or family policing system. Each year, thousands of parents are subjected to investigations for alleged child maltreatment, often stemming from conditions of poverty beyond their control. ACS investigations can take several different paths, but many will lead to formal neglect petitions being filed in family court. Once a neglect petition is filed, even the most minor cases can take more than a year to resolve. Not only does this unjustifiably entangle families in protracted legal proceedings, but also it further burdens the family court system with cases that are best resolved through collaborative support, not inside a courtroom.

Rather than offering such assistance to struggling families, ACS operates as a punitive system, often subjecting families to intrusive surveillance, removing children from their homes, and responding to poverty-related challenges by accusing parents of neglect in family court. Our testimony today highlights recommendations that would help de-escalate ACS investigations by empowering parents to exercise their due process rights at the earliest stages of their case. By supporting parents' ability to effectively advocate for their families, the Council can help prevent the need for court interventions.

II. Parents must have access to counsel before they appear in family court.

For parents who find themselves targeted by allegations of neglect, the initial stages of an ACS investigation are highly intimidating. Parents are often asked to consent to entry into their home, answer intrusive personal questions, sign unnecessary medical releases, and make statements against their interest and the best interest of their families. Under New York law, parents who are the subject of a neglect petition are entitled to an appointed attorney when they first appear in family court.[1] Yet by the time a case lands in court, many parents will have already made decisions without counsel that limit their ability to fairly adjudicate their case.

To ensure the promise of due process and adequately protect parents' due process rights, parents must have access to interdisciplinary legal representation at all stages of a proceeding, particularly in those critical early moments when they are most vulnerable. Granting parents access to an attorney before the filing of a petition can lead to more informed decision-making by parents that may facilitate solutions other than court involvement, reducing the burden on the family court system.

Notably, in its 2019 interim report, the State Commission on Parental Representation named early access to counsel as its top recommendation.[2] The Council has previously considered legislation to create a pilot program to expand legal representation during the

[1] Matter of Ella B., 30 NY2d 352 (1972); N.Y. Family Court Act §§ 261, 262, 1120.
[2] Commission on Parental Legal Representation, Interim Report to Chief Judge DiFiore, at 16-23 (Feb. 2019), http://ww2.nycourts.gov/sites/default/files/document/files/2019-02/PLR_Commission-Report.pdf.

pre-filing period,[3] and several family defense offices in New York City have begun to offer early representation with the help of city funding.[4] Since these offices began to provide early representation to parents in 2019, they have prevented the filing of a case in family court 75-80% of the time and prevented over 90% of the children involved in investigations where they represented their parents from entering the foster system.[5] We urge the Council to consider anew ways to ensure that all parents who are the subject of ACS investigations can access an attorney at the first point of ACS contact.

III. Parents must be told their rights at the outset of an ACS investigation.

In addition to being able to consult with an attorney, it is critical that parents who are subject to ACS investigations understand their rights so that they may advocate for themselves. Despite the intrusive and consequential nature of an ACS investigation, caseworkers are under no obligation to inform parents that they do not have to answer questions, do not have to allow access to their homes, and have the right to contact an attorney. Indeed, caseworkers are in some ways incentivized to not tell parents about their rights in order to elicit information.

This places parents in a precarious position and increases the likelihood that they will make decisions contrary to their and their family's best interests. It also reinforces the adversarial nature of the family regulation system by exploiting parents' lack of awareness of their rights. This further undermines any potential for constructive collaboration between parents and caseworkers that could help them resolve family issues without resorting to family court.

Advocates have long called on state and local lawmakers to enact "family Miranda" laws that would require caseworkers to inform parents of their basic rights during an investigation at their first stage of contact with a family, similar to the warnings delivered by police officers to suspects in the criminal legal context. Even ACS' own staff have expressed support for a requirement that parents be informed of their rights.[6] There are currently two bills before the Council – Intros. 865-2022 and 294-2022 – that, with

---

[3] NYC City Council Intro. 1728-2019, https://legistar.council.nyc.gov/LegislationDetail.aspx?ID=4146304&GUID=1D2664EA-C1F9-4DCE-A0A6-0362B0CC67FE&Options=&Search=.

[4] *See* Bronx Defenders, Press Release: Family Advocacy Initiative Funding, June 18, 2019, https://www.bronxdefenders.org/press-release-family-advocacy-initiative-funding/.

[5] Brooklyn Defenders, Bronx Defenders, Center for Family Representation, and Neighborhood Defender Service of Harlem, *Testimony of the Article 10 family defense organizations in New York City Regarding The State of Primary Prevention Services in New York State*, Hearing before The New York State Assembly Standing Committee on Children and Families, Oct. 18, 2022, https://cfrny.org/wp-content/uploads/2022/11/Joint-Family-Defense-Primary-Prevention-Testimony-10.18.22.pdf.

[6] Andy Newman, *Is N.Y.'s Child Welfare System Racist? Some of Its Own Workers Say Yes.*, New York Times, Nov. 22, 2022, https://www.nytimes.com/2022/11/22/nyregion/nyc-acs-racism-abuse-neglect.html.

necessary amendments, would create such a mandate within the city. The Council must work with advocates to ensure these bills match their intention and quickly enact them into law.

IV. Conclusion.

The family court system in New York City holds immense, if sometimes overlooked, power over the lives of the New Yorkers who find themselves entangled within it. This is particularly true in the area of family regulation, where family court judges make orders each day that determine whether children will remain in their homes or be removed to foster care. As the City Council examines operational issues in family court, it must also scrutinize the systems that lead people into court in the first instance and enact necessary reforms to reduce unnecessary entanglement with the legal system, and with it, government disruption of the most personal aspects of people's lives.

Testimony of The Bronx Defenders, Center for Family Representation, and Neighborhood Defender Service of Harlem
Presented Before
The New York City Council Committee on Oversight & Investigations Jointly with The Committee on Public Safety and The Committee on General Welfare

Hearing Date: April 24, 2023

Subject: Operational Challenges in Family Court

This testimony is submitted jointly by the Bronx Defenders (BxD), Center for Family Representation (CFR) and the Neighborhood Defender Service of Harlem (NDS) (collectively the "family defense organizations"). Our offices are the primary providers of mandated legal representation to parents who are eligible for free representation in Article 10 cases filed in family court in the Bronx, Manhattan and Queens. Together with Brooklyn Defender Services, we have created a model of interdisciplinary representation for parents charged with neglect or abuse and at risk of family separation. Our model, which provides comprehensive representation to indigent parents through teams of attorneys, social workers and parent advocates, is nationally recognized as the most effective model of representation of its kind. Together, we have prevented thousands of children from needlessly entering and languishing in the foster system and have reduced the foster system census in New York City by almost 50%. This translates to nearly $40 million in annual savings in foster system expenditures for New York City, and the preservation of family bonds that are priceless to our clients, their children, and society at large.

We thank the Oversight and Investigations, General Welfare, and Public Safety Committees for the opportunity to submit written testimony about how the current functioning of the Family Court system impacts low-income, Black and Latine and other marginalized New Yorkers. For this body to assess whether the Family Court is functioning efficiently, it must look at whether it is serving the populations that seek its assistance.

The primary goal of our work is to provide high quality legal representation to parents in high stake family policing cases and ameliorate the underlying issues that drive families into this system, such as lack of access to quality health and mental health treatment, basic necessities and appropriate education and services for children with disabilities. We also aim to reduce the harm of the consequences of system involvement, such as criminal charges, housing and income loss, education issues and inability to adjust immigration status. Collectively we represent thousands of parents each year. Since 2007 when New York City first contracted with family defense organizations to represent parents, we have represented tens of thousands of parents of tens of thousands of children, the vast majority of whom are Black and Latine and live in the most marginalized, low-income communities in New York City.

Since fiscal year 2020, we have also provided two critical services to low-income parents, in addition to our mandated representation in court, made possible only with City Council funding of the Right to Family Advocacy Project through the Family Advocacy and Guardianship Support Initiative:

- **We provide support, guidance, and legal representation to parents during an investigation by the Administration for Children's Services (ACS), with the primary goal of preventing family separation and unnecessary family court filings.**

- **We provide legal representation in administrative proceedings to help parents clear or modify (amend or seal) their Statewide Central Register (SCR) records that result after ACS investigations, thereby preserving and expanding low income New Yorkers' employment opportunities.**

The City Council plays an important role in monitoring the provision of ACS services and ensuring that ACS upholds the rights of families who are being investigated and/or prosecuted by ACS.

I. The "Child Welfare" System is Rooted in Our Country's History of Structural Racism.

The family defense offices have followed the leadership of directly-impacted people and adopted the phrase "family policing system" or "family regulation system" to describe what has traditionally been called the "child welfare system" or the "child protection system," to reflect the system's prioritization of and roots in surveillance, punishment, and control rather than genuine assistance to and support of families living in poverty.

The family policing system disproportionately punishes, controls, surveils, and forcibly separates low-income Black and Latine families. Just as our modern police systems descend from slave patrols, the family policing system derives from our country's history of separating Indigenous, Black, and low-income children from their families.

The family policing system's origins are in the separation of enslaved Black children and parents for the benefit of the white people who sought to profit from their labor, and in the government-supported separation of Indigenous children from their parents meant to destroy the Indigenous communities whose land the government was seeking to colonize. Indigenous children were institutionalized under a policy that was meant to "Kill the Indian, Save the Man."

The system continued with "Orphan Trains" of the late 1800s and early 1900s, when The Children's Aid Society, still in operation in New York City today, separated thousands of poor Italian and Irish immigrant children from their families, who at the time were not seen as white, and sent those children to the Midwest to work on farms. Then, as now, the poverty that these children and their families experienced was framed as a personal failing instead of the structural issue it was. Family bonds in impacted communities were considered inferior and therefore breaking those bonds was considered to be to the children's, and more importantly, to society's

benefit. Similarly, for decades until the passage of the Indian Child Welfare Act in 1978, the government separated Indigenous children from their families by the government at disproportionate rates and placed them with white families where the children were systematically and intentionally alienated from Indigenous culture, language, spiritual practices – their entire Indigenous identity.

The family policing system we fight today, which includes the New York City Administration for Children's Services (ACS), foster agencies, family court, and mandated reporters, is rooted in this history, but its funding did not explode until public assistance programs were slashed in the 1980s and 1990s in response to Black families demanding equal access to social programs through the civil rights struggles of the 1960s. These cuts were coupled with billions of dollars in new funding for the foster system. In 1981, the federal foster system budget stood at less than $500 million. By 2003, it was at $4.5 billion. With this huge increase in funding, family policing agencies targeted the Black community, using the same racist and classist ideology motivating the war on drugs and the cuts to public assistance. In New York City, where approximately 60% of the children are Black and Latine, they account for approximately 90% of the children in the foster system.[1]

Research from all corners, from the Federal Children's Bureau to the National Council for Juvenile and Family Court Judges to numbers reported by ACS itself, demonstrates that Indigenous, Black, and Latine families are disproportionately represented in reports, investigations, and prosecutions by the family policing system and that Indigenous, Black, and Latine children are disproportionately represented in the foster system. This is not the work of a few bad apples. These outcomes, demonstrated reliably and consistently across a variety of social research, are a result of structural racism masquerading as social betterment. Even ACS's own staff acknowledges this reality. An internal ACS racial equity audit "described a 'predatory system that specifically targets Black [and Latine] parents' and subjects them to 'a different level of scrutiny.'"[2]

When the communities we represent are investigated by ACS, caseworkers often use misinformation and the threat of family separation and police involvement to coerce vulnerable families to relinquish their constitutional rights before a court is even involved.[3] Hospitals target pregnant low-income Black and Latine parents to drug test them without their knowledge, much less consent. This often occurs regardless of whether there are any actual child safety concerns, and the practice is legacy of the now-debunked racist "crack baby" myth. The family policing system has become a weapon used by landlords seeking to harass tenants, jilted lovers and vengeful family members by allowing anonymous reports to be filed with little accountability, leaving families to pick up the pieces after the resulting intrusive investigations.

---

[1] *See* NYC Narrowing The Front Door Work Group, *Narrowing the Front Door to NYC's Child Welfare System: Report and Community Recommendations* (Dec. 2020), citing David A. Hansel, *City Council Testimony: Oversight - Racial Disparities in the Child Welfare System* (Oct. 28, 2020), https://www.nyc.gov/assets/acs/pdf/testimony/2020/GWCommitteeHearing.pdf.

[2] Andy Newman, Is N.Y.'s Child Welfare System Racist? Some of Its Own Workers Say Yes., *New York Times*, (Nov. 22, 2022), available at https://www.nytimes.com/2022/11/22/nyregion/nyc-acs-racism-abuse-neglect.html

[3] Eli Hager, Police Need Warrants to Search Homes. Child Welfare Agents Almost Never Get One, ProPublica (Oct. 13, 2022), available at https://www.propublica.org/article/child-welfare-search-seizure-without-warrants

All of these processes create a dynamic that entangles low-income Black and Latine families in a system that, more often than not, tears them apart. For the people who find themselves in these horrifying circumstances, their attorney is the lifeline to bring their children home, which is why our services are critical and must be properly resourced and supported by the City.

For too long, the harms of the family policing system have largely been hidden by public relations campaigns by ACS or justified by the tragic deaths of children, the horror of which cannot be articulated in any amount of testimony, and which, importantly, are outliers in these systems. In their attempts to atone for those horrors, ACS sharpens the tools of this racist system by implementing programs like CARES, which claims to divert cases from court, but instead creates prolonged surveillance and policing of families with no judicial oversight and the constant threat of family separation should the parents refuse to "comply."

II. ACS Undermines the Rights and Familial Integrity of Black, Latine, and Low-Income New York City Families in Family Court by Design.

While so many of the harms caused by ACS's unyielding targeting of Black, Latine, and low-income communities occur prior to a case being filed in family court and are made by ACS alone with unfettered discretion—the decision whether to indicate a case, whether to file a case, and whether to take a child from all they know and love—the harm does not cease once families reach family court. Indeed, the harm is reproduced and compounded. Although each and every Article 10 case implicates parents' and children's fundamental constitutional right to familial integrity, Family Court Legal Service (FCLS), the attorneys representing ACS, routinely prosecute these cases in a manner that causes unnecessary delay and, more importantly, undermines the procedural and substantive due process rights of families, from the start of a case to its conclusion.

Since the COVID-19 pandemic, the way we make our initial contact with clients has shifted dramatically. Before the pandemic, we would meet our clients face-to-face, when they came to family court after ACS told them that a case would be filed. After years of intake occurring virtually, in 2022, the family court returned to an in-person intake process. ACS, as the prosecuting agency and the only party who typically has had contact with the parent prior to their first appearance in court, bears the responsibility of informing parents that they are required to appear for intake in person and how to do so. Yet, intake after intake, we hear from our clients that ACS caseworkers only told them that they can appear for intake virtually or by phone. Not only do parents often bear the consequences of running afoul the family court's in-person intake policy, but by appearing virtually for intake, they are also deprived of a crucial opportunity to meet their legal team in person, which can result in challenges building rapport with and collecting critical information from clients.

FCLS also routinely fails to provide, in a timely manner, the critical information needed for our attorneys, social workers, and parents advocates to make contact with and effectively advocate for clients prior to the arraignment of a case. For example, while FCLS often provides notices of cases being filed in the morning hours of intake, all too often our attorneys do not receive the Article 10 petitions or information about ACS applications regarding where the children will be placed until the afternoon, sometimes just minutes prior to a judge calling the case. Without the Article 10 petitions and information from ACS, our attorneys have no information about the allegations ACS is bringing against our clients. This puts parents in the uncomfortable and unacceptable position of receiving a phone call from an unknown number and an unknown voice, telling them that ACS has filed a case against them, but with no information about what the allegations are or what ACS is requesting regarding their children. Worse yet, the lack of information delays our ability to obtain information from our clients necessary to effectively advocate for them, particularly in cases where our client is objecting to ACS's request to separate their family.

Following intake, FCLS undermines parents' due process rights and unnecessarily and unconstitutionally prolongs family separations by routinely failing to uphold its responsibilities as the prosecuting agency. In practice, FCLS attorneys wait weeks, months or sometimes even years to seek necessary discovery. Likewise, when FCLS attorneys do obtain discovery, they regularly wait weeks and months to turn the discovery over to our attorneys, sometimes even waiting until the eve of trial. This is true even for discovery that is in the possession of ACS caseworkers, including progress notes. Beyond delays in turning over critical discovery, FCLS regularly requests repeated adjournments when their witnesses do not appear to testify. Finally, it is also common practice for FCLS attorneys to come to court appearances without the information necessary to move cases toward reunification, including information about the status of service participation and visitation. Worse yet, it is not uncommon for FCLS to report that ACS caseworkers have either failed to make or follow up with referrals for the services in ACS's own service plan for the family. Similarly, FCLS often appears at court dates specifically scheduled to discuss resolution and or family reunification with no information regarding ACS's position on issues such as the expansion of visitation, family reunification, and case resolution through settlement.

What this all adds up to is months or even years of unnecessary delay and prolonged family separation, as well as an increased burden on the court system as cases are repeatedly rescheduled to wait for what should be routine updates from ACS. Our clients have also experienced egregious and lengthy family separations even in cases where ACS ultimately cannot support its allegations with evidence at trial. Even for the families that reunify in an early stage of the proceedings, living under the protracted surveillance, scrutiny, and control of the family policing system and family court is not without consequence or harm. Too often, we have seen parents put their lives and their families' lives on hold—quitting jobs, pausing pursuits of

higher education, canceling family vacations—in order to comply with the demands of the family policing system and family court. While few things approach the level of trauma and harm left in the wake of government-enforced family separation, persistent, unconstrained government monitoring and surveillance–amplified by the threat of family separation–throughout ACS's self-made court delays causes high levels of stress, anxiety, and fear for all members of the family.

Finally, ACS's consistent unwillingness to provide material support for families is indicative of ACS's disregard for the familial bonds of the families it prosecutes. Despite countless studies showing that material disadvantage is one of the largest drivers of what the family policing system calls "neglect," ACS is at best reluctant to and at worst hostile toward providing families with material resources. Whether it's requests for funds for groceries, metrocards to allow parents to travel to and from foster agency visits, furniture necessary to enable children to return home, specialized therapeutic services for families with particularized needs, hotel rooms to facilitate overnight visits for parents that lack stable housing, or beyond, our attorneys and advocates are met with opposition and obstruction. FCLS attorneys routinely take the position that they cannot agree to an order "against the agency," despite ACS policies and regulations that require them to provide material support to families to complete ACS service plans, and the fact that ACS has a multi-billion dollar budget. Under the best of circumstances, our attorneys and advocates are told that ACS will pay for such material support if ordered to do so by the court, but not otherwise. And when the court does issue these essential orders, ACS consistently notes its objection. Worse yet, it is not uncommon for ACS lawyers and caseworkers alike to question and pathologize parents for needing such supports, implying that if, perhaps, parents organized themselves better they would not need ACS "assistance."

The human cost of the harm caused by ACS both before a case is filed and once a case gets to family court is profound. Unnecessary delay undermines the procedural and substantive due process right of families, extending separation, and making it more likely that a family will be permanently separated by termination of parental rights given strict statutory timelines. If New York City is to be truly invested in shifting to fairness and justice for our city's most marginalized families, we must invest in solutions that offer relief from poverty and racism—the largest drivers of families into the family policing system—rather than ACS, a system that merely pathologizes, polices and punishes poverty.

III. New York City Family Court Neither Upholds the Due Process Rights of the Families Before it, Nor Does it Function as a Check on the Myriad Harms of the Family Policing System.

To fully understand and address the challenges that impede the justice and fairness and undermine familial integrity in the New York City Family Court, it is imperative to look beyond

ACS and consider the family court itself. As it operates today, the family court does not function as a check on the harms of the family policing system. Despite the right to familial integrity—a fundamental constitutional right—being at stake, the family court resoundingly fails to ensure that the parents before it receive even the most basic protections and due process that the law requires. As the 2020 Report from the Special Adviser of Equal Justice in the New York State Courts found, New York's family courts provide "a second-class system of justice for people of color in New York State." Three years later, following a pandemic that disproportionately impacted these same communities, this has not changed. Black and Latine families continue to be separated for too long, or even sometimes permanently, as the family courts fail to administer justice. This is by design. From its failure to follow governing laws and ensure due process, to its prioritization of expediency over fairness, humanity, and just outcomes, the family court functions as a continuum of state power, rather than a neutral arbiter of fairness and justice.

Though not mandated by law, currently New York City family court judges are held to "standards and goals" regarding the time periods in which they conduct a fact-finding proceeding, disposition hearing, or termination of parental rights trial. These standards and goals were created without any input from the public are not available to the public. As such, the values and considerations that went into the creation of the standards and goals are unknown, as is information bearing on how the standards and goals are applied and assessed. Goals about timing, rather than fairness and substance, result in judges being more concerned with expediency than reaching the best outcome for the family. They also create pressure to move cases along, which undermines New York State laws that prioritize reunification, function as a check on the state's power to remove children from their families, and protect against unnecessary family separation.

For example, when a court temporarily separates children from their families pending trial in abuse and neglect cases, parents may request the return of their children under §§ 1027 and 1028 of the Family Court Act. Because of the proven harm of family separation, there are strict timelines under which these hearings must commence; once a parent requests a § 1028 hearing, the law requires that "such hearing shall be held within three court days" and may not be adjourned "except upon good cause shown."[4] Likewise, a hearing under Family Court Act § 1027 must commence the next day after the filing of the Article 10 petition, and the hearing must continue on successive court dates thereafter.[5] The purpose of these provisions is to ensure that determinations to take the extreme step of separating a family are reviewed expeditiously and made with a complete record. Yet the family court routinely fails to prioritize these hearings over other matters and often schedules them weeks into the future or with weeks-long gaps between dates, leaving families needlessly separated and children to languish. Deprioritizing emergency

[4] N.Y. Family Court Act § 1028.
[5] N.Y. Family Court Act § 1027.

hearings to review determinations to separate a family delays and denies justice for families and needlessly prolongs cases.[6]

The pressure to move cases along also results in family court judges responding negatively to parents who exercise their rights to due process. Too often family court judges implicitly (and even sometimes explicitly) make clear their displeasure regarding a litigant's decision to exercise their right to have a trial or an emergency hearing challenging the court's determination to temporarily separate their family. Before even hearing the evidence, it is not uncommon for family court judges to make disparaging comments on the strength of the litigant's case, the likelihood of success at trial or in an emergency hearing. Whether intentional or not, this signals to clients that exercising their due process rights may be unwise and indeed hurt their ability to reunify their families as quickly as possible or resolve their case in a favorable manner. The outsized focus on expediency also results in family court judges pressuring parents who do choose to go to trial to move forward even when ACS has either wholly failed to provide complete discovery, or has provided it at the eve—sometimes just hours before—of trial. This is the antithesis of fairness and due process.

Access to the family court is unequal and due process is limited for parents even before the Article 10 petitions are filed in court. Increasingly, we have observed the troubling practice of ACS using its emergency removal powers to separate children from their families[7] and then wait days before filing an Article 10 petition in family court. The harm of this growing practice is profound. For days, families are left in limbo; children are separated from their parents, and in some cases, parents do not even know with whom ACS has placed their children. Beyond the unimaginable harm, this practice is in direct contravention of New York State law, which requires ACS to file an Article 10 petition the next court day after the child was removed, precisely to avoid such harm.[8] While ACS often argues that these removals are voluntary "family arrangements," we know this not to be so. There can be no "voluntariness" when parents are faced with the excruciating option of either handing their children over to a family member or

[6] See Lucas A. Gerber et al., Effects of An Interdisciplinary Approach to Parental Representation in Child Welfare, 102 Children & Youth Serv.'s Rev. 42 (2019), https://www.sciencedirect.com/science/article/pii/S019074091930088X

[7] Part 2 of article 10 of the Family Court Act sets forth three ways in which a child may be separated from their family in response to an allegation of child maltreatment and pending the outcome of a child protection case: (1) a preliminary order of the court after a petition for neglect or abuse is filed under FCA 1027; (2) a preliminary order of the court before a petition is filed; and (3) emergency removal of a child from their parent without a court order and before a petition for neglect or abuse is filed in family court. The statute creates a continuum of consent and urgency and mandates a hierarchy of required review before a child is separated from his or her family. Regardless of the mechanism of removal, New York law makes clear that family separation should occur only when remaining in a parent's home presents an imminent danger to the child's life or health and would be contrary to the child's best interest.

[8] N.Y. Family Court Act § 1026.

friend that ACS authorizes as a caretaker or facing an extrajudicial family separation and placement of a child with a stranger.

Even though ACS is flouting its responsibility under the law to file an Article 10 petition in court the next court day after a child has been removed, the family court routinely refuses to permit parents to exercise their rights when this occurs. New York State law allows parents and caretakers to challenge the removal of their child from their home by way of a pre-petition 1028 filing.[9] This is when a parent files a petition in family court and asks that their child be returned or for a hearing. Despite their clear right to this demand under the law, the family court judges often deny parents' access to the court and refuse to even calendar their petition. The court's refusal to grant parents access to the court when ACS has removed their children and failed to follow the law is a clear example of the court's failure to protect the rights of families and its disregard of their family bonds.

The family court's prioritization of case resolution and achieving "permanency" for children—which often means adoption or guardianship to a non-parent—is yet another structural design, anchored in the federal Adoption and Safe Families Act (ASFA)[10] and driven by concerns regarding expediency rather than fairness and justice, that undermines familial integrity. Central to the notion of "permanency" is that the best thing for children is a permanent living arrangement, even if that "permanency" does not include the families of origin that they have who love them and want to care for them. But we know from experience that too often caring, deeply loving and committed parents face a termination of their rights only because they could not meet the demands of the family policing system, which focuses more on pathologizing and "fixing" the parent rather than addressing the material deprivations and anti-Black racism that drives families into the system to begin with. While it may be *expedient* to do so, the reflexive prioritization of "permanency" and presumption that, after the arbitrary ASFA clock has run, the parent-child bond established is no longer worthy of nurturing and preserving, is harmful to children, families, and the communities from which they come. This prioritization of so-called

[9] *See* N.Y. Family Court Act § 1028.

[10] In 1997, ASFA was signed into law. Under ASFA, states are financially incentivized to place children in adoptive homes, and are mandated to move to terminate a parents rights if a child has remained in the foster system for 15 out of 22 months. *See* Adoption and Safe Families Act of 1997, Pub. L. No. 105-89, 111 Stat. 2115 (1997). Specifically, absent certain exceptions, ASFA mandates, "in the case of a child who has been in foster care under the responsibility of the State for 15 of the most recent 22 months . . . the State shall file a petition to terminate the parental rights of the Child's parents . . . and, concurrently, to identify, recruit, process, and approve a qualified family for an adoption). In other words, ASFA financially incentivizes states to limit to a mere 15 months the time period in which families whose children have been removed to the foster system can receive "reunification services and activities."

"permanency" is especially troubling given recent reporting that 66,000 adoptions failed and led to foster system placement between 2008 and 2020.[11]

Finally, as the Franklin H. Williams Commission of the New York State Courts highlighted, a common complaint about the New York City family court was its "dehumanizing" culture and treatment of litigants and counsel that ranged from disrespectful and discourteous to discriminatory.[12] Our experience representing parents in family court confirms this. Our clients and staff are routinely faced with implicit and explicit racism, classism, sexism, heterosexism, and ableism from judges and court staff alike. From being called by generic labels like "mom," "birth mom," "dad," and "paramour," to having cases scheduled and called with no regard whatsoever of the parent's schedule, obligations, or life, to the reliance on tropes and narrative deeply rooted in this country's history of anti-Black racism, classism, and other forms of structural oppression, our clients are faced with a pervasive disregard for their humanity and dignity.

In its failure to protect the rights of parents and children before it and show regard for their family bonds, the family court does not operate as a check on the prosecutorial power of ACS or ensure fairness for families. Rather, it is an active participant in the family policing system's continuum of harm to families, specifically Black and Latine families in New York City.

IV. Investment in Advocates for Parents and for Reforms that Honor the Rights of and Shift Power to Families will move Family Court Towards Justice and Fairness.

In an adversarial legal process, which requires families to affirmatively assert due process rights in order to be heard, an important way to meaningfully address the abuses described above is to increase the resources available to parents and their advocates from the moment that an ACS investigation begins through the reunification of their families. The most effective investments would be to provide parents with crucial information regarding their rights and ability to access counsel before cases come to court and to fully fund parent defender offices so that they can meet state caseload standards for adequate parental representation.

A walk through how ACS investigations begin illustrates why families need a significant investment in resources for timely defense when ACS first makes contact with families. Our clients first become aware of a pending ACS investigation when a caseworker knocks on their door to inform them that a report of suspected child abuse or neglect was made to the Statewide

[11] Marisa Kwiatkowski and Aleszu Bajak, Far from the fairy tale: Broken adoptions shatter promises to 66,000 kids in the US, *USA Today* (June 6, 2022), https://www.usatoday.com/in-depth/news/investigations/2022/05/19/failed-adoptions-america-foster-care-troubles/9258846002/

[12] The Franklin H. Williams Commission of the New York State Courts, Report on New York City Family Courts (2019), https://www.nycourts.gov/LegacyPDFS/IP/ethnic-fairness/pdfs/FHW%20-%20Report%20on%20the%20NYC%20Family%20Courts%20-%20Final%20Report.pdf

Central Register of Child Abuse and Maltreatment, or SCR. Any person can make a call to the SCR anonymously and have their identity kept confidential until trial. This means that during the pendency of the investigation and the initial stages of court involvement our clients are often in the dark as to who accused them and why, significantly limiting their ability to advocate for and defend themselves. Once ACS has determined that it has enough information to file a petition in court, it holds a meeting that is euphemistically called a "child safety conference" ("CSC") but is akin to a police interrogation. Unlike a police interrogation, however, at CSCs parents are typically *not* informed of their rights and are unrepresented at the interrogation, during which ACS often tries to coerce them into signing contracts agreeing to participate in arduous and unnecessary services in exchange for an oft-broken promise from ACS that they will not take the parents to court or remove their children.

The recommendation as to whether or not to actually prosecute any given case is in the hands of a mid-level ACS caseworker, seemingly without the constraints of firm standards other than the vague language of the Family Court Act. In practice, this means that our clients experience arbitrarily different outcomes depending on how they present at the CSC and whether the ACS team personally likes the family. Often, having decided to recommend the filing of a petition, ACS does not even wait to come to court to take the extreme measure of separating parents and children, even though the Family Court Act says that this extreme measure should only happen in emergencies in which the child is in actual or imminent danger and ACS does not have the opportunity to come to court first.[13]

Two essential reforms would go a long way towards addressing the perils that parents and families face during the investigation phase of their case: providing timely access to legal advice and advocacy and providing timely information so that parents understand their rights when they need to know how to assert them.

One necessary reform would address abusive and unnecessary family policing practices at the investigation stage without requiring any additional funding: providing families with basic information about their existing rights during the pendency of the investigation, including their right to decline to participate in an investigation and their right to decline to provide information to ACS that could be used against them in court. Since families are not routinely connected to counsel until a case comes to court, families are regularly interrogated and subject to intrusive searches and investigation without having any access to advice about how that information could be used against them in court. The *Family Miranda* bills (Int. 294-22 (Ung), Int. 865-22 (Rivera), with proposed amendments, and A1980 (Walker)/S901 (Brisport) would require ACS to do what other law enforcement agencies, such as NYPD, are required to do when they have identified someone against which they may pursue prosecution – advise them of their rights, including the right to contact an attorney. The criminal court example is instructive here – decades after police

[13] See Family Court Act § 1024.

and criminal prosecutors began reading criminal suspects their *Miranda* rights, we know that criminal investigations have not been hamstrung by respecting dignity and due process rights. Injecting transparency and respect into the investigation process would even further serve all players in the family court – which purports to be a rehabilitative, non-punitive court – by facilitating rapport and respecting the dignity and due process of all community members from the outset of the case.

The City Council already began to address the second problem of lack of timely access to counsel by funding our offices to engage in "early defense" through the Right to Family Advocacy Project starting in FY20. Our early defense teams respond to referrals from community partners and inquiries from community members to provide legal support and advice during the pendency of ACS investigations, including advocacy during CSCs. In doing so, we are regularly able to advise parents of their rights so they can advocate for what is best for their families and prevent unnecessary family separations.

Through early advocacy and identification of appropriate services and resources, we avoid unnecessary and traumatic family separations and, often, keep family court cases from ever being filed against the families we assist. Our representation during ACS investigations has also resulted in tremendous fiscal savings for the city by avoiding removals and reducing court filings, preserving valuable court resources and time for cases that require court intervention. Our offices prevented a filing in court between 80-83% of the time. For Article 10 cases that are filed in court, early advocacy has an impact on how the Article 10 case proceeds. In the Bronx, in FY22, in 83% of the cases that were ultimately filed, children stayed home or were placed with family rather than in the foster system. At CFR, staff avoided placement in the foster system for 92% of children involved in their cases, which translates to 160 children. The Right to Family Advocacy Project prevents family separation and saves the city money.

Additionally, parent defender offices need significantly more funding to provide adequate legal representation once cases reach court. The state Office of Indigent Legal Services ("ILS") issued new caseload standards in June of 2021 directing that parent defenders be assigned no more than 33 petitions a year, which translates to a pending caseload of about 35 cases at any given time.[14] In arriving at that figure, ILS conducted a thorough study analyzing how much time it should take for an attorney to ensure that the due process rights of a respondent in a family policing case are actually asserted and protected, and further compared that workload with other analogous areas of legal practice like criminal defense. At each of our organizations, experienced attorneys carry caseloads far above those ILS standards. In addition to safeguarding the due process rights

[14] New York State Office of Indigent Legal Services, Caseload Standards for Parents' Attorneys in New York State Family Court Mandated Representation Cases (June 4, 2021), Available at https://www.ils.ny.gov/files/Caseload%20Standards%20Parents%20Attorneys%20NYS%20Family%20Court.pdf

of parents by providing them with counsel who are not overtaxed with excessive caseloads, fully staffing our offices could also address court delays by allowing us to more quickly litigate, cutting down cases unnecessarily languishing in court and unnecessary family separations.

The only way to meaningfully address abuse and overreach in the family policing system is to provide resources for families to advocate for themselves. One important way the City Council can meaningfully do so is by continuing to fund legal advocacy from the inception of an ACS investigation through reunification and by passing legislation that would require ACS to provide families with notice of their rights at the start of an investigation.

V. The Sheer Size of the Family Policing System—from Investigations to the Number of Cases Filed—is an Impediment to Justice, Accountability, and Humanity.

The failure of New York's family courts to administer justice to Black and Latine families is exacerbated by the sheer size of the family policing system and the number of cases it regularly adjudicates. However, while we agree that fewer cases should be filed in family court, we must also consider the harm perpetrated against Black and Latine, low-income communities solely through contact with the family policing system. As we discussed above, family policing investigations are coercive and traumatic to families, often causing unnecessary harm to the children they are meant to protect. ACS has even recognized the harms of an investigation, but their solution does little to address families' concerns.

ACS created the CARES (Collaborative Assessment, Response, Engagement, and Support) program as a differential response to a SCR report. Instead of an investigation, ACS claims to engage "families in an assessment of child safety and of family needs, in finding solutions to family problems and in identifying informal and formal supports to meet their needs and increase their ability to care for their children."[15] In 2022, over 6,900 calls to the SCR were diverted to the CARES program.[16] These are typically low-risk reports that would be "unfounded" following an investigation.

Through our representation of parents on timely defense cases, as well as discussions with Parent Advocates and other impacted parents, it is clear that CARES functions as an invasive form of surveillance, utilizing coercion to compel families to cooperate. Worse yet, CARES functions as a shadow system without due process protections or judicial oversight, and where parents have no access to legal counsel. At the start of every CARES case, parents are presented with a difficult choice – cooperate with CARES or face a family policing investigation that could result in the removal of your children, family court involvement, and an indicated case that could impact your current or future employment. This threat looms throughout CARES involvement,

[15] Administration for Children's Services, NYC Children Flash Report Monthly Indicators, February 2023, p. 6, available at https://www.nyc.gov/assets/acs/pdf/data-analysis/flashReports/2023/02.pdf.
[16] *Id.*

as parents are told their failure to comply at any time will result in an investigation. CARES cases are even more invasive than investigations, collecting detailed and extensive information about the family, providing parents with "homework," and repeatedly visiting the home for what may be longer than a typical 60-90 day ACS investigation. All of ACS' interactions with a family are recorded as part of standard case practice, and will be used against a family in the event that a petition is eventually filed in family court.

CARES functions like any preventive service – surveilling and policing families, while offering little material support or resources. Increasing the number of families who receive CARES and preventive services does not shrink the reach of the family policing system, it does the opposite, placing more families under the watchful eyes of the system for even greater lengths of time, without access to counsel or judicial oversight.

VI. Recommendations

To shift New York City Family Court toward a court grounded in justice, fairness and respect for the familial integrity of the families it serves requires transformative change. New York City must vastly reduce the number of families that are targeted, surveilled, controlled and separated by ACS by narrowing the pathways that lead to the family policing system, and systemically addressing the largest drivers of families into the family policing system—poverty and racism—and by replacing ACS with a system of community based response and support. Beyond shrinking the expansive reach of New York City's family policing system, New York City must fundamentally change the design and priorities of the family court. To this, we recommend the following transformative changes:

Wholesale Transformation of the family policing system

- The City Council should prioritize measures that will truly "narrow the front door" to the family policing system and family court, instead of programs that expand the reach and surveillance of a system that only harms poor, Black and Latine communities. As laid out by the NYC Narrowing the Front Door Work Group, in *Narrowing The Front Door to NYC's Child Welfare System,*[17] which sets forth a blueprint to shrink New York's family policing system, and shift toward support and wellbeing for all New York families, New York should pursue universal basic income, a universal child allowance, and expansions to Public Assistance and SNAP benefits to effectively reduce child poverty and the risk of maltreatment.[18] Several recent studies have confirmed that increasing income and

[17] *See generally,* NYC Narrowing The Front Door Work Group, *supra* at note 1.
[18] National Academies of Sciences, Engineering, and Medicine concluded that a $3,000 per child per year child allowance would produce the greatest reduction in child poverty, including a 50% reduction in deep poverty. National Academies of Sciences, Engineering, and Medicine, *A Roadmap to Reducing Child*

benefits to families leads to a decrease in child maltreatment and abuse reports. One study found that a 5% increase in the number of families receiving SNAP led to a reduction between 7.6% and 14.3% of CPS and foster system caseloads.[19] Another study found that spending an additional $1,000 on benefit programs per person living in poverty reduced family policing reporting by 4.3%, substantiations of reports by 4%, placements in the foster system by 2.1%, and fatalities by 7.7%.[20]

We must ensure that every family has safe and affordable housing, access to childcare, and that the basic needs of every family are met. Poverty should never be a reason for a family to have contact with the family policing system. Families must have access to quality, evidence-based supportive services and mental health services that are community-based. The City Council should invest in families and support efforts that shift power back to families rather than surveillance and policing through the family policing system.

- The City Council should strongly support efforts to dismantle mandatory reporting laws, which require social service providers such as nurses, social workers, drug treatment counselors, therapists, doctors, and teachers to report any observed or suspected child maltreatment or face possible criminal prosecution and or civil penalties. These laws cause tremendous harm to New York's most marginalized communities by commandeering critical social services to be agents of the family policing system and thus causing Black, Latine, and low-income families to live under near constant surveillance and threat of family separation. This, in turn, drives families away from the very services that they are in need of.

Steps the City Council Can Take now

- Family Miranda Rights: The City Council should pass Family Miranda Rights bills Int. 294-2022 (Ung) and Int. 1736-2019 (Rivera), with our proposed amendments attached as Appendix A, which will ensure that all parents, regardless of their income, are advised of their rights during a family policing investigation. It is critical that these bills be strengthened to ensure that these Family Miranda Rights bills clearly enumerate the rights parents possess during a family policing investigation, including the right to an attorney.

Poverty, Washington, DC: The National Academies Press (2019), https://nap.nationalacademies.org/child-poverty/highlights.html.

[19] Jeff Grabmeier, *Food Assistance program may help prevent child maltreatment*, Ohio State News (July 13, 2022), https://news.osu.edu/food-assistance-program-may-help-prevent-child-maltreatment/.

[20] Henry T. Puls, Matthew Hall, PhD, James D. Anderst, MD, MSCI, et. al., *State Spending on Public Benefit Programs and Child Maltreatment*, Pediatrics (2021) 148 (5) (November 1, 2021), https://publications.aap.org/pediatrics/article/148/5/e2021050685/181348/State-Spending-on-Public-Benefit-Programs-and?autologincheck=redirected?nfToken=00000000-0000-0000-0000-000000000000.

- Funding for Mandated Institutional Representation for Parents in Article 10 Cases**:** The City Council should demand that an additional $30 million is earmarked in the FY24 budget for Article 10 parent defense providers. This is above the $50 million that is baselined in the current budget.

- Funding for Timely Defense: The City Council should continue to ensure that parents have access to attorneys and advocates during investigations, at child safety conferences, and at SCR hearings where decisions to separate families and prosecute families are made by continuing to support the Right to Family Advocacy Project and increase the funding from $2.6 million to $3.3 million to address increased costs.

- Discovery Reform: The City Council should strongly urge ACS and foster agencies to use open file discovery, which provides all counsel with access to case records and relevant documents as ACS receives them. This common sense fix will help prevent delays in obtaining and timely disclosing ACS case records and other discovery, which unnecessarily prolong court involvement and family separations.

Reform at the State Level

- The City Council should urge the New York state legislature to pass the Family Miranda Rights bill (S.901/A.1980) which would require family policing officials to notify parents of their rights, including their right to consult with an attorney, during an investigation.

- The City Council should urge the New York state legislature to pass the Informed Consent bill (S.320/A.109), which prohibits medical providers from drug testing or drug screening pregnant people, perinatal people, and or their newborns without first obtaining written and oral specific informed consent.

- The City Council should urge the New York state legislature to pass the Anti-Harassment in Reporting bill (S.902/A.2479), which would remove the option to make harassing anonymous reports to the SCR, and would require every caller to provide their name and contact information when making a report to the hotline and keep that information confidential. This will allow investigations to proceed while protecting the privacy of the individual who reported, both from the general public and from the person accused of abuse or neglect.

- The City Council should urge the New York State legislature and the Governor to increase Assigned Counsel rates set by Article 18-b of the County Law, to ensure that families have access to quality assigned counsel when institutional providers are not available.

Appendix A

Int. No. 294-22
With Proposed Amendments

By Council Members Ung, Hanif, Hudson, Sanchez, Yeger, Stevens, Velázquez, Williams, Joseph, Ayala, Restler, Abreu, Nurse, Brewer, Narcisse, Cabán, Rivera, Krishnan, Brooks-Powers, Avilés and Schulman

A Local Law to amend the administrative code of the city of New York, in relation to requiring the administration for children's services to provide a multilingual disclosure form to parents or guardians during a child protective investigation

Be it enacted by the Council as follows:

Section 1. Chapter 9 of title 21 of the administrative code of the city of New York is amended by adding a new section 21-922 to read as follows:

§ 21-922 Multilingual Disclosure Form. a. Definitions. For purposes of this section, the following terms have the following meanings:

Designated citywide languages. The term "designated citywide languages" has the meaning ascribed to such term in section 23-1101.

Designated organization. The term "designated organization" means a not-for-profit organization or association that has the capacity to provide free legal services to parents or caretakers.

b. At the initial point of contact with a parent or caretaker who is the subject of a child protective investigation, ACS shall provide to the parent or caretaker a multilingual disclosure form in plain language available in the designated citywide languages, and shall document in the case record that one has been provided. Such form shall be posted on the ACS website and shall include, but need not be limited to, the following information:

1. The parent or caretaker is not required to permit the ACS representative to enter the residence of the parent or caretaker unless presented with a court order authorizing entry into the residence.

2. The parent or caretaker is not required to speak with the ACS representative. Any statement made by the parent, caretaker or other family member may be used against the parent or caretaker in an administrative or court proceeding.

3. The parent or caretaker is entitled to be informed of the allegations being investigated.

4. The parent or caretaker is entitled to seek the advice of an attorney and to have an attorney or a member of the attorney's legal team chosen by the attorney present when the parent or caretaker is questioned by an ACS representative.

5. The parent or caretaker is not required to allow an ACS representative to interview or examine a child unless presented with a court order to do so.

6. The parent or caretaker is not required to agree to any requests made by an ACS representative, including, but not limited to, requests to sign a release of information or to take a drug or alcohol test, unless presented with a court order to do so.

7. Contact information for resources which may be available to parents and caretakers during a child protective investigation, including legal services from designated organizations, and any phone numbers or hotlines available to parents and caretakers who are the subject of a child protective investigation.

§ 2. This local law takes effect 90 days after it becomes law.

Int. No. 865-22
With Proposed Amendments

By Council Members Rivera, Ayala, Stevens, Krishnan, Hudson, Louis, Joseph, Hanif, Ung, Avilés, Williams, Abreu, Cabán, Ossé, Sanchez, Restler, Schulman, Narcisse and Richardson Jordan

A Local Law to amend the administrative code of the city of New York, in relation to requiring child protective specialists to orally disseminate information to parents or caretakers about their rights during initial contact at the start of an ACS investigation

Be it enacted by the Council as follows:

Section 1. Chapter 9 of title 21 of the administrative code of the city of New York is amended by adding a new section 21-919 to read as follows:

§ 21-919 Information regarding the rights of parents and guardians. a. Definitions. For purposes of this section, the term "designated organization" means a not-for-profit organization or association that has the capacity to provide free legal services to parents or caretakers.

b. At the initial point of contact with a parent or caretaker who is the subject of a child protective investigation, ACS shall orally disseminate in plain language to the parent or caretaker information regarding their rights during the investigation, and shall document in the case record that the information has been so provided. Such information shall include, but need not be limited to:

1. The parent or caretaker is not required to permit the ACS representative to enter the residence of the parent or caretaker unless presented with a court order authorizing entry into the residence.

2. The parent or caretaker is not required to speak with the ACS representative. Any statement made by the parent, caretaker or other family member may be used against the parent or caretaker in an administrative or court proceeding.

3. The parent or caretaker is entitled to be informed of the allegations being investigated.

4. The parent or caretaker is entitled to seek the advice of an attorney and to have an attorney or a member of the attorney's legal team chosen by the attorney present when the parent or caretaker is questioned by an ACS representative.

5. The parent or caretaker is not required to allow an ACS representative to interview or examine a child unless presented with a court order to do so.

6. The parent or caretaker is not required to agree to any requests made by an ACS representative, including, but not limited to, requests to sign a release of information or to take a drug or alcohol test, unless presented with a court order to do so.

7. Contact information for resources which may be available to parents and caretakers during a child protective investigation, including legal services from designated organizations, and any phone numbers or hotlines available to parents and caretakers who are the subject of a child protective investigation.

§ 2. This local law takes effect 90 days after it becomes law.

The undersigned respectfully submits this written testimony to the New York City Council's Committees on Oversight and Investigation, General Welfare and Public Safety and to provide perspective on the operational challenges in the New York City Family Court. I am grateful to Chairperson Brewer, the other distinguished and honorable committee members and their staff for holding this hearing and affording me the opportunity to provide my views.

My name is Rene Kathawala. I am the pro bono counsel for Orrick, Herrington & Sutcliffe LLP, an international law firm. I am based in the firm's New York Office. I am responsible for managing and initiating the firm's pro bono activities, including all administrative and legal aspects world-wide. I work with other pro bono counsel and legal services nonprofits to increase the quantity and quality of pro bono representation that is being provided to indigent clients in each of the cities worldwide where Orrick has a presence, including New York City. In addition, I supervise and directly work on cases in such diverse areas as family and matrimonial law, immigration law, housing law, public benefits law, employment law counseling, human rights law, impact litigation and nonprofit advice and counseling. I have worked on many substantial matters in the federal and state systems over my 25+ year career that are reported as precedent, including those initiated in the New York City Family Courts.

Based on my long-standing commitment to access to justice issues, I have been appointed as Co-Chair of the New York City Bar Association Work Group on Race Equity in the New York City Courts. I also served as co-chair of a Work Group Focused on the response of the New York City Family Court to the COVID-19 global health pandemic. I was a member of the New York City Bar Association Right to Counsel Task Force. I was also a leading member of the New York City Bar Association Family Court Judicial Appointment & Assignment

Process Work Group. Each of these work groups have issued detailed reports with significant recommendations about how the New York State Office of Court Administration ("OCA") could meaningfully reform the New York City Family Court. Those recommendations—which OCA has largely ignored—form the basis of my written testimony.

I have been representing low-income clients in New York State Family Courts for more than twenty-five (25) years, primarily working on child support, custody and visitation and orders of protection cases. I have handled many more than 300 petitions in the New York City Family Court during my career.

In my extensive experience, the New York City Family Court is emblematic of long-standing inequities and systemic discrimination. Family courts in New York City are dehumanizing and have a demeaning cattle-call culture. For example, litigants are summoned to appear at 9 am and often wait hours to get a mere 15 minutes of court time. Cases are adjourned for weeks or months at a time with the resolution of a case far in the distance. Court vacancies caused by judicial retirements or transfer of judges to the Civil or other courts result in Family Court parts being vacant for up to a year, during which time litigant cases are not processed. I have had countless clients tell me that they do not see any purpose in showing up in Family court and enduring the disrespectful system that is the New York City Family Court.

The management of the court system – OCA – tolerates and in my view sanctions the broken Family Court that has not seen substantial improvements in decades. Administrators—and during COVID 19, this was led by our former Chief Judge—pat themselves on the back for progress that is not evident to the many poor and working-class litigants who set foot in the New York City Family Courts. The overwhelming majority of the litigants in the Family courts in New York City are people of color. These litigants have no voice, and they are further

silenced by a bureaucracy that does not see their plight as one worthy of a dignified process. The sad picture that emerges is, in effect, a second-class system of justice for people of color in the New York City Family Court. This has been an enduring feature of the New York City Family Court for decades. *See* Report from the Special Adviser on Equal Justice in New York State Courts, Oct. 2020, at 2–3, https://www.nycourts.gov/whatsnew/pdf/SpecialAdviserEqualJusticeReport.pdf.

OCA has failed to meaningfully engage the diverse group of stakeholders who operate in the New York City Family Courts and to ensure they are able to provide input into potential reform of the system. As a result, the dissonance between the advocates and OCA only grows. In the last couple of years, there have been a number of city-wide initiatives to provide OCA with credible, meaningful recommendations regarding how the court system could improve the Family Court. However, with few exceptions, OCA has refused to engage in candid and meaningful dialogue about these recommendations, which are laid out below. For the benefit of this oversight hearing, I also attach the reports to my testimony which I incorporate fully into my testimony and provide the City Council rich detail about the broken promise of the New York City Family Court. I have been directly involved with these efforts and affirm the importance of these recommendations and the strong desire that advocates, and other Family Court constituencies have to collaborate with OCA to implement the recommendations thoughtfully and as expeditiously as is possible. Citations to the reports are attached in the appendix submitted as part of this written testimony.

RECOMMENDATIONS FOR POSITIVE FAMILY COURT REFORM THAT HAVE GONE UNANSWERED TO DATE, BUT GENERALLY DO NOT REQUIRE ADDITIONAL RESOURCES

Address Problematic Culture in the Courts That Serve Poor and Working-Class People:

- A litigant survey should be created and conducted on at least an annual basis. Feedback and data should be analyzed by a third party outside OCA. The results should be broken down by borough, court type, and case type. Results should be anonymized and made publicly available. OCA should consistently reach out to all court constituents to receive feedback and listen and respond to the concerns being expressed by litigants and advocates who seek to better the courtroom experience for all litigants.
- Mandatory bias education training programs for court personnel is an important start, but training in and of itself is insufficient to, continuously and directly, confront the dehumanizing culture and eliminate bias. All trainings should be evidence-based, and their contents and delivery should be reviewed at least annually to ensure no updates are needed. Feedback from court employees, attorneys, and litigants should be solicited to identify areas where additional or new training may be needed. Pre- and-post-training evaluations should be created and administered, and the results of these evaluations should be anonymized, broken down by borough, and publicly posted.
- OCA should provide progress reports and statistics on its implementation plan for bias training broken down by borough (i.e., number of trainings that were completed, statistics on compliance by judges, court staff, etc., a timeline for review of the implementation of mandatory bias training and plan for noncompliance, etc.). Sharing this information will educate and build trust among court users and the public.

- Since the transition from Mr. Alphonso David, the question of who is performing the role of Independent Monitor for OCA is difficult to clearly answer. Consistent with Secretary Jeh Johnson's recommendation, OCA should appoint a new, third-party independent monitor from outside the court system to evaluate, benchmark, and report on the implementation of the recommendations set forth herein. The independent monitor should be viewed as an additional and important resource to ensure accountability, feedback, and transparency.
- Signs about the Inspector General's Office for Bias Matters (the "IG Office") should be in every New York City Family courthouse. They should be, at minimum, in the five most spoken languages within each borough of New York City. OCA should work with the IG's office to create a version of this sign that can be electronically disseminated to litigants appearing virtually, such as on Notices to Appear.
- OCA should provide observation and feedback for jurists from colleagues, supervisors, and litigants. This can be done through a variety of means, including, but not limited to, litigant surveys, anonymous staff surveys, town halls, random observations by supervising judges, more frequent requests for attorney feedback, and a court watch program.

Procedural Safeguards and Litigant Information:

- Adopt the New York State Courts Electronic Filing system ("NYSCEF"), the electronic filing system used throughout much of the New York State court system, in all New York City Family courts, to the fullest extent permitted by law, with appropriate support for unrepresented litigants.
- Ensure that sufficient qualified interpreters are on staff to meet the needs of communities that speak languages other than English, and develop (or publicize, if it already exists) a means to report interpreters that interpret incorrectly or poorly.

- Provide the public with regular statistical reporting, by court Term, on all proceedings in Family Court. Information should be broken down by borough, court type, and case type. The current Court website fails to have relevant statistics, including, but not limited to, details about the timing and movement of cases and any delays in processing specific case types that are reported there.
- Build an effective, user-friendly website (including mobile website) that comprehensively informs the public of current court operations and provides guidance to unrepresented litigants. The website must be fully accessible to people with disabilities and thus built according to universal design principles. All website content must be available in languages other than English. All court forms designed for litigant and attorney use should be current and easy to find, read, and edit. I was notified at an October 2022 meeting with OCA that the State Courts' website is being independently evaluated by the National Center for State Courts. I reiterate here our strong suggestion that any formal project for a successful redesign include input from and testing by litigants, institutional providers, and other advocates, as they are the daily users of the State Courts' website.
- Litigants without access to adequate technology should be provided ways to participate in remote proceedings. All Family Courts should have technology for pro se litigants to draft and file documents and to appear in virtual or hybrid proceedings.

The Equitable and Fair Administration of Justice:

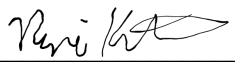
- OCA should adopt a communications strategy to ensure litigants and attorneys are kept up to date on the status of their cases as well as the status of Family Court operations, generally.
- Assess the Family Court's needs with respect to remote proceedings to ensure that it purchases and utilizes up-to-date technology best suited for courtroom protocols, and that the

technology poses minimal security risks. The Family Court should also provide sufficient user training and support to all those who use it. Trainings should be easy to understand, accessible to persons with disabilities, and available in languages other than English.

- Provide appropriate resources from other trial courts as necessary and appropriate to tackle backlogs and delays in the Family Courts.
- Enact uniform procedural and part rules for both in-person and remote proceedings. Judicial discretion is not a sufficient justification for the absence of consistent, published part rules dictating discovery, trial procedure, and courtroom behavior. Clear rules will help ensure that all litigants and lawyers are treated fairly and equitably regardless of which courtroom their case is assigned to.
- Ensure timely coordination with the Mayor's Advisory Committee on the Judiciary and anticipate vacancies in the New York City courts to select judicial appointees before vacancies arise. Take the additional steps necessary to fill vacancies quickly, and simultaneously use a distinct application and review process for judicial reappointments to complete the reappointment process more expeditiously.

Dated: April 19, 2023
New York, New York

Respectfully submitted,



Rene Kathawala
Pro Bono Counsel
Orrick, Herrington & Sutcliffe LLP
51 West 52nd Street
New York, New York 10019
Tel: (212) 506-5100
Cell: (304) 281-7363
Fax: (212) 506-5151
Email: rkathawala@orrick.com

APPENDIX

i. February 2023, Report from Working Group on Racial Equity in New York State Courts: Progress Report and Recommendations: Creating Lasting Reform in the Wake of Secretary Jeh Johnson's Equal Justice Report (Honorable Ronald Richter and Rene Kathawala, Co-Chairs)

ii. February 4, 2022, Report from Multi-Committee Working Group on the Impact of COVID-19 on the New York City Family Court: Recommendations on Improving Access to Justice for All Litigants (William Silverman and Rene Kathawala, Co-Chairs), https://s3.amazonaws.com/documents.nycbar.org/files/Final_Family_Court_Report_22.2.4.pdf

iii. June 15, 2021, Letter from Working Group on Racial Equity in New York State Courts (Vidya Pappachan, former Chair) to the Franklin H. Williams Judicial Commission Regarding their May 19, 2021, Meeting with New York City Family Court Stakeholders, https://s3.amazonaws.com/documents.nycbar.org/files/2020915-RacialEquityInCourtsWilliamsCommissionMtg.pdf

iv. June 12, 2020, Letter from Council on Children (Lauren Shapiro, Chair), Children and the Law Committee (Melissa J. Friedman, Chair) and Family Court and Family Law Committee (Michelle Burrell, Chair) to Court Officials Requesting COVID-19 Point Person for New York City Family Court, https://s3.amazonaws.com/documents.nycbar.org/files/2020725-COVIDFamilyCourtReopening.pdf

v. April 9, 2021, Report from Domestic Violence Committee (Amanda M. Beltz, Chair): Recommendations for New York City Virtual Family Court Proceedings, With Particular Focus on Matters Involving Litigants Who Are Survivors of Abuse, https://s3.amazonaws.com/documents.nycbar.org/files/2020867-CommentsonVirtualTrialRules.pdf

vi. December 15, 2020, Report from Multi-Committee Working Group on The Family Court Judicial Appointment and Assignment Process (Glenn Metsch-Ampel and Hon. Daniel Turbow (ret.), Co-Chairs), https://s3.amazonaws.com/documents.nycbar.org/files/2020790-FamilyCourtJudicialAppointmentProcess.pdf.

WORKING GROUP ON RACIAL EQUITY IN NEW YORK STATE COURTS

PROGRESS REPORT AND RECOMMENDATIONS: CREATING LASTING REFORM IN THE WAKE OF SECRETARY JEH JOHNSON'S EQUAL JUSTICE REPORT

February 2023

THE ASSOCIATION OF THE BAR OF THE CITY OF NEW YORK
42 West 44th Street, New York, NY 10036
212.382.6600 | www.nycbar.org

TABLE OF CONTENTS

NEW YORK CITY BAR ASSOCIATION WORKING GROUP ON RACIAL EQUITY IN NY STATE COURTS

I. MISSION STATEMENT

The New York City Bar Association ("City Bar") has created an inter-committee Working Group, housed within its Council on Judicial Administration, to address racial (in)equality in the New York State courts. The formation of this Working Group is a direct follow-up to the City Bar's comment letter providing the City Bar's input and recommendations to Secretary Jeh Johnson in September 2020, and his Equal Justice in the State Court's report published on October 1, 2020. City Bar members are dedicated to working towards improving our court system and eliminating racial bias at all levels by:

1. Allowing for continued discussions with, and feedback to, officials tasked with implementing the recommendations of Secretary Johnson's report;
2. Advocating for transparency, collaboration, and accountability on the part of all stakeholders involved with implementing Secretary Johnson's recommendations;
3. Listening and responding to the experiences and concerns of litigants during conversations and correspondence with stakeholders;
4. Coordinating and facilitating discussions amongst City Bar members about racial injustice and bias, and engaging the City Bar as an active stakeholder in ensuring that Secretary Johnson's recommendations are implemented; and
5. Providing the courts with access to resources and possible *pro bono* services to help achieve our shared interest in eliminating systemic racism and inequality from the New York Court System.

The formation of this group is an important and necessary next step to ensure progress towards meaningful change that will improve our courts. City Bar members have a diverse set of perspectives and experiences that will provide valuable input towards achieving the goals outlined in the Equal Justice report. We welcome the opportunity for transparent, honest, and respectful

conversations and will offer resources, potential solutions[1], and continued feedback and support in this collaborative effort.

II. OVERVIEW

New York State Courts, particularly New York City's high-volume courts such as Housing Court, Civil Court, Family Court, and Criminal Court, are emblematic of long-standing inequities and systemic discrimination. At the time of the Working Group's inception, the legal system was facing a pivotal moment in its history.[2] The City Bar has undertaken its own widespread efforts to examine areas in need of immediate action through interviews with hundreds of practitioners and court personnel, and comparative conversations with affinity bar associations and organizational leaders. Initial conversations and the draft of the City Bar's comment letter to Secretary Johnson in October 2020 made it distinctly clear that racial inequity in the New York State Courts was a prevalent, decades-long problem. Specifically, in 1988—more than thirty years ago—then-Chief Judge Sol Wachtler appointed the New York State Judicial Commission on Minorities. That Commission issued a report that traced what it said was a long pattern by New York court officials of ignoring warnings about racial bias. Only since 2020, spurred on by Secretary Johnson's report, are court leaders explicitly saying that achieving racial equity in our court system is a top priority.

Discussions among City Bar members prior to the September 2020 comment letter highlighted widespread concerns regarding racial inequity and passion for taking steps towards improvement. The staunch commitment of City Bar members led to forming the Working Group on Racial Equity in New York State Courts.

III. TAKEAWAYS FROM 2021–2022 DISCUSSIONS WITH UCS STAKEHOLDERS

In March 2021, the Working Group began a series of meetings and collaborative discussions with leaders of the court system. The goal was for the Working Group to help implement recommendations highlighted in Secretary Johnson's report, while also serving as a pipeline of information to City Bar members and the public at large.

The goals of the Working Group are to (1) assist stakeholders in improving diversity, equity, and inclusion among staff in state courts, (2) promote cultural and racial awareness in

---

[1] *See infra*, pp. 10–13 for a comprehensive list of the City Bar's recommendations in this regard, to date.

[2] The Working Group focuses this report and its work on the high-volume courts that formed the basis of Secretary Johnson's report. As detailed in his report: "But, in one form or another, multiple interviewees from all perspectives still complain about an under-resourced, over-burdened New York State court system, the dehumanizing effect it has on litigants, and the disparate impact of all this on people of color. Housing, Family, Civil, and Criminal courts of New York City, in particular, continue to be faced with extremely high volumes of cases, fewer resources to hear those cases and aging facilities. Over and over, we heard about the 'dehumanizing' and 'demeaning cattle-call culture' in these high-volume courts. At the same time, the overwhelming majority of the civil or criminal litigants in the Housing, Family, Civil, and Criminal courts in New York City are people of color. The sad picture that emerges is, in effect, a second-class system of justice for people of color in New York State. This is not new." *See* Report from the Special Adviser on Equal Justice in New York State Courts, Oct. 2020, at 2–3, https://www.nycourts.gov/whatsnew/pdf/SpecialAdviserEqualJusticeReport.pdf. As a result, this report intentionally does not address the system of justice administered in the Supreme Courts in New York State, the primary trial court, and does not address any race equity issues being contemplated or administered there, except the mandatory bias training, case management training, and other trainings and programs that have been implemented throughout the entire court system.

courts where litigants and defendants are comprised heavily of low-income and working-class populations, and (3) provide tools to implement initiatives that increase accountability and transparency among staff in adhering to existing and newly implemented policies.

Our conversations with stakeholders in the Unified Court System ("UCS") underscored the many challenges ahead, while we explored avenues to assist with implementing and reviewing planned initiatives.

> ***As members of this Working Group, we have drawn upon our lived experiences and expertise to provide insight into key areas of improvement. It is palpably clear that collective action combined with continued conversations to amplify both the progress and shortcomings are necessary in order to assure lasting change.***

The Working Group's preliminary efforts focused on gathering information from primary stakeholders in UCS through meetings with the Office for Justice Initiatives, the Franklin H. Williams Commission, the Inspector General's Office, and the Office of Diversity and Inclusion. Engagement in these conversations allowed Working Group members to formulate and suggest ideas for improvement.

The foundational step in engaging in these discussions was a meeting with Judge Edwina Richardson-Mendelson, who, as of March 2023, leads the Office for Justice Initiatives. In March 2021, Working Group members invited Judge Richardson-Mendelson to speak with Working Group members and the Council on Judicial Administration about planned initiatives in light of Secretary Johnson's recommendations. Judge Richardson-Mendelson explained the many plans ahead. She indicated that larger systemic change would be a slow, drawn out process that would take years of effort and dedication. She further explained that these initiatives require engagement with town and village courts in addition to the Supreme Court, while stating that a large part of implementation included community outreach.[3]

The Office for Justice Initiatives planned to increase mandatory and continuous bias training in different formats and to retain outside experts for assistance. At the time, Judge Richardson-Mendelson also shared that Alfonso David, then the President of the Human Rights Campaign, was appointed an Independent Monitor to ensure effective implementation of Secretary Johnson's recommendations. Mr. David was succeeded by retired New York Court of Appeals Judge Carmen Beauchamp Ciparick, with both having served as "first Independent Monitors" to UCS. Monitoring will continue to be provided by, among others, the Franklin H. Williams Commission.[4]

---

[3] This meeting was around the same time that Judge Richardson-Mendelson released her Message on Equal Justice, April 16, 2021, which outlined plans for moving forward with implementation of Secretary Johnson's recommendations. *See* https://www.nycourts.gov/legacyPDFS/IP/nya2j/A-Message-on-Equal-Justice-from-DCAJ-Mendelson.pdf; *see also* Equal Justice in the Courts, https://www.nycourts.gov/legacyPDFS/IP/NYA2J/Equal-Justice-in-the-Courts.pdf.

[4] *See id*., Equal Justice in the Courts at #13 ("Independent Monitors will help review and guide our implementation endeavors. Hon. Carmen Ciparick and Alphonso David served as the first Independent Monitors, while other individuals, such as the Franklin H. Williams Judicial Commission, will continue to monitor the progress of the Equal Justice in the Courts initiative. Additional internal and external monitors, including court users and the public at large, will provide further accountability.").

It is not clear to whom—if anyone—the Independent Monitor reports, or if the independent monitor must be responsive to the legislature, the Chief Judge, the Williams Commission, or a third party outside of the court system. The Working Group notes that vesting the role of an Independent Monitor in a former member of the Court of Appeals arguably creates the appearance of a lack of independence and bias favoring the court system. We therefore suggest that the Independent Monitor be someone with no ties to the court system. Clear information regarding the Independent Monitor's qualifications, function, and oversight should be publicly accessible.

In that same March 2021 meeting, Judge Richardson-Mendelson indicated that a concentrated focus would be made on promoting existing commissions and departments that had been underutilized to (1) address juror bias[5] by, among other things, updating rules for *voir dire* and amplifying civil and criminal pattern jury instructions; (2) update and recirculate social media policies for all court personnel; (3) strengthen Attorney General processes for bias complaints in courts, *i.e.*, through appointing an Ombudsperson; (4) review rule changes for disparate impact and bias; (5) work with an advisory committee to implement plans and rules as to translation and interpretation services; (6) begin implementing new data collection rules aimed towards broader collection of relevant information and transparency; (6) publish data for download in a manipulative format, such as Excel; (7) diversify Human Resources; (8) increase community trust of Court Officers by, among other things, appointing a community affairs officer; and (9) improve the court navigator program by, among other things, providing "greeters" with customer service training.

The Working Group recognized, though, that certain likely challenges would arise in implementing the planned proposals. For instance, members of the Working Group noted that initiatives to observe and evaluate judges and their interaction with the public would conceivably be met with displeasure by at least some jurists and court personnel. Similarly, collaboration with other court personnel and unions in implementation of initiatives that involve monitoring and evaluation may meet with resistance. In the view of the Working Group, the outlined plans would be greatly enhanced by publicizing a time line and clear benchmarking goals.

Efforts must be focused on thoughtfully determining impactful short- and long-term goals while developing clear and measurable metrics to assess both progress and accountability as to the outcomes.

In May 2021, discussions with UCS stakeholders continued during a meeting with Franklin H. Williams Commission chairs, Justice Troy Webber and then co-chair Justice Shirley Troutman.[6] Indeed, the Williams Commission has long recognized a culture of biased attitudes and behaviors in our courts, which in turn profoundly negatively affects the fair administration of justice. New York City's high-volume courts are particularly impacted. Indeed, the Williams Commission recently released a report on the Family Court that identifies the myriad of access to justice issues with that Court that this Working Group supports, and, in fact, many of our recommendations set

[5] The UCS juror bias video is here, https://wowza.nycourts.gov/vod/vod.php?source=ucs&video=2021-JuryServiceFairness.mp4, and as reported at a UCS Virtual Town Hall on November 4, 2022, has been viewed by over 320,000 prospective jurors since its release.

[6] Justice Shirley Troutman served as co-chair of the Williams Commission at the time of the May 2021 meeting. As of 2022, Justice Richard Rivera serves as co-chair in conjunction with Justice Troy Webber.

forth herein are mirrored in the Williams Commission Report.[7]

Reports of egregious, overtly inappropriate behavior by Family Court personnel came to light within the last few years. For instance, a court employee was caught on live microphone using a racial slur speaking about a young litigant who had just appeared before the court and another court employee was overheard referring to a litigant as a "scumbag." These are but two examples of the numerous, recurrent scenarios of implicit, explicit, and/or unreported instances of bigotry.

During the May 2021 meeting, the Williams Commission highlighted plans for enhanced mandatory training for judges and court personnel that would focus on modifying courtroom behavior and decision-making.

To the credit of UCS, Mandatory Bias Training has now been implemented for all court personnel.

Anti-bias training is a top priority for a court system seeking to change its culture and how the people who work in and rely on our courts are treated. It is a positive development that mandatory bias training has now been implemented for all court personnel. The Working Group hopes to learn the details about the current training's content, how frequently and to whom it is administered, what future bias trainings will entail, how progress and impact will be measured and disclosed to the public, and how individuals who struggle with the trainings will be assisted and, if needed, held accountable.[8] We have recommended, among other things, that all trainings involve evidence-based practices to ensure efficacy.[9]

Despite UCS's efforts to hold personnel accountable in instances of overt bias such as those referenced above, pervasive implicit biases are entrenched and at least some court employees remain resistant to change and refuse to acknowledge their own biases. In June 2021, the Working Group held an in-depth meeting with the UCS Inspector General's Office. The Working Group spoke with Inspector General Sherrill Spatz and with the Inspector General for Bias Matters, Kay-Ann Porter, about the role of the UCS Inspector General, newly implemented initiatives, and existing and anticipated challenges. While the Inspector General's Office provides a mechanism to ensure equitable access to, and administration of, justice, it was immediately apparent that many litigants and practitioners were simply unaware of its existence and function. The meeting with IG Spatz underscored that the Working Group and similarly situated bar associations across New York State must serve as pipelines of information to the public about available protective measures.

It appears, however, that as of the release of this report, there is still no significant visible

---

[7] *See* Franklin H. Williams Judicial Commission of the New York State Courts, Report on New York City Family Courts, Dec. 19, 2022, at 7, 22, https://www.nycourts.gov/LegacyPDFS/IP/ethnic-fairness/pdfs/FHW%20-%20Report%20on%20the%20NYC%20Family%20Courts%20-%20Final%20Report.pdf.

[8] It is important to note in this respect that though diversity training workshops have been around in one form or another since at least the 1960s, few of them are subjected to rigorous evaluation, and those that are mostly appear to have little or no positive long-term effects. This lack of evidence is "disappointing, considering the frequency with which calls for diversity training emerge in the wake of widely publicized instances of discriminatory conduct." *See*, *e.g.*, Elizabeth Levy Paluck, Prejudice Reduction: Progress and Challenges, 72 Annu. Rev. Psychol. 533, 543 (2021). Therefore, it is crucial that UCS go well beyond isolated bias training to address race inequity.

[9] UCS 2020-2021 Year in Review: Equal Justice in New York State Courts, https://www.nycourts.gov/LegacyPDFS/publications/2021-Equal-Justice-Review.pdf at 13-17.

information about the Office of the Inspector General in New York City Family Court buildings. This assessment is based on firsthand reports of multiple Family Court practitioners. In addition, per the Office of the Inspector General, all court signage is currently only in English and Spanish; it is not available in the myriad other languages spoken by court users throughout New York City.

The Working Group understands that the Office of Inspector General, in conjunction with UCS, is continuing efforts to make information about its complaint process and safeguards visible and readily available to court users. For instance, at a recent October 2022 meeting between court leaders and the Working Group, the Office of Inspector General restated its commitment to printing notices in additional languages and mentioned the possibility of including a "QR" code on the notices for easy access to additional information and forms. This commitment was repeated during the November 4, 2022 Virtual Town Hall, during which the IG's Office also noted an uptick in complaints received. This Working Group supports the use of a QR code. We also support, and have repeatedly suggested, including information about the Office on Notices to Appear so that litigants attending virtual proceedings can access the information. While any uptick in complaints received is good progress, it also should be noted that the baseline number of complaints was very small (single digits), presumably given the lack of awareness about the complaint procedure.

As many other reports have noted, the pandemic most heavily burdened low-income and working-class populations. In particular, the initial closure of Family Courts during the pandemic for all but "emergency matters" created a tremendous burden on litigants with a distinct disparate racial impact. Although proceedings in Family Court have mostly resumed, the enormous backlog of cases and ongoing emergency, time-sensitive applications have left an enduring wound in the faith of our legal system. While UCS has implemented a case management training for jurists, it is unclear that this training can overcome the significant backlogs and delays that still exist in the courts that primarily serve poor and moderate income litigants. More judges, more court attorneys for judges, more clerks, and better technology are desperately needed in order for the Family Court to dig itself out of this predicament.

Continued transparency and communication with the public ensures trust in a court system that purposefully exists to serve the needs of its community members. The City Bar, led by the efforts of this Working Group, is pleased to serve as a vehicle to share information, updates, and recommendations for change among court leaders, jurists, litigants, and advocates.

An overarching concern that the Working Group has about current and future progress is that of transparency and collaboration. Based on our continued talks with UCS, the Working Group acknowledges that several of the goals outlined by Judge Richardson-Mendelson have been implemented or are in the process of being implemented (as noted above and below). In addition, the Working Group acknowledges that Judge Richardson-Mendelson and other court leaders met with key members of the Working Group in late October 2022 and stated a commitment to meet with the Working Group regularly. It continues to be critically important for UCS to be in regular communication with this Working Group, practitioners, and the public about the steps being taken to achieve UCS's racial equity goals and what the impediments to their implementation are. Without this information, a perception of inaction is likely to take hold. We also strongly believe that input from this Working Group, other practitioners, and from litigants themselves is critical to success, and we welcome the opportunity to collaborate with UCS and other stakeholders going forward.

We know that there is a planned website redesign, a new bias training, and changes to the criminal and civil pattern jury instructions to address juror bias. We look forward to learning further details as these initiatives continue to develop and improve as it is imperative that all stakeholders be included in these initiatives and that UCS listen and incorporate stakeholder perspectives into these important projects.[10]

The Working Group is pleased to announce that most recently, the Williams Commission and the Office for Justice Initiatives have agreed to work with the Working Group to establish a Litigant Survey—a critically important way in which real-time feedback can be obtained from the clients of our court systems.

Court leaders also have made clear their commitment to be part of a process to conduct a litigant survey. The Working Group has begun the process of identifying partners, such as the Center for Court Innovation, to assist in the project. It is critical that UCS follow the lead of litigants and advocates regarding this survey, ensure that litigants are surveyed regularly, and that UCS respond quickly and affirmatively to the concerns raised by survey results.

The Working Group also acknowledges the creation of a Judicial Observation Project ("JOP") in the Seventh Judicial District, which includes Rochester, New York, which was brought to our attention during the October 2022 meeting with court leaders. This program is designed to detect and address implicit bias and systemic racism in New York State courts in the Seventh Judicial District. The JOP has been in the planning stage since 2020. Currently, based on publicly available information, we understand that there are 14 trained observers and 5 judges participating in the pilot program.[11] The Working Group looks forward to learning more about the Judicial Observation Project and its impact and, if effective, to ensure that it (or a comparable program) is implemented in New York City courts.

Again, as the Working Group specifically, and the City Bar generally, provides a crucial pipeline of information to the community at large, we appreciate and urge continued conversations with UCS and other court leaders. Transparency, collaboration, and joint commitment to change are key to realizing the goals set out in Secretary Johnson's report and to creating true equity in our courts.

---

[10] Likewise, we look forward to following the progress of all of the initiatives presented in UCS's December 2021 Year in Review, i.e., the requirement that all state-paid judges receive regular anti-bias trainings; mandatory bias education and training for all UCS non-judicial personnel and for Town and Village judges and non-judicial personnel; publicly available technological tools, with demographic data for the judiciary, for the UCS workforce, and for defendants in criminal matters; expanded diversity initiatives to increase diversity in hiring; appointment of an ombudsperson for bias matters and widely publicized and clarified complaint procedures for bias matters; annual Diversity Summit to promote diversity in the court system and to address matters of concern to the court community; Town Hall meetings sponsored by the Williams Commission to address matters of concern to the court community expressly related to issues of racial bias; creation of local Equal Justice Committees in each of New York's thirteen judicial districts; new juror orientation video to educate potential jurors and grand jurors about the dangers of implicit bias; and implementation of new policies and protocols expressly designed for court officers and other uniformed personnel, such as specialized implicit bias training, the requirement of nametags, and a designated Community Affairs Officer to be assigned in every courthouse. *See* https://www.nycourts.gov/LegacyPDFS/publications/2021-Equal-Justice-Review.pdf.

[11] The Law Day Report for 2022 with a discussion of the progress of UCS is available here: https://ww2.nycourts.gov/ip/nya2j/Courts_Community_Center/lawday.shtml.

IV. ADDITIONAL WORKING GROUP COLLABORATION

In addition to meeting with UCS stakeholders, on October 14, 2021, the Working Group hosted a joint meeting in collaboration with the Network of Bar Leaders and the National Center for State Courts. Leaders of affinity bar associations across New York State and Presidents of organized associations within the Courts were invited to attend. The meeting aimed to serve as an informational session but also an opportunity for others to provide feedback to UCS stakeholders. Attendees included the Judicial Friends Association, the Association of Justices of the Supreme Court, the Asian American Judges Association, the Latino Judges Association, the New York Women's Bar Association, the Brooklyn Women's Bar Association, Queens County Bar Association, Rockland County Bar Association, LGBT Bar Association (LeGAL), Metropolitan Black Bar Association, Asian American Bar Association, South Asian Bar Association, Korean American Lawyers Association, and the Jewish Lawyers Guild.

In the view of the Working Group, more of such meetings are necessary in order to provide bar association groups more fulsome opportunities to give honest feedback to UCS and to voice ideas about how the groups—if viewed as part of the solution—can play a critical role in providing greater equity for litigants in New York City's high-volume courts.

V. WORKING GROUP RECOMMENDATIONS

As indicated above, the Working Group has met regularly for more than two years and has representation from institutional providers, private law firm pro bono counsel, and court personnel, including several current or former Jurists, all of whom practice regularly in the courts that primarily serve poor and working-class people in New York City. Subsequent to the comment letter submitted to Secretary Johnson, the Working Group prepared a letter, dated June 15, 2021, addressed to the Williams Commission, providing the Commission and UCS with specific proposals to reform the Family Court.[12]

As part of the Council on Judicial Administration, the Working Group is only one of several groups at the New York City Bar Association that has provided detailed recommendations to UCS about what is needed to bring justice and dignity to the thousands of litigants in these courts. Thus, the recommendations in this report are made after detailed and thoughtful reflection by Working Group members with input across numerous committees inclusive of the vast membership of the City Bar. They are not meant to be duplicative of the steps currently underway although, naturally, there will be some overlap, including the recent report issued by the Williams Commission focused on reform of the Family Court.[13] We urge UCS to separately consider our recommendations as part of the overall effort to provide equity in our courts, and we are prepared to engage in further discussions as necessary and to assist in their prompt implementation.

---

[12] *See* Exhibit A.

[13] *See* n. 7, *supra*, https://www.nycourts.gov/LegacyPDFS/IP/ethnic-fairness/pdfs/FHW%20-%20Report%20on%20the%20NYC%20F amily%20Courts%20-%20Final%20Report.pdf.

Only together can we deliver equal access to justice to those most in need so as not to perpetuate the unfair legal system that has characterized the status quo in New York State for our poor and working-class litigants for decades.

The Working Group has reviewed our proposals along with those of other City Bar committees. We reference and incorporate that large body of work in this report. The Working Group looks forward to continued meaningful dialogue about the recommendations.

As noted above, UCS has instituted mandatory bias training for all court personnel, rolled out a training for jurists on case management, developed a juror video on implicit bias, implemented a pilot court observer project in the Seventh Judicial District, and created Equal Justice committees in each judicial district. However, one concern we note is that the Equal Justice committees do not appear to include advocates as members, and information about their creation, role, and membership selection has not been transparent or easy to access. The City Bar is pleased to act as a pipeline of information to practitioners, litigants, and the community at large. We urge UCS to take advantage of this opportunity for transparency, and we encourage use of a readily available resource.

Attached hereto as Exhibit A are links to the reports that the City Bar committees have issued in the last year relating to the recommendations in this report.

VI. CONCLUSION

The impetus for creating the Working Group arose out of members' deep concern for litigants in New York City's high-volume courts and a desire to have an equitable, respectful, dignified system for all those who come through its doors. After providing input to, and then reading, Secretary Johnson's report, Working Group members spent countless hours drafting constructive recommendations. We look forward to enhanced engagement with UCS so that the goals outlined in Secretary Johnson's report may be achieved. It is this goal that has moved so many members of the bar and the judiciary to devote valuable time and effort to this endeavor, one which remains an unwavering commitment of the Working Group and the City Bar.

RECOMMENDATIONS

We concur with the recommendations recently issued by the Williams Commission.[14] Our additional recommendations are below.

Address Problematic Culture in the Courts That Serve Poor and Working-Class People:

- The Office for Justice Initiatives must be provided additional resources to support the Office's widespread efforts to combat explicit and implicit bias in the courts serving poor and working-class litigants.[15]

- Mandatory bias education training programs for court personnel is an important start, but training in and of itself is insufficient to continuously and directly confront the dehumanizing culture and eliminate bias. All trainings should be evidence-based, and their contents and delivery should be reviewed at least annually to ensure no updates are needed. Feedback from court employees, attorneys, and litigants should be solicited to identify areas where additional or new training may be needed. Pre- and-post-training evaluations should be created and administered, and the results of these evaluations should be anonymized, broken down by borough, and publicly posted.

- UCS should provide progress reports and statistics on its implementation plan for bias training broken down by borough (i.e., number of trainings that were completed, statistics on compliance by judges, court staff, etc., a time line for review of the implementation of mandatory bias training and plan for noncompliance, etc.). Sharing this information will educate and build trust among court users and the public.

- A litigant survey should be created and conducted on at least an annual basis. Feedback and data should be analyzed by a third party outside of UCS. The results should be broken down by borough, court type, and case type. Results should be anonymized and made publicly available.

  As identified above, it is a very positive sign that both the Williams Commission and the Office for Justice Initiatives have agreed to participate with the Working Group in planning for and conducting litigant surveys. UCS should consistently reach out to all court constituents to receive feedback and listen and respond to the concerns being expressed by litigants and advocates who seek to better the courtroom experience for all litigants.

- Since the transition from Mr. David, the question of who is performing the role of Independent Monitor is difficult to clearly answer. Consistent with Secretary Johnson's recommendation, UCS should appoint a new, third-party independent monitor from

[14] *See* n. 7, 13, *supra*.

[15] The Working Group notes its firm belief that the New York State Unified Court System is in need of more judge lines in, among others, the Family and Criminal courts. We acknowledge that this is a legislative matter outside the control of UCS. If such lines were authorized, UCS would likely not be required to move judges from one court to the other, which ultimately creates delays, causes inappropriate mistrials, and harms the fair administration of justice and provision of due process.

outside the court system to evaluate, benchmark, and report on the implementation of the recommendations set forth herein and in the Equal Justice report. The independent monitor should be viewed as an additional and important resource to ensure accountability, feedback, and transparency.[16]

- As per the Year in Review annual report and the Inspector General's landing page on the UCS website, UCS has appointed Eva Moy to serve as Ombudsperson for the Bias Matters Unit.[17] The role of an ombudsperson overseeing this work is extremely important and should be broadly publicized, including on all internal- and external-facing communications regarding UCS's anti-bias work. In addition, although Ms. Moy is identified as the ombudsperson on the Bias Matters Unit landing page, there is no visible description of what role she plays and why someone might want to contact her; that information should be clear. It is also critical that Ms. Moy serve independently and have full discretion to carry out the important tasks of an ombudsperson provided that she has such authority.

- Signs about the Inspector General's Office for Bias Matters should be in every New York City courthouse. They should be, at minimum, in the five most spoken languages within each borough of New York City. UCS should work with the IG's office to create a version of this sign that can be electronically disseminated to litigants appearing virtually, such as on Notices to Appear.

- UCS should provide observation and feedback for jurists from colleagues, supervisors, and litigants. This can be done through a variety of means, including, but not limited to, litigant surveys, anonymous staff surveys, town halls, random observations by supervising judges, more frequent requests for attorney feedback, and a court watch program.

Procedural Safeguards and Litigant Information:

- Adopt NYSCEF, the electronic filing system used throughout much of the New York State court system, in all courts that primarily serve poor and working-class people, including Civil, Criminal, Housing, and Family courts, to the fullest extent permitted by law, with appropriate support for unrepresented litigants.[18]

---

[16] Specifically, at p. 100, Secretary Johnson wrote: "We recommend that the Chief Judge assign an entity or committee that includes those independent of the court system, to monitor and report on implementation of those recommendations adopted here on an ongoing basis. Several outside organizations suggested this, and we agree."

[17] *See* http://ww2.nycourts.gov/admin/ig/biasmatters.shtml.

[18] According to the reference materials on the NYSCEF website, the New York City Civil Court and the Landlord/Tenant Division are available on NYSCEF (and EDDS), and NYSCEF filing has recently been made available in the New York County Family Court in the following case types: custody/visitation; guardianship; parentage—assisted reproduction; parentage—surrogacy; paternity; and support and only in new cases filed on or after August 1, 2022. The NYSCEF Resource Center indicated that there is no specific time line for the expansion of NYSCEF filing in the Family Courts beyond New York County, but the hope is that it occurs soon. The Working Group could locate no public information as to why e-filing is being piloted only in certain cases in one Family Court in New York City, nor could we locate any publicity announcing the pilot, its time line, or any anticipated

- Expand UCMS access to all attorneys who regularly practice in the court system they seek to access. As it currently stands, many private practitioners and small nonprofits cannot access UCMS because they cannot meet the minimum number of active docket numbers required. A method should be developed so that UCMS users can annually certify they still need access to the system and have the same contact information. Such a system will ideally help keep access limited to those who should have it.

- Ensure that sufficient qualified interpreters are on staff to meet the needs of communities that speak languages other than English, and develop (or publicize, if it already exists) a means to report interpreters that interpret incorrectly or poorly.

- Provide the public with regular statistical reporting, by court Term, on all proceedings in Civil Court, Criminal Court, Family Court, and Housing Court. Information should be broken down by borough, court type, and case type. The Working Group has reviewed the Court website and concludes that relevant statistics are lacking, including, but not limited to, details about the timing and movement of cases and any delays in processing specific case types that are reported there. If such information currently exists, the Working Group has not been able to locate it.

- Build an effective, user-friendly website (including mobile website) that comprehensively informs the public of current court operations and provides guidance to unrepresented litigants. The website must be fully accessible to people with disabilities and thus built according to universal design principles.[19] All website content must be available in languages other than English. All court forms designed for litigant and attorney use should be current and easy to find, read, and edit.

We were notified at our October 2022 meeting with UCS that the State Courts' website is being independently evaluated by the National Center for State Courts. We reiterate here our strong suggestion that any formal project for a successful redesign include input from and testing by litigants, institutional providers, and other advocates, as they are the daily users of the State Courts' website.

- Litigants without access to adequate technology should be provided ways to participate in remote proceedings. All courts should have technology for pro se litigants to draft and file documents and to appear in virtual or hybrid proceedings.[20]

---

goals. Family Court statewide, other than certain case types in the New York County Family Court, New York City Criminal Court, County Court Criminal Term (for jurisdictions outside of New York City, City Court Civil and Criminal Divisions) are only available on EDDS.

See also The Expansion of Electronic Filing: A Report and Recommendations of the Structural Innovations Working Group of the Commission to Reimagine the Future of NY Courts, https://www.nycourts.gov/LegacyPDFS/publications/pdfs/CommitteeReport-eFiling.pdf.

[19] *See also* Website Analysis submitted to Commission to Reimagine the Future of NY Courts, https://www.nycourts.gov/LegacyPDFS/reimagine-the-future/WebsiteAnalysis.pdf (calling for substantial overhaul of UCS website).

[20] *See also* Report and Recommendations of the Futures Trial Working Group of the Commission to Reimagine the Future of NY Courts, https://www.nycourts.gov/whatsnew/pdf/future-trials-working-grp-april2021.pdf.

The Equitable and Fair Administration of Justice:

- Adopt a communications strategy to ensure litigants and attorneys are kept up to date on the status of their cases as well as the status of Court operations, generally.
- Assess the Court's needs with respect to remote proceedings to ensure that it purchases and utilizes up-to-date technology best suited for courtroom protocols, and that the technology poses minimal security risks. The Court should also provide sufficient user training and support to all those who use it. Trainings should be easy to understand, accessible to persons with disabilities, and available in languages other than English.
- Provide appropriate resources from other trial courts as necessary and appropriate to tackle backlogs and delays.
- Enact uniform procedural and part rules for both in-person and remote proceedings. Judicial discretion is not a sufficient justification for the absence of consistent, published part rules dictating discovery, trial procedure, and courtroom behavior. Clear rules will help ensure that all litigants and lawyers are treated fairly and equitably regardless of which courtroom their case is assigned to.
- Ensure timely coordination with the Mayor's Advisory Committee on the Judiciary and anticipate vacancies in the New York City courts to select judicial appointees before vacancies arise. Take the additional steps necessary to fill vacancies quickly, and simultaneously use a distinct application and review process for judicial reappointments to complete the reappointment process more expeditiously.

(recommending, among other things, that "UCS seek to partner with major internet service and/or other technology providers with an interest in community building in New York State and a commitment to access to justice to supply all courtrooms in New York state with secure and reliable high-speed wireless internet.").

EXHIBIT A

i. February 4, 2022, Report from Multi-Committee Working Group on the Impact of COVID-19 on the New York City Family Court: Recommendations on Improving Access to Justice for All Litigants (William Silverman and Rene Kathawala, Co-Chairs), https://www.nycbar.org/member-and-career-services/committees/reports-listing/reports/detail/fa mily-court-covid-19-impact.

ii. June 15, 2021, Letter from Working Group on Racial Equity in New York State Courts (Vidya Pappachan, former Chair) to the Franklin H. Williams Judicial Commission Regarding their May 19, 2021, Meeting with New York City Family Court Stakeholders, https://www.nycbar.org/member-and-career-services/committees/reports-listing/reports/detail/racial-equity-in-courts-williams-commission-meeting.

iii. April 9, 2021, Report from Domestic Violence Committee (Amanda M. Beltz, Chair): Recommendations for New York City Virtual Family Court Proceedings, With Particular Focus on Matters Involving Litigants Who Are Survivors of Abuse, https://www.nycbar.org/member-and-career-services/committees/reports-listing/reports/detail/comments-on-virtual-trial-rules-domestic-violence-cases.

iv. December 15, 2020, Report from Multi-Committee Working Group on The Family Court Judicial Appointment and Assignment Process (Glenn Metsch-Ampel and Hon. Daniel Turbow (ret.), Co-Chairs), https://www.nycbar.org/member-and-career-services/committees/reports-listing/reports/detail/the-family-court-judicial-appointment-and-assignment-process.

v. June 12, 2020, Letter from Council on Children (Lauren Shapiro, Chair), Children and the Law Committee (Melissa J. Friedman, Chair) and Family Court and Family Law Committee (Michelle Burrell, Chair) to Court Officials Requesting COVID-19 Point Person for New York City Family Court, https://www.nycbar.org/member-and-career-services/committees/reports-listing/reports/detail/covid-19-point-person-for-new-york-city-family-court.

WORKING GROUP MEMBERSHIP[21]

Working Group Co-Chairs
Ronald Richter and Rene Kathawala

Council on Judicial Administration

Amanda Raines

Alternative Dispute Resolution Committee

Natasha Major

Civil Courts Committee

Judge Leslie A. Stroth
Susan Shin
Jessica Caruso

Civil Rights Committee

Samantha Lyons

Council on Children

Co-Chair, Judge Ronald Richter (ret.)
Nila Natarajan

Criminal Courts Committee

Adnan Sultan

Criminal Justice Operations Committee

Danielle Jackson

Disability Law Committee

Katherine Carroll

Domestic Violence Committee

Nadia Hernandez
Lisa Alexander

[21] In addition to having members participate in the Working Group, the following committees opted to separately review and endorse the report: Alternative Dispute Resolution; Children and the Law; Civil Courts; Civil Rights; Council on Children; Council on Judicial Administration; Domestic Violence; Education and the Law; Family Court and Family Law; Housing Court; Juvenile Justice; Litigation; Minorities in the Courts; Pro Bono and Legal Services; and State Courts.

Family Court and Family Law Committee

Michelle Burrell
Judge Daniel Turbow (ret.)

Housing Court Committee

Jennifer Hudson
Sara Wagner
Mark Ward

Juvenile Justice Committee

Fredda Monn
Kirlyn Joseph
Lisa Salvatore
Cecilia Shepard

Litigation Committee

Jawad Muaddi

LGBTQ Rights Committee

Jose Abrigo
Danielle (Danny) King

Minorities in the Courts Committee

Christopher Wilds

Pro Bono & Legal Services Committee

Rhonda Singer
Hamra Ahmad
Co-Chair, Rene Kathawala

State Courts Committee

Rachel Haskell
William Bell

The Impact of COVID-19 on the New York City Family Court: Recommendations on Improving Access to Justice for All Litigants

The New York City Family Court COVID Work Group

A Joint Project of the New York City Bar Association and

The Fund for Modern Courts

January 2022

TABLE OF CONTENTS

Page

I. INTRODUCTION

In December 2020, the New York City Bar Association Family Court Judicial Appointment & Assignment Work Group ("Work Group") issued a report giving voice to significant concerns about the process by which Family Court judges are appointed and assigned.[1] Within a few months, however, it became apparent that the challenges addressed in that report paled in comparison to the alarming challenges posed by the COVID-19 pandemic. As detailed in a timeline below, for the better part of a year, the New York City Family Court (the "Family Court") largely heard only "essential" and "emergency" matters and was otherwise unavailable to many litigants.[2] In light of the serious consequences for families and children unable to access the Family Court, the Work Group—jointly with the Fund for Modern Courts—embraced a new mandate: to shed light on the crisis in the Family Court, document and analyze steps that were taken (or not taken) in order to ensure access to justice during and subsequent to the worst months of the pandemic, and make recommendations for meaningful reform based on lessons learned.[3]

In conducting its review, the Work Group interviewed institutional providers and legal service organizations working in the Family Court as well as members of the Assigned Counsel ("18-b") Panel in each borough. We prioritized hearing directly from the litigants themselves who have been impacted, some of whose experiences are detailed below. The Work Group also met with the Hon. George J. Silver, Deputy Chief Administrative Judge (NYC) and the

---

[1]The Family Court Judicial Appointment and Assignment Process (December 15, 2020), available at https://www.nycbar.org/member-and-career-services/committees/reports-listing/reports/detail/the-family-court-judicial-appointment-and-assignment-process.

[2]We note up front that creating a timeline was a difficult and inexact exercise because of the nature of the pandemic itself, the fact that announcements by the Court were made both officially and informally, and the differences between what practitioners heard and what they observed. Moreover, by relying in part on an interview/survey format, the Work Group understands that some readers may feel that their experiences in certain respects—or at certain points along the timeline—were different from what is presented here. That being said, this is an important exercise, so that what occurred is not lost and forgotten but, instead, can serve as a basis for discussion, deliberation and reform. Lastly, we note that this report does not seek to provide information on events that have transpired since December 31, 2021, unless otherwise indicated. In other words, although we recognize that facts on the ground—both in terms of COVID-19 and court operations—are fluid, the timeline does have an end date.

[3]Members of the expanded Work Group include three former Family Court jurists, a pro bono counsel and pro bono partner from the law firms of Orrick, Herrington & Sutcliffe LLP and Proskauer Rose LLP, respectively, an executive from a major technology company, and members of the leadership teams from several of the New York City institutional providers of legal services for parents and children involved in Family Court litigation, including Brooklyn Defender Services, Lawyers For Children, the Legal Aid Society Juvenile Rights Practice, and the Children's Law Center, as well as the New York City Administration for Children's Services. A full list of members appears at the end of this report.

Hon. Jeanette Ruiz, Administrative Judge of the New York City Family Court. Based, in part, on these interviews and discussions, the Work Group used best efforts to create a timeline of events.

The purpose of this report is not to be critical for its own sake. The intent and hope are to be constructive, transparent, and honest. We must start with the proposition that most Family Court stakeholders are keenly aware of the deep inequities in that historically under-resourced court. Secretary Johnson's *Equal Justice* report, discussed in greater detail below, came as no surprise to many who practice in Family Court. But to see these deep inequities so quickly laid bare by the pandemic—with significant negative consequences for those who rely on Family Court—was deeply disturbing to many, particularly as they heard far different reports from colleagues who practice in other more-resourced parts of our state courts. We know that when COVID-19 hit, an under-resourced court like Family Court was ill-equipped to respond quickly, consistently, fairly, and comprehensively to the needs of all litigants. Under stressful and uncertain conditions, we know that difficult choices had to be made. And, in some cases, we know that the immediate efforts of bench and bar yielded responsive results, for example, when it came to ensuring that fewer juveniles would be in detention. We can both acknowledge these facts and remain firm in our belief that the pandemic illuminated significant inequities, shortfalls and a lack of readiness in Family Court, to the detriment of many. We need to take account and challenge ourselves to do better. That is the spirit in which this report was conceived and written.

With this in mind, the report aims to accomplish three things: first, to collect and give voice to the significant concerns raised by lawyers and litigants in Family Court, some long-standing and some triggered or exacerbated by the pandemic; second, to contribute to the critically important question of how to improve the reliability and effectiveness of a court that serves mostly poor, disenfranchised New Yorkers; and third, to recommend and support changes that we believe are achievable and necessary and already subject to broad consensus among Family Court stakeholders, discussed in greater detail below, but in summary:

- adopt NYSCEF, the electronic filing system used throughout much of the New York State Court system, in Family Court to the fullest extent permitted by law, with appropriate support for unrepresented litigants;

- provide the public with regular statistical reporting, by court Term, on all Family Court proceedings;

- build an effective, user-friendly website (including mobile website) that comprehensively informs the public of current court operations and provides guidance to unrepresented litigants;

- enable litigants without access to adequate technology to participate in remote proceedings by providing access to the appropriate technology;

- adopt a communications strategy to ensure litigants and attorneys are kept up to date on the status of their cases as well as the status of Court operations generally;

- provide enhanced training for jurists in case management strategies and techniques;

- assess the Court's needs with respect to remote proceedings to ensure that it purchases and utilizes up-to-date technology best suited for courtroom protocols, and provide sufficient user training and support;

- move judges, staff, and other resources from other trial courts as necessary and appropriate to tackle backlogs and delays;

- enact uniform procedural rules; and

- engage with stakeholders on a plan for the complete reopening of the Family Court.[4]

We emphasize, again, that nothing in this report should diminish the importance of those proceedings which did go forward during the pandemic and the efforts required to do so. According to the Family Court, it heard to completion over 102,000 cases from March 2020 to October 2021.[5] This report highlights hard choices the Family Court made about what cases it could hear, focuses on those proceedings that did not go forward, and addresses the need—that long predates COVID-19—for increased Family Court resources and meaningful reform.

II. EXECUTIVE SUMMARY

In his recent report examining institutional racism in the New York State Court system, which had been requested by Chief Judge Janet M. DiFiore, former U.S. Secretary of Homeland Security Jeh Johnson singled out a handful of under-resourced trial courts throughout the state, including the Family Court, and concluded that "[t]he picture painted for us was that of a second-class system of justice for people of color in New York State." Nowhere is this concept better

[4]Our recommendations are well supported by recent committee reports issued by the New York City Bar Association on issues such as the need for access to the UCMS system and uniform procedural rules governing in-person and virtual proceedings in the Family Court. *See* Letter to Judge Ruiz Regarding Equitable Access to Justice in the NYC Family Courts (June 15, 2021), available at https://www.nycbar.org/member-and-career-services/committees/reports-listing/reports/detail/letter-to-judge-ruiz; Letter to the Franklin H. Williams Judicial Commission Regarding their May 19, 2021, Meeting with New York City Family Court Stakeholders (June 15, 2021), available at https://s3.amazonaws.com/documents.nycbar.org/files/2020915-RacialEquityInCourtsWilliamsCommissionMtg.pdf.

[5]According to the Court, from March 16, 2020, to October 31, 2021, the Family Court issued 63,603 orders of protection, 93,941 extensions and modifications of orders of protection, finalized 576 adoptions, and fully adjudicated 22,559 support petitions, 2,957 guardianship petitions, 14,578 child abuse and neglect petitions, and 2,978 paternity petitions. To provide context, we compared those numbers—which span a 19-month period—with the 12-month period preceding the pandemic, as reflected in the New York State Unified Court System's 2019 Annual Report: in 2019, the Family Court finalized 906 adoptions, and fully adjudicated 57,519 support petitions, 3,758 guardianship petitions, 16,307 child abuse and neglect petitions, and 9,701 paternity petitions. We were unable to locate comparable data on orders of protection.

demonstrated than in how the Family Court has fared during the COVID-19 pandemic. To be clear, the pandemic has been as unprecedented as it has been cruel, and nothing in this report should suggest that the Family Court reasonably could have met the challenges faced by litigants without, at least initially, some disruption of service. What followed from COVID-19, however, was a significant shutdown of service in the New York City Family Court for a large number of litigants for an extended period of time. In other words, our findings and recommendations are a product of the deep inequities in Family Court that this crisis has laid bare.

When COVID-19 struck New York City in March 2020, the Family Court operated much as it had for decades. While other trial courts in New York, such as the Supreme Court, had embraced electronic filing, the Family Court had not. Prosecution of an action required the filing of a physical petition and in-person court appearances. Similarly, for those who wanted a copy of a court document, and for those unrepresented litigants who sought help filing papers, the Court was only accessible in person. Moreover, Court personnel were not equipped with the technology to enable them to work from home. Thus, at the start of the pandemic, when safety protocols led to the closure of public buildings, the Family Court faced enormous hurdles to simply function.

Given its limited technological and logistical capacity, once the pandemic hit, the Family Court allocated its resources to a limited number of "essential" cases, such as orders of protection and certain child protective and delinquency proceedings, which it heard remotely. Virtually all other cases—including most visitation, custody, adoption, guardianship, and support matters, as well as many child protective and termination of parental rights proceedings—were deemed "nonessential" and "nonemergency" and did not proceed. The bulk of pending "nonessential" cases therefore stagnated for months, many for almost a year, before being scheduled to be heard, and most new cases like these were not even accepted for filing. Although the Family Court accepted some applications deemed "emergencies" in these "nonessential" matters, it never defined what constituted an "emergency." Accordingly, while some creative lawyers were able to fashion their cases as "emergencies," the vast majority of litigants—especially unrepresented litigants who make up 80% or more of the court population—had virtually no access to the Family Court.[6]

In the end, the distinction between emergencies and nonemergencies became a false dichotomy, rationalizing delays that caused harm to thousands of families. For example, a child support matter is indeed an emergency for a family without financial support suffering from housing or food insecurity regardless of whether the Family Court deemed the matter to be an "emergency." Similarly, an emergency exists for a victim of domestic violence who is not receiving child support and thus has no means to leave their abusive home regardless of how the Family Court characterizes the filing. And while it might have seemed necessary to exclude most custody and visitation proceedings from the category of "emergencies," that is of no comfort to the parents and children who have not seen each other for months, or to children in physically or emotionally harmful custodial arrangements. At a time of crisis, when the vulnerable populations

[6]It is worth noting here that the overwhelming number of delinquency referrals were not included among the "essential" matters.

who routinely appear in Family Court needed help the most, the courthouse doors were largely closed.

Making matters worse, the Family Court struggled to develop an effective system to disseminate updates and guidance to the public. People were turned away from courthouses with limited information. Even now, the Family Court's website provides limited and often unclear information on the status of the Court's operations and offers only limited guidance for unrepresented litigants.

The website is just one example of the Family Court's technological challenges. The Family Court struggled with its transition to remote proceedings given staffing shortages, the challenges staff faced working remotely, and the use of cloud-based conferencing platforms ill-suited to their purpose. Of grave impact was the inability of many lawyers to access orders or documents electronically on their cases. The Court's decision to not authorize widespread access to its Universal Case Management System ("UCMS"), which is not an electronic filing system but does enable users to immediately view and print all signed orders and documents, imposed an impossible burden on providing effective representation. While some institutional and agency lawyers have access to UCMS, many do not. Even during "normal" times, lawyers and unrepresented litigants should have access to court files electronically as they do in the Supreme Court. But during the pandemic—when physical access to court documents has been limited—it became a problem of utmost urgency that the Family Court still seemed to be struggling to address. Nor has the Court yet implemented a system to facilitate electronic filing and to eliminate UCMS as a relic of a bygone era.

What distinguishes the Family Court, of course, is that the litigants are primarily unrepresented. Pre-COVID, the Help Center, or pro se petition room, served a critical role assisting the public, including helping file various court documents. Since the beginning of the pandemic, that essential assistance has been greatly curtailed. Moreover, remote proceedings have presented special challenges to some unrepresented litigants who lack adequate access to technology. While nonprofit organizations have helped to some degree, unrepresented litigants continue to have difficulty navigating the system and getting information about their cases. This is especially problematic given the long delays resulting from the substantial backlog of cases now facing the Family Court.

III. OVERVIEW

This overview illuminates the real damage caused by the extended cessation of Family Court operations for so many litigants during COVID-19. These consequences can only be fully appreciated with an understanding of the intensive workload and frenetic pace of the Court and its impact on the lives of families and children pre-COVID.

New York State Family Court has jurisdiction over a range of subject matters that are vital to the lives of children and families, including child abuse and neglect, termination of parental rights, adoption, domestic violence, custody, visitation and guardianship, paternity, child support, and juvenile justice.

The caseload in New York City Family Court is enormous. In 2019, there were a total of 192,000 filings in the City's five counties.[7] Because that caseload is far too large to be handled by the 56 statutorily authorized Family Court Judges alone, a variety of other judicial officers also preside over certain matters. These judicial officers include judges on temporary assignment from other courts as well as "Court Attorney-Referees," "Judicial Hearing Officers," and "Support Magistrates."[8] Before the pandemic, there were approximately 135 Court "Parts" presided over by these judicial officers in Family Court. During the first month of the pandemic, there were just three, expanding to five in mid-April, seven in early June, and eleven later that month.

Since Family Court cases have drastic impacts on families—including the temporary or permanent removal of a child from the care of their parent—and since time frames in the life of a child are pronounced, Family Court practice and procedure, informed in part by statutory mandates, aspire to avoid delays and seek swift results. Highlighted below are some of the most important relevant Family Court proceedings.

(a) Child Abuse and Neglect

When a parent (or caregiver) is charged with child abuse or neglect, a case may be filed pursuant to Article 10 of the Family Court Act ("FCA") by the City's Administration for Children's Services ("ACS"). In egregious cases of "imminent risk" to the child, the agency has the power to perform an "emergency removal" of the child from the parent and to place them into foster care without a Court order. In such cases, the parent must be notified immediately and

[7]These include 3,119 delinquency cases, 60,000 child support and paternity cases, 53,260 custody and visitation cases, 24,414 Article 8 family offense cases, and 14,084 Article 10 child abuse and neglect matters. New York State Unified Court System 42nd Report 2019 Year, Annual Report of the Chief Administrator of the Courts, available at https://www.nycourts.gov/legacypdfs/19_UCS-Annual_Report.pdf.

[8]The number of Family Court Judges in New York City is fixed by the New York State Legislature. FCA §§121 and 131. In 2014, the allotment was increased from 47 to 56, which remains inadequate to meet the demand. To address this need, the Office of Court Administration ("OCA") has resorted to creative measures. On the judicial level, OCA has developed a system of designating New York City Civil Court Judges as Acting Family Court judges and temporarily assigning them to Family Court. Approximately ten serve at any given time. OCA has also created "Court Attorney-Referee" and Judicial Hearing Officer ("JHO") positions. Referees are appointed to their positions by OCA and serve subject to the court's supervision. JHOs are retired judges who serve part-time and per diem to assist the court. Referees and JHOs primarily conduct preliminary proceedings in custody, visitation, guardianship, and domestic violence cases. Additionally, upon consent of the parties, Referees and JHOs can conduct trials. There are approximately 45 Referees and JHO's citywide. Support Magistrates are specifically authorized by statute to hear child support cases. (FCA §439). They are appointed by the Chief Administrative Judge to a five-year term (22 NYCRR 205.32). There are currently approximately 25 Support Magistrates serving citywide.

ACS must commence a legal proceeding within 24 hours. At any time, the parent is entitled to request a formal hearing to contest the removal pursuant to FCA §1028, which must be held within 72 hours of the request.

Where an ex parte removal is not effectuated prior to the filing, ACS may recommend at the initial appearance to have the child remain in the parent's care upon certain Court-ordered conditions or it may seek an order to remove the child. In the latter instance, a formal expedited hearing is conducted (FCA §1027).

Ultimately, whether a child is removed or not, unless the matter is settled, a trial ("fact-finding hearing") must be conducted. If the parent is found to have committed the act of neglect or abuse, then a "dispositional hearing" follows to determine the disposition that is in the best interests of the child.

Because of the overwhelming number of cases on judges' dockets, it is common to have more than a year or two pass between the time of the case's filing and the time of trial and disposition. However, during that time, the judge will preside over numerous conferences and interim proceedings and make rulings that significantly impact the lives of the children and their parents. During this time, continued ACS oversight is nearly a universal mandate by the Court.

For example, there may be preliminary hearings to consider whether certain conditions are necessary to keep a family intact and ensure safety for the child, such as supervised visitation, temporary orders of protection, or social service intervention programs to assist the family. If the child is placed in foster care, the Family Court must hold a "Permanency Planning Hearing" every six months, where it is determined whether the agency has made sufficient efforts to reunify a family and whether the situation triggering ACS's intervention has been remedied or the parent has been sufficiently rehabilitated to allow the child to safely return home.

If a child has remained in foster care for a significant period of time and the parent is deemed not to have made sufficient progress toward reunification of the family, proceedings may be brought to terminate the parental rights ("TPR proceeding") and allow a child to be adopted. Again, because of a lack of judicial resources, it might take several years to complete the case—a delay of particular consequence, since a family may be in limbo and a child may be without stability as a decision is being reached on whether their family will be kept together or the child will be adopted into a new family.

(b) Custody, Visitation, Guardianship, and Domestic Violence

Family Court is the main arbiter of custody and visitation disputes in our system.[9] Such matters can run the gamut from serious allegations of domestic violence to irreconcilable differences in child rearing. Regardless of a case's particular nature, however, the life of a child,

[9]While Family Court does not have jurisdiction over matrimonial cases, it has concurrent jurisdiction with the Supreme Court over custody and visitation of children of unmarried parents. Additionally, even for married couples, custody disputes ancillary or supplemental to a divorce are often heard in Family Court.

already disrupted by the split in the family, remains in limbo until a stable outcome is achieved. For this reason, the Family Court has official rules regarding the trial of a custody and visitation case, which must be concluded within 90 days of commencement (22 NYCRR 205.14).

The original custody case, however, rarely concludes the matter. There can be any number of reasons for continued proceedings that extend the time frame in which custody cases can be concluded. For example, a noncustodial parent may assert the other is withholding legally mandated visitation with the child. Or a custodial parent may have a new job or social opportunity in another city, with their potential relocation necessarily affecting contact between the child and the other parent. Once again, the uncertain result in such cases can severely affect the child, making expeditious resolution of these proceedings essential.[10]

Similar temporal concerns arise in related contexts such as guardianships. A parent serving in the Armed Forces might at a moment's notice be deployed to another country. Or a parent might be deported, leaving their child behind. In each of these cases, all interested parties must be notified, and even if there is no objection to the guardian's appointment, the potential guardian's background must be explored before the Court may approve of their appointment. Sometimes the matter is contested, as when two relatives are fighting over guardianship, and a formal hearing is necessary.

While awaiting the outcome, the child's life remains uncertain. They may not be allowed to see the other parent or enroll in school, government benefits may be denied or delayed, or they may not be allowed to travel or obtain a passport or visa. Even more importantly, the emotional stability of the child may suffer while facing such uncertainties. For these reasons, Family Court strives to process such cases expeditiously.[11]

Also requiring speedy resolution are cases involving domestic violence, which affect the rights of adults, and where children are often also the targets of or witnesses to violence in the home. Brought pursuant to FCA Article 8, they allow a party to seek an order of protection where there is a current or former "intimate relationship" with the alleged abuser. These cases can have dire consequences if delayed.

Such family offense proceedings are generally commenced ex parte with the petitioner seeking an order of protection. If an exclusionary order is issued, there will be an expedited

---

[10]If a person withholds custody of the child, a proceeding may be brought on by a writ of habeas corpus for immediate attention. If a party lives in another state, pursuant to the Uniform Child Custody Jurisdiction and Enforcement Act, there must be rapid consultation by the Family Court Judge with the judge in the other state to address the jurisdictional issues even before reaching the merits of the case.

[11]Federal law provides "Special Immigrant Juvenile Status" to undocumented immigrant children who are present in the United States and who have been abused, abandoned or neglected by one or both parents. *See* 8 U.S.C. §1101(A)(27)(J); 8 C.F.R.§204.11. The Family Court must make a preliminary determination in a child's favor before the application is submitted to the United States Citizenship & Immigration Services, the federal agency that is authorized to grant SIJS relief. New York City Family Court receives hundreds of such applications.

return date scheduled to give the respondent an opportunity to be heard. These cases often result in time-sensitive hearings. Any delay in securing a final order leaves the victim(s) in a state of insecurity and peril; delays in addressing ex parte orders in situations where a respondent is wrongfully accused may result in that person improperly being excluded from their home or indefinitely separated from family members, including their children.

(c) Juvenile Justice

Family Court has jurisdiction over Juvenile Delinquency cases, i.e., the commission of an act by a person under the age of 18, which would be considered a crime if committed by an adult. While Family Court has long had jurisdiction over cases involving youth under the age of 16,[12] the historic Raise the Age legislation resulted in the expansion of Family Court's jurisdiction to include all misdemeanor charges brought against 17 and 18-year-old youth as well as those Adolescent Offenders in that age group who are charged with a felony and whose cases originated in the Youth Part of the Supreme Court.[13] It also expanded juvenile justice operations to 365 days and nights a year, from what had been essentially a business-hours only court.[14] These operations continued throughout the pandemic and returned to live in-person proceedings at Criminal Court on July 6, 2021. Because of the exposure to quasi-criminal liability, and the fact that youth can be remanded—separated from their parents and family without bail—while their cases are tried, the Family Court's speedy trial rules contain extremely short time frames that are strictly enforced.[15]

(d) Child Support

A critical component of Family Court's jurisdiction is its authority to issue and enforce orders of child support. For any parent, but particularly for the working class and those of limited means who make up most of the Court's litigants, adequate financial support is essential for their

[12]Legislation effective December29, 2021, amended Article 3 of the Family Court Act to increase the minimum age for a juvenile delinquency prosecution to 12 for all crimes except enumerated homicide crimes, which would retain their minimum age of seven.

[13]Eighty-four percent of all NYC youth Adolescent Offenders that originate in the Supreme Court Youth Parts have been removed to the Family Court.

[14]Night, weekend and holiday proceedings in Juvenile Justice cases are currently handled by the accessible magistrate in the Criminal Court. These proceedings were initially handled by the Family Court at the beginning of the pandemic.

[15]If a youth is remanded at the initial appearance, the respondent is entitled to a "probable cause hearing" within three days to justify any longer, continued remand. (FCA § 325.1). If the remand continues, trials must commence within three days for lower-level crimes or 14 days for higher-level felony charges. (FCA §340.1). Pretrial motions, such as hearings to suppress evidence illegally obtained or statements taken in contravention of the Fifth Amendment, must be promptly heard within these speedy trial parameters.

children's health and welfare and missed payments can have immediate and drastic consequences.

Support matters are initially heard before Support Magistrates. (FCA §439). Once a child-support obligation is imposed, proceedings can be brought for modification if there is a significant change in circumstances. Supplemental proceedings can also be brought if the obligor fails to pay the required child support. In such matters, a hearing is conducted by the Support Magistrate to determine if the failure to pay was "willful," which would subject the obligor to sanctions, including, in some cases, incarceration.[16] Due to the hardship imposed on a child for failure to receive child support, Family Court Rules impose strict deadlines for the conduct of a Violation petition, including that hearings commence within 30 days and conclude within 60 days thereafter. (22 NYCRR 205.43).

* * *

As discussed in detail below, many of the above-described proceedings were deemed to be "nonessential" and "nonemergency" matters that could neither proceed nor even be filed during much of the first year of COVID-19, leaving thousands of litigants in limbo without access to legally entitled remedies.

IV. TIMELINE: THE COURT'S RESPONSE TO THE PANDEMIC

Prior to the COVID-19 pandemic, litigants initiated cases in New York City Family Court by mail or at the courthouse itself by filling out a physical petition, often with the help of a clerk for those who were unrepresented.

March – April 2020: Beginning on March 16, 2020, for most cases and then on March 26, 2020, for all cases—as the COVID-19 pandemic spread across New York City—the Family Court closed its physical doors to the public, rendering in-person physical filings and court appearances impossible. Signs on the doors, first posted only in English, and then only in English and Spanish, notified litigants of the closure. Practitioners reported that thousands of people came to Family Court during the pandemic only to be turned away. By the end of March 2020, the Family Court opened three citywide virtual intake parts focused on Child Protection, Juvenile Delinquency, and Orders of Protection. Those three parts stood in lieu of the approximately 135 parts that operated pre-pandemic.

From the start of the pandemic, the Family Court distinguished between pending cases that were "essential" and those that were "nonessential." Nonessential cases could only proceed if deemed by the court to be "emergency" matters. "Nonemergency" matters were placed on indefinite hold. Thus, the Family Court administratively adjourned without return dates all "nonessential" matters filed before March 17, 2020, unless they were subsequently deemed to be an "emergency."

[16]A family Court Judge must confirm the determination of the Support Magistrate before sanctions can be imposed. (FCA §§439(a) and 454, et seq.).

During March and April 2020, the Court issued a series of administrative orders and press releases with a list of "essential matters," stating that the Court would accept "no new nonessential matters…[or] additional papers…in pending nonessential matters." The Court's definition of "essential matters" included: (1) new child protection cases involving removal applications, (2) new juvenile delinquency cases involving remand applications or modifications thereof, (3) emergency family offense petitions/temporary orders of protection, (4) Orders to Show Cause, and (5) stipulations on submission. The Court stated in a separate order that emergency Family Court cases would be heard by remote video appearance and/or by telephone, and it provided a telephone number and email address for litigants to use for any questions.[17]

As a result, a vast number of pending Family Court cases deemed "nonessential"—including custody, visitation, guardianship, adoption, and support—were frozen for at least nine months, as were all new similar cases until they began to be calendared a year later, in spring 2021. Many of those cases were given return dates well into 2022 and then only for preliminary administrative issues such as return of service.

From the beginning of the pandemic, the Family Court also heard emergency applications on "nonessential" cases. However, as described in greater detail below, it was unclear what constituted an "emergency" in the so-called "nonessential" matters. It was left to the discretion of the individual jurist sitting in the Court's "Intake Part" that day to decide whether what was pleaded in an Order to Show Cause constituted an emergency and would be heard. Initially, the Court only heard "emergency" applications in pending cases. Clearly intended to restrict the number of filings in light of the Family Court's limited capacity, there was no substantive basis to distinguish between an emergency in a pending case and one where no case previously had been filed.

While the Family Court's handling of Juvenile Delinquency (Article 3) and Abuse and Neglect (Article 10) cases fared better, the physical closure and then the slow transition to virtual

---

[17] *See* AO/78/20 (March 22, 2020), available at https://nycourts.gov/whatsnew/pdf/AO-78-2020.pdf ("Pursuant to the authority vested in me, in light of the emergency circumstances caused by the continuing COVID-19 outbreak in New York State and the nation, and consistent with the Governor of New York's recent executive order suspending statutes of limitation in legal matters, I direct that, effective immediately and until further order, no papers shall be accepted for filing by a county clerk or a court in any matter of a type not included on the list of essential matters attached as Exh. A. This directive applies to both paper and electronic filings."); AO/85/20 (April 8, 2020), available at https://www.nycourts.gov/whatsnew/pdf/AO-85-20.pdf (directing that certain pending matters can proceed virtually; providing that no new nonessential matters may be filed until further notice; nor may additional papers be filed by parties in pending nonessential matters). *See also* Governor's Executive Order 202.8 (March 20, 2020) ("In accordance with the directive of the chief Judge of the State to limit court operations to essential matters during the pendency of the COVID-19 health crisis, any specific time limit for the commencement, filing, or service of any legal action, notice, motion, or other process or proceeding, as prescribed by the procedural laws of the state, including . . . the family court act . . . is hereby tolled…."), available at https://www.governor.ny.gov › EO_202.8.pdf.
These orders were continually extended until June 25, 2021.

courtrooms negatively affected those areas too. In the Juvenile Delinquency practice area, the cases in which remand (detention) of juveniles was sought were processed smoothly. Some advocates, however, advised the Work Group that they were aware of certain children who had been detained and whose length of time in detention increased as a result of the pandemic. Of note, at the beginning of the pandemic, the Family Court entertained motions brought by practitioners, who reviewed previously issued remand orders in light of the danger of congregate living during the pandemic. Our understanding is that this decreased the number of youths in custody by more than 50%.

Juvenile justice practitioners worked every day, night, weekend, and holiday with the Family and Criminal Courts. Every youth arrested and charged with a crime was afforded the opportunity to be considered for adjustment services by the Department of Probation, to be considered for release by the Law Department, and, ultimately, where those options were not available, to have their case decided by a Family Court judge in a virtual proceeding where they were represented by counsel; to accomplish this effort, Family Court judges took over night, holiday, and weekend court. [18] When grand juries were suspended, the Family Court conducted prepetition hearings, arraignments and probable cause hearings, each of which was deemed an essential matter. These virtual hearings were conducted in largely the same manner as when they were in-person. Remand cases remained on the Court's calendar and motions to advance matters outside the Court's administrative orders were granted for settlement and disposition.[19]

ACS, which prosecutes child protective cases in Family Court, understood early on that the agency was effectively prohibited from filing cases in which it was not seeking a remand of the child into foster care.[20] In situations where a child was arrested but a decision was made not to seek remand or other interim relief, no case would be filed and the matter and pending charges against the child were left in judicial limbo. Because of resource constraints and the resulting attempt by the Court to prioritize certain cases over others, a high percentage of Article 10 filings involved serious allegations of domestic violence or other physical harm, including sexual abuse. It was reportedly much more difficult to file Article 10 cases involving allegations considered to be less serious, such as educational neglect. The Work Group was informed that there were many instances where attorneys attempted to get such cases on the calendar to dispose of them because the relevant issues had been satisfactorily addressed but could not do so because there were no jurists available. In addition, in the first few weeks of the shutdown of the Family Court,

[18]The pandemic did create opportunities for some technological advancement, including the use of virtual proceedings. Technological capabilities acquired during the pandemic should be harnessed, finalized and tested to ensure access and safety for all who have crucial business with the Family Court.

[19]It is important to note that all youth in custody are represented by counsel. There is no question that those who were unrepresented during the pandemic fared worse than those who were able to retain counsel or were afforded representation due to the nature of their case.

[20]These are called "court-ordered supervision cases"–those in which the child is alleged to be at risk of abuse or neglect, but an attempt is made to provide the services necessary to maintain the child safely at home, thereby avoiding removal.

statutorily mandated permanency hearings (required to be held every six months for youths in foster care) were missed—though that issue appears to have been addressed.

The Family Court's severely limited operations between March and April 2020 exacerbated the serious constitutional issues implicated whenever families are separated for extended periods of time. Attorneys for parents in Article 10 cases requested unsuccessfully that pending emergency hearings be completed rather than continuously adjourned. Moreover, the Family Court had no centralized calendar for identifying and effectively processing emergency cases. As a result, only the attorneys working on the cases had that information. Consequently, during the first few weeks of the Family Court shutdown, those attorneys provided the Family Court with daily lists of cases that should proceed to emergency hearings.

Statutorily expedited emergency hearings, such as 1027 and 1028 hearings that address vital liberty issues for families when their children are removed by ACS, were conducted by affidavit in truncated proceedings in virtual courtrooms. This was woefully inadequate to the Family Court's full consideration of parents exercising their statutory right to challenge the removal of their children. In addition, while there have in recent years more frequently been delays in scheduling required hearings in child protective cases, including 1027 and 1028 hearings, these delays have grown exponentially worse with the advent of the pandemic restrictions. Because the Family Court took the position that statutory time constraints were suspended, mandated hearings with speedy trial obligations of 24 to 72 hours were not being calendared for four weeks or longer.

With respect to orders of protection, the Court took steps from the beginning of the pandemic to ensure that these proceedings went forward. This effort included a central processing system for new matters and the use of telephone and, later, video proceedings.

April – June 2020: It is our understanding that by May 24, 2020, all jurists had returned to the courthouses except those with specific health concerns, and clerical staff had returned on a staggered basis.

The Family Court rolled out virtual courtrooms utilizing the "Skype for Business" platform in April 2020. However, it was not until May 2020 in Richmond County, and several months later for the larger boroughs, when each jurist had access to their own virtual link. In addition, Skype for Business was inadequate to the task because, among other things, it did not allow for the recording of proceedings. Severely limited resources were used to train staff and attorneys on Skype for Business only to have the Family Court transition to the "Microsoft Teams" platform in mid-December 2020 (as a result of the court system's statewide contract with Microsoft, which changed platforms). This only further aggravated the backlog of cases in the Family Court. One physical courtroom, fitted with plexiglass barriers, was available in each county to accommodate in-person proceedings.

In early May 2020, the Family Court began accepting "nonemergency" applications—but did not schedule them for court appearances—when the Court provided that applications related to pending child support matters could be submitted by email. In a notice on the Court's website dated May 13, 2020, the Court provided information on how to modify an order of support because of a change of circumstances. This update reiterated that the Family Court was not yet

scheduling cases involving child support but that the Court would update litigants when it began hearing those cases.

Significantly, the Family Court did not officially begin accepting all other nonemergency petitions, including custody, visitation, and guardianship and new support matters, until spring 2021, one year from the start of the pandemic.[21] However, that did not stop litigants, primarily those with attorneys, from submitting them by mail and, beginning in May 2020, via the Electronic Document Delivery System ("EDDS"), when EDDS opened for the stated purpose of receiving support modification petitions. As the Court did not have any rejection protocol, those petitions sat dormant until the Court started docketing nonemergency cases in 2021. At that time, the litigants who submitted these cases during COVID—when they were officially not being accepted—were at the front of the line for scheduling. This is just one of many examples where pro se litigants were profoundly disadvantaged by the Court's process.

August 2020: On August 24, 2020, the Court transitioned from accepting support submissions by email to accepting them through EDDS. As explained in more detail below, EDDS is not an electronic filing system but simply a vehicle to submit papers that, in turn, are not "filed" until processed by Court personnel. EDDS is not user friendly, especially for unrepresented litigants.

Accordingly, between March and December 2020, the Family Court heard "essential" cases and "emergencies" within "nonessential" cases, but other cases were largely stuck in a holding pattern, even those that had been filed before the start of the pandemic. The Court has informed us that "most jurists continued to remotely advance existing cases in which appearances were not required." The lack of court appearances, however, combined with the limitation on filing applications and motions prevented all but a small number of these cases from moving forward. As a result, there is now a significant backlog of cases.[22]

December 2020: In December 2020, the Family Court began to assign court dates to custody and visitation cases filed prior to March 17, 2020.

As mentioned above, the Family Court transitioned to Microsoft Teams by mid-December. Yet, that transition failed to provide critical functionality to litigants and their attorneys, including breakout rooms where attorneys could confer confidentially with their clients and where cases could be conferenced. Perhaps worse, judges reported not getting appropriate instruction and training on how to use the new software and technology. Some could not manage the technology, especially from home with no in-person support. Utilization was also

[21]Lawyers consistently told us that the Court officially began accepting all nonessential submissions in the spring of 2021—based in part on direct conversations they had with the Court—but we have not been able to locate any formal announcement or administrative order on point.

[22]The Work Group has not been able to identify the specific number of backlogged cases, itself an issue, but suffice to say, it appears there are thousands of cases submitted prior to or after the onset of COVID that have been significantly delayed.

hindered because there was only one LAN technician in each county creating links, setting up equipment, rolling out laptops, establishing virtual courts and virtual private networks (VPN) to ensure confidentiality, and creating phone numbers for each virtual part.

January – February 2021: In January and February 2021, the Family Court began to assign court dates to child support cases filed prior to March 17, 2020.

March 2021: At the end of March 2021, the Family Court announced that it would begin scheduling custody, visitation and support cases that were submitted during the pandemic. Practitioners consistently informed us of significant delays in getting their cases on the calendar, and then, in many cases, only for preliminary administrative matters such as return of service. In one typical example, a litigant had submitted a child support application in July 2020 that was not scheduled for a first appearance until June 2021. Even if the application is ultimately successful, it is unclear whether and to what extent the litigant will be successful in obtaining retroactive relief.

July – October 2021: There was wide variation in how quickly new cases were being scheduled during this time period. For instance, one attorney noted that within a week after filing a motion to change the method of payment on a support order, the Court scheduled a first appearance four weeks out. In contrast, another lawyer reported that for a new support petition she filed on July 2nd, she was given a first appearance date of October 4th. Accordingly, her client was without even a temporary order of support for three months. Practitioners also reported extended delays between court appearances. One lawyer explained that pre-COVID she would routinely have adjournments of about two months and now that is closer to four months. Indeed, many cases were getting court dates in 2022. In one example, a litigant who filed a family offense petition on August 25th received a temporary order of protection with a return date of June 13, 2022. It is our understanding that there remained a number of cases submitted through EDDS, email or mail that had not been calendared. Every practitioner we spoke with has told us that, overall, delays in Family Court are significantly longer now than they were pre-COVID.

November – December 2021: It is our understanding that all cases submitted through EDDS, email, or mail throughout the pandemic have been calendared. Practitioners, however, continued to report wide variation in how quickly cases were being scheduled, longer than usual adjournments between court appearances, and little or no improvement in overall delays in Family Court. That being said, there were improvements in the number of cases being adjudicated. For example, according to Chief Judge Janet M. DiFiore in her December 13th video address, "while the number of adoptions has not quite returned to pre- COVID levels, we are on pace to finalize 33% more adoptions in 2021 than in 2020."

V. CLASSIFICATION OF EMERGENCY MATTERS

Although the Court accepted emergency applications in nonessential matters by Order to Show Cause, it never defined what constituted an "emergency." In the initial stages of the pandemic, Orders to Show Cause to obtain permission to file went to Supervising Judges who approved very few applications, perhaps because of the limited resources available to them. Subsequently, proposed Orders to Show Cause were distributed to individual judges who we

understand felt constrained to strictly or narrowly consider them. Judges informed us that they were frustrated with their inability to appropriately address the emergency situations affecting children and families.

From numerous interviews, it is clear that practitioners had difficulty distinguishing between emergencies and nonemergencies and that the standard often varied from judge to judge. In general, practitioners understood that abuse, neglect or other cases where the child was in danger constituted emergencies. Likewise, attorneys understood that, as a general rule, support cases were not considered to be emergencies. However, confusion arose in the multitude of different circumstances where a family was in crisis, but the child might not be in immediate physical danger.

This confusion was initially compounded by the Family Court's decision to only hear emergencies in pending cases. One practitioner told us they tried to get before a judge on behalf of a client whose spouse had taken their child out of state, but the Court rejected the application several times because there was no pending case. Then, when the Court did begin accepting orders to show cause for both new and existing emergency applications on nonessential cases, it did so without clearly communicating this change to litigants.

Practitioners used what they called "creative lawyering" to have their cases heard as "emergencies," while equally or arguably even more compelling litigants were shut out. However, even where the Court calendared a case as an emergency proceeding, some attorneys noted that there was no mechanism for filing related nonemergency claims in the same case. While the Court was more likely to calendar orders to show cause where a litigant was represented by counsel, many such cases were not heard because they were not deemed to be a sufficient emergency.

In one example, a practitioner represented an adult brother of a child whose mother had died of COVID-19. The attorney sought to assist the adult brother in applying for custody of the child so that he could make medical and educational decisions. While the Court was generally treating custody cases as nonemergencies, the attorney emphasized the importance of the case in the context of COVID-19. The Court initially rejected the case as a nonemergency, but the attorney pursued the case until, after multiple attempts, it was finally heard. For most litigants who are not represented by counsel, this outcome in all likelihood would have been different.

Although the Family Court attempted to create a delineation between emergency and nonemergency cases, practitioners repeatedly noted that many so-called "nonemergency" matters were in fact emergencies, both in terms of the health and safety of the litigants, and the urgent time frames the cases presented. As the months went on, this extended delay in the ability to seek and obtain judicial relief wreaked havoc on thousands of families and irreparably damaged their legal cases. The consequences of this delay are discussed in detail below.

While the pandemic brought nonemergency cases to a virtual standstill in Family Court, the New York State Supreme Court continued to hear both new and ongoing cases, whether or not they were deemed to be an "emergency." Thus, while nonemergency visitation, custody, and support cases were all stayed in Family Court for months on end, those same kinds of legal

issues continued to be adjudicated in the Supreme Court in connection with divorce cases, highlighting, again, the two systems of justice described by Secretary Johnson in his report.

This difference is largely a function of the fact that, unlike in Family Court, the Supreme Court's transition to remote proceedings was relatively smooth. It is well recognized that litigants who have access to the Supreme Court, where there is a filing fee, are more often represented by counsel and typically more affluent than their Family Court counterparts. Family Court serves many more unrepresented litigants, people of color and those living in poverty. There may not be a better example of systemic injustice, and yet despite this glaring disparity, in June 2021, the New York State Legislature approved additional judges to sit throughout the state in the Supreme Court. There was no such legislative solution or bailout of any kind directed to the New York City Family Court despite the crisis described in this report affecting some of the most vulnerable children and families in the State.

VI. COMMUNICATIONS

The Family Court's decision not to hear "nonemergency" matters affected a vast number of cases. This, in turn, prompted countless questions from unrepresented litigants, as well as from lawyers and advocates, about when and to what extent the Court would reopen, what would happen to previously filed cases and when new dates for those cases would be provided, what to do in an emergency, whether custody orders had to be complied with even if children were being relocated for health and safety reasons related to the pandemic and what to do if they are not, whether petitions (previously only filed in person) could still be filed while Family Court was physically closed, how to notify the Court of a change of address or phone number, and more. These questions were made even more urgent by the continuously changing nature of court operations over the course of the pandemic.

In the face of this significant disruption of services, the Court struggled to find a coherent communications strategy and never developed a system to effectively disseminate updates and guidance to the public on court operations and procedures. Litigants could not rely on the website or any other accessible source to receive clear, detailed, accurate, and up-to-date information, which was especially challenging for those who were unrepresented.

(a) At the Courthouse

At the time the pandemic began in March 2020, with limited exceptions, litigants could only file Family Court petitions by mail or in person at the courthouse, often relying on the help of court clerks.[23] Therefore, from approximately March 16, 2020, to May 8, 2020, when the courthouse was physically closed and was not yet accepting any filings on nonessential/nonemergency matters, litigants could neither file nor even submit petitions. Even when the Court began accepting petitions via email and then EDDS, these changes in court procedures were not effectively communicated in real time to litigants or the general public. Nor

[23]Prior to COVID, family offense petitions could be filed electronically from outside the courthouse.

was it communicated how to determine in advance when particular cases would be calendared and heard.

As a result, thousands of litigants showed up at the courthouse, as they would pre-pandemic, only to be turned away. Signs on the courthouse doors stated that the Court was closed with little additional information. Compounding the problem, in the beginning of the pandemic, these signs were only in English, and even when the signs were modified to provide for greater accessibility, they were only posted in English and Spanish.

Further, as a Court that had previously relied exclusively on paper filings and in-person hearings, the Family Court often did not collect or update litigants' contact information. Consequently, many litigants whose cases were administratively adjourned could not be reached by the Court and were left with no information about their cases.

(b) The Website

In addition to the lack of meaningful guidance at the courthouses, the Family Court sections of the Unified Court System website (including the version shown on mobile devices) provide limited and often unclear, outdated or inaccurate information on the status of the Court's operations even as of the release of this report. Of concern, the website is only available in English and, to a more limited degree, Spanish. By not offering a variety of languages, the website automatically excludes many individuals from acquiring any information.[24]

Also of concern, the website's home page does not contain any landing page for updates related specifically to the impact of the pandemic on the Court's operations. The only section dedicated to pandemic-related updates is the "Coronavirus and New York City Family Court" portion, which is a single hyperlink in a long list of links. The section provides only basic information, and at no point throughout the pandemic did it provide meaningful updates with detailed guidance for litigants or the general public on the latest changes in court operations and procedures.

Not only does the website contain very limited information, but it also includes information that is conflicting or inaccurate. For instance, as of the date of this report, the website still states that the Court is "not yet open for the initiation of new cases involving . . . nonemergency matters." In fact, the Court has been accepting new submissions relating to nonemergency matters via EDDS and by email for months. To make matters even more confusing, in the section titled, "Information for Filing Emergency/Essential Applications," there is no guidance on what constitutes an emergency.

The website does direct litigants to submit permitted filings via EDDS, but the system is hard to navigate even with the Court's user guide,[25] especially for unrepresented litigants. For

[24]In its own Strategic Plan for Language Access, OCA identified the most frequently requested languages for translating, which includes Spanish, Mandarin, Russian, Haitian Creole and Arabic. http://ww2.nycourts.gov/sites/default/files/document/files/2018-06/language-access-report2017.pdf

[25]https://iappscontent.courts.state.ny.us/NYSCEF/live/edds.htm.

example, EDDS will only accept a certain file type (PDF/A), even though the Court forms are only made available in PDF (non-form fillable) and Microsoft Word. For many unrepresented litigants who are unfamiliar with computers, this requirement poses a real and potentially insurmountable challenge.

Certain forms are provided on the website, but most are only in English and are not accompanied by any instructional guides to help litigants determine how to appropriately complete them or even which forms to complete. With respect to an affidavit of service, which is a critical document, one must know where to look on the website. Indeed, the web page titled "Filing an Affidavit of Service" indicates that the document can be found by clicking on the hyperlink labeled "Forms," which redirects the user to a category of forms. However, "Affidavit of Service" is not mentioned anywhere on that page.

The website contains some "do-it-yourself forms," which provide more specific guidance for litigants about the drafting process, but they are quite limited in scope.[26] For example, the custody and modification forms are only designed for parents. A grandparent or sibling could not use the forms to modify their visitation schedules or custody arrangements. Likewise, when users find out that the forms they are trying to use are not right for them, the only direction they receive is to call their local Family Court. Moreover, there are only five such forms available: Paternity, Custody Modification, Custody Enforcement, Child Support Modification, and Child Support Enforcement. There are, however, a multitude of other forms needed by litigants, especially during COVID-19 when no cases in those areas were being heard without an Order to Show Cause and Affidavit in Support. The closest information we could find anywhere on the Court website with guidance on Orders to Show Cause is on a link[27] that provides information for pro se litigants titled, "How to Ask the Court for Something (motions and orders to show cause)." There is no form for an affidavit in support, however, which must accompany an Order to Show Cause, the information provided is general and not specific to the Family Court, and the web page is hard to find.

(c) Administrative Orders

Some information, including guidance on what broad categories of cases constitute an emergency, and what phase of operations the Family Court is in at any given time, was shared through the Court's various administrative orders. These orders, however, are difficult to locate; indeed, there is no link on the Family Court website that easily allows a litigant or the general public to access them. Furthermore, the orders themselves do not contain all updates to Family Court operations and provide only limited guidance. The incomplete and inaccessible nature of

[26]The lack of a uniform format is problematic: some forms on the website are available in Word, some in fillable pdf, and still others in non-fillable pdf, which have to be printed out and filled in by hand. Because these are universal forms, they often contain language that does not apply in every case, so the absence of clear instructions in many of the forms leaves unrepresented litigants confused and potentially disadvantaged.

[27]https://iappscontent.courts.state.ny.us/NYSCEF/live/edds.htm.

the orders has thus contributed to confusion concerning the status at any given time of the Family Court operations in New York City.

(d) Reliance on Lawyers to "Spread the Word"

Lawyers working in the Family Court, especially those from institutional providers of legal services to families and children, and members of the assigned counsel panel have fared better with respect to learning about the current status of Family Court operations. These advocates, by and large, have received information throughout the pandemic directly from the Family Court. For instance, the Supervising Judges in each of the boroughs held periodic meetings with agency leaders to provide updates on Family Court operations. These meetings, among other things, enabled stakeholders to comment on the definition of essential matters and advocate for the ability to file Orders to Show Cause to address additional matters. Other important issues were discussed during these meetings as well. In the area of juvenile justice, for example, practitioners were able to explain the importance of an order appointing attorneys for the child prior to the initial appearance based on the large number of non-custody cases that could not be filed. Issues regarding conflicting information or positions among jurists were also raised during these meetings.[28]

However, only a select group of institutional and nonprofit providers were invited to participate in these meetings. Additionally, participants reported that these meetings were most helpful for understanding what the Court could not do but were less effective in communicating updates from the Court or clarifying how to overcome challenges presented by the pandemic. Announcements from the Court at these meetings were not always consistent with what participants were seeing on the ground. In addition, the Court communicated some information via one-off emails to listservs, but it did not send these updates with any regularity and often provided little clarity beyond what the Court's brief and irregular administrative orders stated.

The Family Court did not disseminate information to the general public and to advocates at the same time or with the same level of detail. Advocates reported that the Court delegated its responsibility to communicate with the public to the advocates, asking them to communicate updates to their clients instead of widely disseminating information to the public at large. Represented litigants whose lawyers were able to find out more information were thus more likely to obtain favorable outcomes—e.g., access to the courts during the pandemic—than unrepresented litigants with no direct access to information. Unequal outcomes may exist even among represented litigants, with some organizations receiving fuller or more complete information than others depending on what meetings with the Court they attended.

[28]By way of a more recent example, during the past few months' return to in-person juvenile delinquency intake across the boroughs, attorneys for the child, probation officers, and ACS were initially denied a request for technology in the detention rooms that would enable all members of their staff and the youth to maintain safety precautions. Although the request was initially denied, the decision was later reversed following a stakeholder meeting with newly appointed Administrative Judge Anne-Marie Jolly.

The communication mentioned here developed on a rather ad hoc basis and as time progressed. There was not, and is not now, a formalized emergency plan of communication that anticipates future crises which are unfortunately certain to occur.[29]

As a result, many of the sources of information advocates relied on originated outside of the Court. For instance, advocates from various nonprofit organizations and institutional provider organizations set up email chains to share updates with each other. Advocates would communicate with colleagues in other organizations to determine what successes and roadblocks they had experienced with their cases, hopeful that the information would help other advocates achieve successful outcomes for their clients.

VII. CHALLENGES WITH REMOTE OPERATION

Not only did the Family Court struggle to communicate with the public about the current state of Family Court operations, it also struggled to manage the transition to remote operations altogether. Inadequate staffing, challenges with Court staff working remotely, the Family Court's outdated pre-pandemic filing system, the Court's unwillingness to authorize widespread access to its Universal Case Management System ("UCMS") and challenges with remote proceedings all contributed to a slow and confusing transition to remote operations.

(a) Staffing

With the Courthouse physically shut down at the beginning of the pandemic, the Family Court sought to shift to virtual proceedings with its judges and staff working remotely. The transition was difficult as judges, court clerks, and other staff were not initially equipped with the necessary technology or training to work at home effectively. The problem was magnified because the Court, which had already been acutely understaffed before the pandemic, was subject to a crippling hiring freeze imposed across the entire court system.

The lack of adequate court staff and the rocky transition to remote work made it difficult for the Court to hear cases and provide various services to the public, including assistance and guidance for unrepresented litigants. The Family Court website informed litigants that they could call the Court to obtain information, yet because of the shortage of clerks and the lack of proper technology, the public was often unsuccessful in getting through to the Court for help. Additionally, because of understaffing and the attendant need for personnel to assume roles for which they were not adequately trained, the advice provided by the office was at times inconsistent. As a result, litigants and practitioners alike were sometimes required to file the same or similar motions and petitions repeatedly before they were accepted. Litigants also had difficulty obtaining documents previously filed in their cases.

[29]Additionally, there appeared to be virtually no routine, formal communication among the Supreme, Family and Criminal Courts regarding Raise the Age operations and youth. To that end, juvenile justice parties and stakeholders were present at Criminal Court in downtown Manhattan on the night that Hurricane Henri devastated New York City. Despite attempts to communicate with the Criminal Court and to utilize virtual appearances, all were expected to travel to the court.

Early on in the establishment and implementation of remote Family Court, usage of the new technology—first Skype for Business and then Microsoft Teams—was inadequate because, initially, virtual court time had to be rationed and shared by various judges. Even when there were enough courtrooms, only some had the capability to connect with the standard digital recording system ("FTR"). Another issue arose in those cases that required court reporters. Few reporters were available, and their services were therefore rationed. It was also difficult to secure interpreters. These factors made scheduling court time difficult.

(b) Family Court Staff Were Generally Unable to Work From Home

Compounding the lack of adequate staffing was the notable fact that many Family Court clerks and staff were unable to work remotely because they lacked the hardware and/or technology to do so. As a result, going remote while already facing a significant caseload[30] put even more burden on the jurists who were left without sufficient or, in some cases, any support staff. Moreover, we understand that court staff were not required to use their personal phones for work, making the situation more difficult for jurists to access assistance remotely to handle the Family Court's significant caseload crisis.

(c) Technology

Today, more than 85 percent of Americans have access to the internet.[31] And, while significantly fewer low-income individuals have sufficient internet access than those better off economically, that digital divide has been narrowing. The widespread availability and use of the internet has presented the Family Court with an opportunity to examine past, present, and future practices.[32] Unfortunately, at the time COVID-19 struck, the Family Court had, by and large, allowed this opportunity to pass.[33] The cessation of in-person proceedings and closing of the Family Courthouses for a large number of litigants during COVID only magnifies the need to confront the technology issues head on and develop workable solutions and innovations.

(d) Filings

---

[30]*See* New York State Unified Court System 2020 Annual Report, https://www.nycourts.gov/legacypdfs/20-UCS-Annual-Report.pdf.

[31]*See generally* Internet/Broadband Factsheet, Pew Center for Research (Apr. 7, 2021), available at https://www.pewresearch.org/internet/fact-sheet/internet-broadband/.

[32]*See generally* Digital Divide Most Glaring in Low-Income Communities, Government Technology (Sept. 7, 2017), available at https://www.govtech.com/computing/where-the-digital-divide-is-the-worst.html.

[33]Some of this lost opportunity was due to concerns about the need to preserve confidentiality in Family Court proceedings and that a voluntary e-filing system (the only form permitted under current law) would be unworkable. We believe that privacy concerns can be addressed through safeguards in the technology, as they have been in the Supreme Court, and that an e-filing system for those willing to take advantage of it would be a great improvement over current practices.

In contrast to many other courts in New York State, the Family Court had no electronic filing system before the pandemic, and it still has yet to adopt one. The New York State Courts Electronic Filing System (NYSCEF) is the electronic court filing system used in the New York State Unified Court System. Since the introduction in 1999 of electronic filing in the Commercial Division of the Supreme Court in two counties, electronic filing has gradually expanded to most counties in the state and to additional courts. Specifically, electronic filing through NYSCEF is currently authorized in 60 Supreme Courts, 54 Surrogate's Courts, the Court of Claims, and the Appellate Division, and it has also expanded to the high-volume New York City Housing Court.[34] NYSCEF is also administered in matrimonial cases, in which the public is presumptively precluded from accessing legal documents.

Although legislation would be required to make electronic filing mandatory in Family Court, current law authorizes the Chief Administrative judge to introduce electronic filing for those litigants willing to take advantage of it (FCA §214). Among the many benefits of electronic filing is the digital storage of electronic documents that provides litigants, their attorneys, and courts with the significant benefit of instant access to court papers anytime. After the closing of the physical Family Court to the public in March 2020, the method of in-person filing of pleadings was rendered obsolete, but no adequate substitute was ready to be instituted. As of the date of this report, in-person filings are permitted but there is limited capacity in the waiting areas.

The Family Court first adopted a rudimentary system through which filings could be submitted to the Court, but not filed, through a simple email address—NYSCAPPLICATIONS@NYCCOURTS.GOV. Beginning May 4, 2020, OCA initiated a new program to transmit digitized documents to the Family Court via EDDS. EDDS allows users to (1) enter basic information about a matter on a Uniform Court System website portal page, (2) upload one or more PDF documents, and (3) send those documents electronically to a court or clerk selected by the user. Upon receipt of the document(s) by the court, the sender receives an email notification with a unique code that identifies the delivery. However, no further action is taken through EDDS, including issuance of a docket number or a summons. And neither litigants nor attorneys can access any documents through EDDS. This platform is, therefore, a submission portal and not a filing system like NYSCEF.

The Work Group was advised by stakeholders that Family Court was slow to roll out information about how to use EDDS, particularly for pro se litigants. The Family Court website now contains a link on the main page on how to use EDDS along with a user manual, but, as explained above, current guidance is insufficient for unrepresented litigants.

(e) UCMS Access

Further compounding the impact of not having an electronic filing system is that the Family Court has not yet provided litigants and lawyers with UCMS access to the Court files in their own cases. Presently and prior to the pandemic, all records in a case file were received

[34] *See* New York State Unified Court System 2020 Annual Report, https://www.nycourts.gov/legacypdfs/20-UCS-Annual-Report.pdf (last visited on June 8, 2021).

digitally and saved in the Family Court's UCMS by court staff. Judges, Support Magistrates, Court Attorney-Referees and Judicial Hearing Officers review all court records online and enter their case progress notes into UCMS. Petitions and orders are signed electronically by jurists, enabling the presentment agencies and those attorneys with access to UCMS to immediately view and print all signed orders and documents.

All attorneys interviewed for this report, regardless of whom they represented or which types of proceedings they handled, were consistent in their criticism of the fact that many lawyers, including those working for institutional providers, are unable to access court documents through UCMS. Access is therefore completely uneven: some institutional providers have full access, while others have no access or access only to certain types of cases (e.g., custody, visitation, and neglect but not family offense petitions). Further, even within individual institutional providers and the assigned counsel panel, some have access and some do not. Private attorneys have no access to UCMS.

It is a problem of utmost urgency that lawyers are not able to access court files electronically, particularly during a pandemic when most lawyers have been working remotely. One attorney described the lack of access as "practicing law with a blindfold on." It is our belief that no attorney can advise clients adequately without having timely access to copies of all pleadings and orders.

Further, UCMS does not have a docket sheet such as that provided in the NYSCEF system. Therefore, to the extent attorneys have UCMS access, they have to access documents piecemeal and pull documents individually without reference to the full electronic file. This is a material impediment to adequate representation. At some point during the pandemic, the Family Court created an email system where attorneys could request documents. For some, there has been delay in accessing documents in that way, but in any event, this antiquated system unacceptably impedes access to the court system in a way that disproportionately impacts the poor and low-income parties in Family Court who are less likely to have counsel who can request documents for them.

These impediments made the work of lawyers during the pandemic much more burdensome. For example, in an ad hoc effort to deal with the limited applications that would be accepted during the pandemic, a project was initiated in late March 2020 to provide representation to domestic violence victims seeking orders of protection, in which Safe Horizon coordinated with the court-appointed attorney panel (referred to as the "18-b" panel) in New York City. However, many 18-b lawyers were unable to access court files through UCMS. The lack of UCMS access required the already overburdened 18-b lawyers with UCMS access to spend even more time coordinating the staffing of these cases for those 18-b lawyers without UCMS access. The bulk of the orders of protection in Family Court during COVID-19 were filed by various legal services organizations. These organizations also reported difficulty in making these filings without access to Court clerks or UCMS. They often found it challenging to track cases and provide clients with their documents after hearings.[35]

[35]There is no question, however, that litigants benefited greatly from having counsel early in the process, which gave them access to safety planning and legal advice that strengthened their

Family Court should act expediently to provide all lawyers who work in the Family Court with UCMS access, particularly given that the Court does not have an electronic filing system. To the extent that the Family Court has concerns about abuse of the system and safeguarding the privacy of records, those concerns are relevant to every electronic filing system, including matrimonial cases through NYSCEF, and there are straightforward technological solutions to manage those concerns.

(f) Procedures in Remote Proceedings

The Family Court has not yet issued uniform rules governing remote proceedings.[36] In December 2020, several advocate organizations and ACS, with input from the Safety, Family Engagement & Court Practice Committee and the Family Court's all borough Child Protective Advisory Committee, presented a detailed virtual hearing protocol to Administrative Judge Jeanette Ruiz for the Court's consideration. We understand that, as of the date of this report, the Court has not substantively responded to the draft protocol nor developed its own protocol.

Feedback from the Court has been that while it might at some future date consider best practice guidelines for remote proceedings, a virtual hearing protocol would infringe on judicial independence. We respectfully disagree. Indeed, uniform procedural rules would instill confidence in the system, increase the likelihood that all litigants are treated fairly and respectfully, and ensure that litigants and their attorneys know what to expect and are better prepared for Court.

Senior Court administrators have advised us that they will embrace remote proceedings going forward. This decision, which we support, highlights the importance of establishing uniform rules for remote proceedings.

In addition, we believe remote proceedings should allow the Family Court to move quickly and efficiently away from the dehumanizing "cattle calls" that traditionally have plagued the Family Court.[37] And, in this regard, it bears emphasis that other courts have been able to conduct remote proceedings effectively, including those in matrimonial cases, which raise many

---

petitions. This is particularly true given that in family offense petitions pro se litigants are expected to plead specific elements of a crime.

[36]The Family Court issued a general one-page document that provided little practical guidance for pro se litigants and attorneys. *See* https://www.nycourts.gov/LegacyPDFS/COURTS/nyc/family/Guide-to-Virtual-Appearances.pdf.

[37]Report from the Special Adviser on Equal Justice in the New York State Courts (Oct. 1, 2020) at p. 3 ("Over and over, we heard about the 'dehumanizing' and 'demeaning cattle-call culture' in" the Family Court. "At the same time, the overwhelming majority of the civil or criminal litigants in the Housing, Family, Civil and Criminal courts in New York City are people of color. The sad picture that emerges is, in effect, a second-class system of justice for people of color in New York State. This is not new."), available at http://www.nycourts.gov/whatsnew/pdf/SpecialAdviserEqualJusticeReport.pdf.

of the same issues relating to privacy and confidentiality as do Family Court cases. The same result should be achievable in the Family Court.

Finally, we believe that a flexible approach in administering remote proceedings is critically important. For example, one litigant informed us that he spent months seeking to get his child support termination case heard by phone because he had no way to access a video proceeding. This seems like a sensible way to process cases for litigants who may not have video access and particularly where, as in this case, the issues in the court proceeding were uncontroverted and straightforward. Accordingly, the Family Court uniformly should conduct proceedings by phone where appropriate.[38] Indeed, the Court informed us that most unrepresented litigants now appear by telephone and are able to introduce evidence by email. The Microsoft Teams link that is currently sent to litigants includes a phone number to dial into proceedings.

VIII. PRO SE CHALLENGES

Under the best of circumstances, pro se parties in Family Court need significant help navigating the complex and intimidating maze of rules, regulations, statutes and case law governing access to the Family Court and disposition of each proceeding. When the pandemic hit New York City, these litigants suffered disproportionately when it came to their Family Court cases.

Pre-COVID, the Help Center, or pro se petition room, was the Family Court's lifeblood for unrepresented litigants. The Help Center seeks to provide individuals with the highest quality service in order to fulfill the public's right to fair and efficient justice. Although Court staff do not provide legal advice, they historically have provided various types of assistance to court users, including help filing petitions, motions, and other court documents. After the physical closure of the Family Court beginning in March 2020, unrepresented litigants were prevented from accessing the Help Center. That was a devastating blow to a large number of unrepresented litigants who have little or no legal sophistication and have difficulty filing papers without assistance. Throughout the pandemic the Family Court assigned staff to answer phones and emails from litigants about their cases, but we were universally told of the difficulty many unrepresented litigants had in getting through to the Court. As of the date of this report, the Family Court has resumed Help Center operations but only at reduced capacity.

As mentioned above in the context of orders of protection, the Family Court has relied heavily on already overburdened nonprofit organizations and 18-b panel members in each borough to provide assistance to unrepresented litigants. As heroic as these organizations have been during the pandemic, the absence of the Help Center as it existed pre-COVID continues to negatively impact unrepresented litigants.

On the positive side, OCA has facilitated the creation of Public Access Terminal Court Hubs housed in Family Justice Centers, which offer remote access to Family Court and were

[38]Telephonic appearances in child support cases were not unusual pre-COVID. The difference is that typically only one party appeared by phone (because, for example, they lived in another state) while the others, including their attorneys, appeared in person.

often staffed by Safe Horizon employees. Unrepresented litigants can seek to file petitions for orders of protection and obtain general information about Family Court cases during the limited windows when these hubs are open—most often for not more than two days per week and a few hours each day.[39] According to the Court, work is in progress to establish additional hubs in other locations. In addition, in each county, isolated space containing a court computer and staffed by a court clerk has been set aside to permit litigants who do not possess the requisite technology to attend their court appearances.

As discussed above, one of the greatest challenges pro se litigants experienced during the pandemic was the inability to get information about their cases. When finally calendaring cases after the long delays described above, the Family Court reached out by mail and often did not have current email or phone information, thus making it difficult or impossible for pro se litigants to receive notice of their scheduled virtual court proceedings. For the same reasons, the Court was often unable to reach litigants who failed to appear for scheduled hearings. For those pro se litigants who were able to submit nonemergency cases through EDDS, there have been delays of up to one year between the time a petition was submitted on EDDS and when the Family Court deemed that petition to be filed and a summons issued.[40] During that time, litigants received no information about the status of their submissions and had no access to the court system.

Even when a litigant was finally able to get a hearing, there was no meaningful way for that individual to obtain technical support to log into the remote courtroom or to receive assistance in uploading documents for the hearing. As a result of these technical difficulties and trouble getting through to the Court for assistance, practitioners report an increasing number of motions to recalendar cases. These issues have resulted in the denial of access to justice for innumerable pro se litigants in Family Court.

IX. HOW THE COURT IS DEALING WITH THE BACKLOG

We requested from OCA, but did not receive, detailed information on the backlog of filings in the New York City Family Court—including those cases that have been filed but not disposed of and those cases that have been submitted through EDDS but not yet filed. Therefore, we have not been able to quantify the actual number of backlogged cases. In June 2021, the Court explained in an email response to our inquiry that it was "difficult to quantify 'backlogged' cases." They continued, "the term 'backlogged' does not have a generally accepted definition. As you know, in Family Court normal proceedings in some cases can continue for

[39]In July 2021, Legal Information for Families Today (LIFT) piloted a remote technology site in its downtown Brooklyn office where pro se litigants can come to participate in their virtual hearings and trials in Family Court, download Court documents and upload them to the Court electronic delivery system, and receive remote assistance from LIFT's staff.

[40]For child support cases in particular, the date of filing is substantively important, as any support ordered or modified is retroactive to the date of filing.

several months. What we can offer in response to this question is the number of unfiled cases—11,120—plus the approximately 10,000 anticipated new child support filings."

At the time of this report, practitioners consistently report that delays in Family Court are considerably longer now than they were pre-COVID, which may be the best indication that the backlog of cases continues to present a real problem for litigants. Our interviews have indicated that the backlog includes cases that were filed pre-March 2020 that have been delayed, cases filed during the pandemic that are moving at different speeds, and a large number of "dangler" cases—those cases that have been submitted through EDDS or by mail but have not yet been deemed filed. Indeed, it has been a source of confusion among litigants that a submission could be something separate from a filing. Some practitioners informed us of documents getting lost or not being properly filed. As of the date of this report, it appears that the remaining dangler cases have been calendared.[41]

To address this backlog, in or about January 2021, OCA recruited approximately 100 volunteer Supreme Court Justices, many of whom are from matrimonial or criminal parts, to hear custody and visitation cases in all five boroughs in matters where there is no prior history between the parties. The Supreme Court justice is provided a Family Court link and is reliant entirely on Family Court resources and personnel. These justices went through a training program that included the administrative process, signing vouchers and other matters.

So far, the Supreme Court Justices have primarily been conferencing cases. Judge Ruiz reported to us that approximately 600 cases had been referred to Supreme Court justices in April and May 2021 and that the disposition rate was greater than 50%, with many cases resolved by referrals to court-based alternative dispute resolution programs. Judge Ruiz was optimistic that the Supreme Court project would expand and that more cases would be referred under the project. As of the date of this report, to our knowledge, this project has not expanded.

We appreciate that these case referrals have been made; however, to date, these judges have disposed of a relatively small number of cases, mostly through the settlement of cases already ripe for settlement and dismissal for failure to appear. Moreover, it is our understanding that the Supreme Court justices are only handling Family Court matters one day per week and are using Family Court clerks and other resources (as opposed to using Supreme Court resources), thereby taxing the already under-resourced Family Court. In short, although a good step, this small initiative has not adequately addressed the current backlog of cases.

Compounding the shortage of resources appears to be the resistance among some Supreme Court justices to be associated with the Family Court because of a perceived lack of

[41] According to practitioners, a factor contributing to the current delay in Family Court proceedings is the lack of a sufficient number of 18-b lawyers as a result of resignations during the pandemic. In the absence of available appointed counsel, a growing number of cases have had to be adjourned. The resignations should not come as a surprise given the added burdens of the pandemic combined with the fact that 18-b lawyers have not received a pay increase in 17 years.

prestige.[42] This reflects deeper issues regarding the perception, even among jurists, of the Family Court as a less important component of the state's system of justice. The same is reflected in the legislature's recent measure to add Supreme Court seats in 11 judicial districts, but not a single New York City Family Court judgeship. This resulted in a statement from the court system's spokesperson acknowledging that "additional Family Court Judges would have been more helpful as Family Court is facing greater challenges than any other court and could use the resources."[43]

Finally, we must note that on January 7, 2022, just days before this report was issued, OCA took steps which could significantly exacerbate the central concerns we address here. It announced the transfer of six Civil Court Judges, who had been assigned to Family Court, out of Family Court, to be replaced by one, or perhaps, two judges. It has not, however, yet determined how the transferred judges' caseloads will be absorbed. Four of those Civil Court Judges had been sitting in Bronx Family Court, where it is our understanding they were the only jurists assigned to hear custody, visitation and family offense matters; the other two had been sitting in Brooklyn, where they too had been hearing such cases.[44] It is our understanding that as a result, nearly 4,500 cases will have to be transferred to other sitting jurists who, as we have detailed, preside over dockets that are already overwhelming.

No rationale for these transfers has been shared with the public.[45] We are particularly troubled that this action is being undertaken notwithstanding OCA's previous acknowledgment of the need to ameliorate the impact of such transfers, which were thoroughly highlighted in our prior report.[46]

---

[42] Tarinelli, Ryan, "Power Struggle Continues Over Return of Older NY Judges as System Announces Assignment Plan." *New York Law Journal*, May 21, 2021, https://www.law.com/newyorklawjournal/2021/05/21/power-struggle-continues-over-return-of-older-ny-judges-as-system-announces-assignment-plan/.

[43]Tarinelli, Ryan, "State Lawmakers Vote to Add More Judicial Seats as Session Ends." *New York Law Journal*, June 21, 2021, https://www.law.com/newyorklawjournal/2021/06/11/state-lawmakers-add-more-judicial-seats-as-sessionends/?kw=State%20Lawmakers%20Add%20More%20Judicial%20Seats%20as%20Session%20Ends.

[44]Memorandum from Family Court Administrative Judge Anne-Marie Jolly, dated January 7, 2022. We understand that one newly elected Civil Court Judge will be assigned to New York County Family Court and that a newly appointed Family Court Judge may be assigned to Family Courts.

[45]We have requested additional information from the Court concerning these transfers but did not receive anything in time to include here.

[46]The Family Court Judicial Appointment and Assignment Process (December 15, 2020), available at https://www.nycbar.org/member-and-career-services/committees/reports-listing/reports/detail/the-family-court-judicial-appointment-and-assignment-process.

The work group is profoundly concerned with the significant disruption and delay these transfers will likely cause for the poor and low-income families of color who are before the Family Court, who are already the most profoundly and detrimentally impacted by the pandemic, and whose cases have already been subject to long delays.

X. CONSEQUENCES IN PARTICULAR CASES

As described earlier in this report, the tremendous backlog of cases in the Family Court is made up primarily of custody, visitation, guardianship, adoption, and child support cases. The Family Court also continues to suffer from a severe shortage of court personnel. Scores of would-be litigants have been cut off from the Family Court without access to a court-appointed lawyer. Moreover, the Family Court Help Center is now operating at only limited capacity, further hobbling pro se litigants' ability to proceed on their own.

Child Support: During a meeting with several Family Court judges early in the pandemic, one agency was told child support would never be considered an emergency. Later, practitioners reported that in response to zealous and creative advocacy, the Court heard a small handful of child support cases that were deemed to be "emergency" cases. However, the vast majority of child support cases filed before and during the pandemic were stayed for an extended period of time.

Some lawyers invoked the provision in Article 8 that provides for an award of child support in connection with an order of protection only to find that many jurists were reluctant to make such awards.

Without child or spousal support for months on end, many families have experienced greater food and housing insecurity and dependence on public assistance. Practitioners also reported that some victims of domestic violence felt compelled to remain in abusive or unsafe homes due to the lack of child support for their families. Financial support is a critical factor in enabling victims to leave their abusers: A victim is more likely to stay with or return to an abuser if they are unable to meet their and their children's basic needs. Indeed, financial dependence is one of the most powerful methods of keeping a victim of intimate partner violence trapped in an abusive relationship, and it deeply diminishes the victim's ability to stay safe after leaving an abusive partner. Moreover, limiting access to the Family Court increases the chance that a child will reside in an abusive home, which can have devastating long-term effects. In short, for many litigants, support denied over an extended period of time is anything but nonessential.[47]

Child Custody: For families litigating child custody matters, the months of inaction have prevented parents from seeing children for extended periods of time. This separation is excruciating for parents and children alike. Determining custody and visitation is not a

[47] According to a recent report published by Her Justice, which examines New York City Child support proceedings in detail and provides a host of original data, "the child support system plays a critical role in determining economic justice for single mothers and children living in poverty." https://herjustice.org/childsupportpolicyreport/.

dispassionate legal matter for families seeking help from the Family Court—it is often their last recourse when they are being denied access to their children or believe their children are being mistreated by the other caregiver. In addition to the personal burden, lost time with children may affect the Court's ultimate decision in a given case, which is likely to be influenced to some degree by the status quo. Moreover, lack of access to the Court during the pandemic put some litigants in the impossible position of having to choose between following a prior court order or making a sound public health decision.

Thus, characterizing virtually all custody and visitation proceedings as nonemergency matters, causing them to be sidelined for so long, continues to take a grave human toll.

Termination of Parental Rights and Adoptions: Another so-called nonemergency category involves adoption proceedings, which were stayed during the pandemic and have only begun to be calendared with any frequency since the spring of 2021. This standstill and resulting backlog have undermined the health and safety of children who are being deprived of a final, timely decision on their adoption. It is also important to note that pre-adoptive parents have no parental rights, so the lack of access to the Family Court gravely affected them as well.

One practitioner described a case that was scheduled for a dispositional hearing in a termination of parental rights proceeding in March of 2020 for a seven-year-old who had spent most of their life in foster care as a result of their mother's mental illness. The matter was delayed an entire year. Because of the failure of the Court to proceed, the child was subjected to numerous virtual visits in which their mother cursed at them, instructed them on what to say to their attorney and repeatedly hung up on them during phone conversations. In May 2021, two days after a virtual visit where the mother threatened the child, the child was psychiatrically hospitalized with suicidal ideation. In addition, despite struggling in school, the child's mother repeatedly refused to sign requests for a special education evaluation, subjecting the child to an entire year of "virtual school" in an inappropriate educational setting.

The overall effect of this extended lack of access goes beyond the thousands of individuals denied their day in court; it now threatens institutional damage to the Family Court itself. Without the ability to proceed in court, some have engaged in self-help or were on the other side of such an effort and now may be even more reluctant to follow the law or have their disputes decided by a judge as the doors finally reopen. Practitioners have told us that many people are losing respect for an institution that became unavailable to them during a time when its help was most needed.

XI. LACK OF ACCESS TO FAMILY COURT NEGATIVELY AFFECTS REAL LIVES

The effect of the Family Court's closure to a significant number of litigants involving many categories of proceedings has had a profoundly negative impact on New York City's families, as demonstrated by the client stories below:

1. Kings County, New York

A. O. is facing the potential termination of her parental rights to her seven-year-old daughter, Amora. The termination of parental rights proceeding in her case began prior to the

pandemic, with the agency's submission of case records making up its direct case. The continued trial was initially adjourned as the result of the pandemic and then proceeded virtually over Ms. O.'s objection. Ms. O.'s main witness is her grandmother, Maria G., who does not have reliable internet or a computer or tablet in her home. Ms. O's counsel arranged for Ms. G. to come to her office to participate in the proceeding. However, once Ms. G. arrived, they discovered that the Wi-Fi at counsel's office was not working, forcing Ms. O's attorney to participate in the trial via her phone. On a subsequent court date, Ms. G. arranged to return to counsel's office but had to cancel when another grandchild's school closed because of COVID. As a result, Ms. G. had to continue her testimony from her home on her personal phone, using her cellular connection. The judge frequently interrupted her testimony to admonish Ms. G. for her inability to hold the phone steady, her bad lighting, and the fact that the judge was having difficulty hearing her—none of which was within Ms. G.'s control. Counsel for Ms. O. attempted to make a record regarding the multiple technological issues that had occurred throughout the course of the proceeding; however, the judge became upset and attempted to prevent her from doing so.

2. Bronx County, New York

A.C. is the father of a two-and-a-half-year-old son. For the two years following the birth of his son, the child resided with A.C. and the mother had little involvement in his life. Things changed dramatically when A.C.'s mother refused to return the child to A.C. after a visit. Shortly thereafter, A.C. was arrested and a criminal order of protection was entered against him that prevented him from contacting his son, subject to modification by a subsequent order of visitation from the Family Court. A.C. was unable to access the Family Court to obtain a temporary visitation order because the Family Court did not recognize this as an emergency matter. He was not able to file a petition until eight months later, when he obtained pro bono counsel. With counsel, A.C. was able to obtain a shared custody order. A.C. established that the denial of visitation was detrimental to his son and restarted his relationship with him. Eight months in the life of a two-year-old constitutes many developmental milestones that the child experienced without his father.

3. Bronx County, New York

J.A. has three children, one of whom has significant special needs. She has spent at least seven years in Family Court seeking to enforce significant child support arrears. She submitted her most recent petition on October 27, 2020. The Family Court did not calendar the case until late July 2021, and the willfulness hearing was not concluded until September 23, 2021, just a little less than one year after submission. As a result, J.A. has fallen into debt, endured a housing eviction case, and has been unable to provide adequately for the basic needs of her children.

4. Kings County, New York

During her marriage, a client was strangled, head-butted, kicked, slapped, and pushed by her husband. Many incidents occurred while the client was pregnant. She is an immigrant and her husband threatened to call immigration to have her deported if she left him and to leave her on the street with their two young children and with no support. The client knew the Court was not accepting child support cases and feared that she would not be able to quickly get child

support during the pandemic. Thus, she stayed in an abusive, unsafe situation. She tried twice to separate from her husband during the pandemic, but he convinced her to reconcile, repeatedly telling her that she could not support the children without him. After finding counsel months later, she filed for an order of protection in Family Court. In addition to asking that the Court order the husband to stay away from her, the attorney also requested, and received, a temporary child support order based on the children's needs under Article 8. Because of her order of protection and the support award, the client felt both physically and financially safe to separate from her abuser.

5. Kings County, New York

On May 22, 2020, ACS filed a petition alleging that Mr. J. neglected his one-year-old son and his son's two half siblings. The petition alleged that Mr. J. knew or should have known of the mother's mental illness and did not arrange emergency treatment for her. The Kings County Family Court removed the children, placing one of them with her nonrespondent father and the other two, including Mr. J.'s son, in non-kinship foster care. On June 9, 2020, Mr. J. requested the return of his son to his care, or in the alternative, an immediate hearing pursuant to Family Court Act ("FCA") section 1028. All the parties except the children's mother submitted papers stipulating to certain facts. The attorney for the child supported his release to Mr. J. Over Mr. J.'s objection, the Court granted the children's mother an extension until June 26, 2020, to submit papers. Despite numerous requests by Mr. J.'s counsel that the Court schedule an immediate hearing, the Court took no action until July 8, 2020, at which time it issued a decision denying Mr. J.'s 1028 application for the return of the children without a hearing "in light of the Covid-19 response." Mr. J. appealed the order and filed an emergency motion seeking remittal to the Family Court for an immediate hearing. On July 17, 2020, the Appellate Division Second Department granted the motion and remanded the case for an immediate 1028 hearing. The Family Court began the hearing on July 23, then adjourned to August 3 because the judge was on vacation. On August 3, the Court heard one hour of testimony and then adjourned the hearing over Mr. J.'s objection to August 13. On August 6, 2020, Mr. J. filed a second emergency motion in the Second Department seeking to expedite the hearing. The Second Department issued an interim order directing the Family Court to continue the 1028 hearing expeditiously and without adjournment as required by the Family Court Act. The court continued the hearing on August 11, 12, and 13, and issued a decision on August 17 granting his application and releasing his son to his care—more than five weeks after Mr. J. requested his son's return pursuant to FCA section 1028.

6. New York County, New York

In January 2020, C.C. commenced a violation of support petition on behalf of her 14-year-old son who had been placed on administrative leave from his therapeutic boarding school due to his father's failure to pay his tuition pursuant to a court order. The Support Magistrate issued an undertaking for the next tuition payment that was due March 1, 2020. Respondent failed to pay but was granted an extension until April 1, 2020. The pandemic hit in March, and the courts were closed. The son's school closed March 17, 2020. As the date to reopen was rapidly approaching, the school increased their efforts to collect the tuition and the mother ramped up her efforts to get help from the Court. She was repeatedly told by her lawyers and the attorney for her daughter in a concurrent custody matter that the Court would only hear

emergency cases. The May 15th reopening of school date came and went, and her son was not allowed back to school. Having been removed from his educational and support network, his mental health deteriorated rapidly and his behavior grew more erratic and he became aggressive and socially withdrawn. C.C.'s attempts to file violation petitions and motions were met with silence. She did not hear from the Court regarding the support violation until October 2020, by which point it was too late to reenroll her son in his therapeutic boarding school.

7. New York County, New York

A.B., a father, submitted a petition through EDDS in August 2020 to terminate his support obligation because his son was living with him. He received no response. In January 2021, he brought an Order to Show Cause because his license was being threatened for failure to pay child support. A.B. received his first appearance by telephone on March 10th. EDDS was very difficult for him to navigate, and he did not find useful information on the Court's website. He had no idea what an Order to Show Cause was before speaking with a volunteer attorney, and up until that point, he had found the experience to be "horrible." He felt the Support Magistrate refused to let him speak and treated him "like a child." Even for such a simple request, it took almost a year to get relief and only after coming close to having his license suspended.

XII. RECOMMENDATIONS

The main takeaway from this report should be the urgent need to modernize the Family Court and bring it up to at least the level of the state's trial court of general jurisdiction, the Supreme Court. The lack of electronic filing was crippling during the pandemic but even in normal times, it is still unacceptable for litigants not to have immediate access to documents and court orders. During the pandemic, the lack of effective remote access to court proceedings, including access to a Help Center and an effective website, meant that many litigants were shut out of Court, facing lengthy delays without knowing the status of court operations. But this lack of technology, adequate staffing and uniform rules were all problems that existed for decades prior to the COVID-19 pandemic.

The emergence, however uneven, of remote technology and a growing recognition that the Family Court is under-resourced and that its in-person service model does not fit today's world should be a source of hope. The Court is now in a position, as it continues to recover from the pandemic, to address long-standing and deep-seated institutional challenges. The recommendations that follow are meant to address these challenges and should be embraced with urgency for two main reasons. First, the current backlog of cases requires immediate attention or else the aftereffects of the shutdown could be felt for years to come. Second, recent events have underscored the acute need to advance racial and social equity in our court system, a need underscored by the findings in Secretary Johnson's report. The Family Court, in particular, is truly a "People's Court," primarily serving unrepresented litigants, lower-income families and communities of color. Accordingly, these recommendations will not simply make the system more efficient but are essential for equal access to justice.

It should be further noted what these recommendations do not address. We recognize that many challenges in Family Court are the byproduct of New York's antiquated system of 11 separate trial courts and an overall lack of resources, including, among other things, an

insufficient number of judges. Accordingly, the Work Group urges legislative and executive action to address the underlying inequities in the court system. The Fund for Modern Courts is spearheading a coalition of organizations in support of the Chief Judge's proposal to simplify the courts through an amendment to the New York State Constitution.[48] The recommendations that follow, however, are intended to identify specific actions the Court can take immediately on its own to advance the rule of law for all families and children.

We recommend:

1) The Family Court should create a **uniform system of filing, processing and tracking cases**. In the absence of such a system, litigants are often left in the dark about their cases and often have to submit papers in person. Even represented litigants have been disadvantaged to the extent their counsel are among the many who do not have access to UCMS. The Family Court should adopt NYSCEF, which is used effectively in the Supreme Court and other trial courts across the state. Although e-filing would be on a voluntary basis in Family Court (which is the fullest extent that current law allows), it would be a dramatic improvement over the antiquated and inadequate system in place now. Moreover, until such a modern system is in place, the Court should grant UCMS access to ALL attorneys in Family Court, even to the extent the legal service they are providing is limited in scope. To the extent practicable and safe, sufficient Court staff should be made available in person and remotely to help unrepresented litigants file documents.

2) The Family Court should provide the public with **regular statistical reporting**, by court Term (13 of them in one calendar year), on all Family Court proceedings, including, among other things, case totals, filings, dispositions, and some approximation of current delays. Greater transparency and accountability will better serve the public by informing it of the Family Court's current operations and what to expect as a litigant and providing a critical foundation for informed, targeted, and meaningful reform.

3) The Family Court needs an **effective, user-friendly website** (including mobile website) that comprehensively informs the public of current court operations and provides guidance to unrepresented litigants. The website should be in multiple languages, be kept up to date, and should include forms with easy-to-comprehend instructional guides.

4) Given that remote proceedings are likely here to stay, the Family Court should **enable litigants without access to adequate technology to participate in remote proceedings** by providing access to the appropriate technology. In addition, the Court should provide accommodations for litigants without reliable space or privacy to remotely access their attorneys and the Court. We appreciate that OCA facilitated the creation of Public Access Terminal Court Hubs in Family Justice Centers and have made computer terminals available to unrepresented litigants inside courthouses. We strongly encourage the expansion of these efforts. This will require greater coordination with nonprofit organizations, including the Court's acceptance of donations of technology to be implemented in a fashion consistent with ethics rules and cybersecurity. Specially trained Court staff should be available to help litigants resolve technical

[48] https://simplifynycourts.org/; https://www.law.com/newyorklawjournal/2019/03/01/ny-lawmakers-see-court-reform-assigned-counsel-rate-hike-with-favor/.

issues, and litigants should be given the option to appear by telephone in all videoconference proceedings.

5) The Family Court should adopt a **communications strategy** to ensure litigants and attorneys are kept up to date on the status of their cases as well as the status of Court operations generally. This would be accomplished through the Court website, a staffed telephone line, as well as text messaging or other forms of direct communication. The New York City Family Court Administration currently conducts meetings with certain institutional providers, attorneys, and other "stakeholders" in order to involve them in policy discussions and pass along information of Court improvements and procedures. In order to communicate more effectively with the broader public, these meetings should include a wider range of stakeholders and the substance of the meetings should be made available to the public. In the same vein, the Court should develop additional avenues of communication to reach unrepresented litigants. All public communications should be available in multiple languages, not merely English and Spanish.

6) The Family Court should provide **greatly enhanced training** for jurists in case management strategies and techniques in order to better serve the public, smoothly process cases, and address the backlog.

7) The Family Court should **assess its needs with respect to remote proceedings** to ensure that it purchases and utilizes up-to-date technology best suited for courtroom protocols. The Court must then implement and provide competent and coherent training in the use of this technology to its jurists and non-judicial staff and provide comprehensive IT backup and support staff.

8) To address the current backlog of cases and alleviate substantial delay, judges, staff and other resources should be moved from other trial courts as necessary and appropriate. Such **transfer of resources** must be implemented within a coherent and efficient framework. (See this Work Group's prior report, which provides background and includes recommendations concerning the temporary assignment of judges to the Family Court from other courts).[49]

9) Especially with the advent of virtual proceedings and other innovations, the Family Court should **enact uniform procedural rules**. For example, the rules should specify the methods by which litigants introduce various forms of evidence in virtual and in-person proceedings. In addition, the rules should clarify when virtual proceedings are available, including broad acceptance of proceedings entirely by phone, so that there is greater consistency. As the Family Court continues to recover from the pandemic, the Court administration should engage with

[49]The Work Group's earlier report details how the Family Court—which does not have a sufficient number of judges—relies by necessity on the assignment of "acting" judges on temporary leave from other courts. Our recommendations (published before the pandemic in December 2020) were intended to mitigate the delay and disruption resulting from judicial vacancies and transfers. *See* The Family Court Judicial Appointment and Assignment Process (December 15, 2020), available at https://www.nycbar.org/member-and-career-services/committees/reports-listing/reports/detail/the-family-court-judicial-appointment-and-assignment-process.

stakeholders and experts on a plan for the complete reopening of the Family Court along with any necessary safety protocols.

Work Group members, and those we interviewed, are acutely aware that the COVID-19 pandemic has presented remarkable challenges for all organizations serving New Yorkers and that the transition to remote work and the resulting embrace of technology have been unprecedented in scope. The new way forward offers the opportunity to improve our court system for the most vulnerable in society by applying what we have learned during this crisis. We are eager to work closely with the Family Court to ensure that we leverage this moment to reimagine how the Court can better ensure equal access to justice for all New Yorkers.

XIII. ACKNOWLEDGMENTS

The Work Group wishes to thank the Chief Administrative Judge of the Courts of New York State, the Hon. Lawrence K. Marks, for his commitment to OCA's cooperation with this effort, and former Deputy Chief Administrative Judge of the New York City Courts, the Hon. George J. Silver, and former Administrative Judge of the New York City Family Court, the Hon. Jeanette Ruiz, for meeting and sharing information with us. The Work Group offers its profound appreciation to all the advocates, practitioners, and litigants who generously shared their frontline and institutional experience and insights. In particular, we wish to acknowledge significant contributions to the Report from Her Justice, The Children's Law Center, JCCA, Legal Information for Families Today (LIFT), New York Legal Assistance Group (NYLAG), Sanctuary for Families, and Safe Horizon. The Work Group also wishes to acknowledge the Hon. Daniel Turbow and Glenn Metsch-Ampel, co-chairs of the first phase of this group's efforts who, along with the Hon. Sidney Gribetz, worked closely with the current co-chairs in the preparation of this report. The Work Group benefited enormously from the invaluable substantive input and keen editing of Krusheeta Patel, John Prusakowski, and Lucy Wolf, Associates at Proskauer, Zachary Hennessee, Associate at Orrick, and Hanan Nouira, Fordham University School of Law LL.M. '21.

January 2022

The New York City Family Court COVID Work Group

Rene Kathawala, Pro Bono Counsel at Orrick and Work Group Co-Chair (rkathawala@orrick.com)

William C. Silverman, Partner and Head of Pro Bono at Proskauer, Work Group Co-Chair, and Chair of the Fund for Modern Courts (wsilverman@proskauer.com)

Members of the Work Group (affiliations for identification purposes only)

Sara Doody, The Legal Aid Society

Louise Feld, The Children's Law Center

Hon. Sidney Gribetz (Ret.)

Dennis Hawkins, The Fund for Modern Courts

Sara Hitzik, Segal & Geenberg LLP

Celeste Koeleveld, Clifford Chance LLP

Denise Kronstadt, The Fund for Modern Courts

Susan Lindenauer, Former General Counsel of the Legal Aid Society

Glenn Metsch-Ampel, Lawyers for Children

Dawne Mitchell, The Legal Aid Society

Fredda Monn, NYC Administration for Children's Services

Michael Porcelain, Comtech Telecommunications Corp.

Laura Russell, The Legal Aid Society

Heather Saslovsky, The Legal Aid Society

Lauren Shapiro, Brooklyn Defender Services

Karen Simmons, The Children's Law Center

Kim Susser, Law Office of Kim Susser

Peggy Tarvin, Lawyers for Children

Hon. Daniel Turbow (Ret.)

Hon. Ruth Jane Zuckerman (Ret.)

Endorsing City Bar Committees

Council on Children, Dawne Mitchell, Chair

Children and the Law Committee, Melissa J. Friedman and Rachel Stanton, Co-Chairs

Mental Health Law Committee, Karen P. Simmons, Chair

Pro Bono & Legal Services Committee, Nicole Fidler and Jessica M. Klein, Co-Chair

Previously Issued City Bar Reports of Note/Relevance

July 20, 2021, Letter from Council on Children (Dawne A. Mitchell, Chair) and Family Court and Family Law Committee (Michelle Burrell, Chair) to Judge Ruiz Regarding Equitable Access

to Justice in the NYC Family Courts, https://www.nycbar.org/member-and-career-services/committees/reports-listing/reports/detail/letter-to-judge-ruiz.

June 15, 2021, Letter from Working Group on Racial Equity in New York State Courts (Vidya Pappachan, Chair) to the Franklin H. Williams Judicial Commission Regarding their May 19, 2021, Meeting with New York City Family Court Stakeholders, https://www.nycbar.org/member-and-career-services/committees/reports-listing/reports/detail/racial-equity-in-courts-williams-commission-meeting.

June 12, 2021, Letter from Council on Children, Children and the Law Committee (Melissa J. Friedman, Chair) and Family Court and Family Law Committee to Court Officials Requesting COVID-19 Point Person for New York City Family Court, https://www.nycbar.org/member-and-career-services/committees/reports-listing/reports/detail/covid-19-point-person-for-new-york-city-family-court.

April 9, 2021, Report from Domestic Violence Committee (Amanda M. Beltz, Chair): Recommendations for New York City Virtual Family Court Proceedings, With Particular Focus on Matters Involving Litigants Who Are Survivors of Abuse, https://www.nycbar.org/member-and-career-services/committees/reports-listing/reports/detail/comments-on-virtual-trial-rules-domestic-violence-cases.

December 15, 2020, Report from Multi-Committee Working Group on The Family Court Judicial Appointment and Assignment Process (Glenn Metsch-Ampel and Hon. Daniel Turbow (ret.), Co-Chairs), https://www.nycbar.org/member-and-career-services/committees/reports-listing/reports/detail/the-family-court-judicial-appointment-and-assignment-process.

WORKING GROUP ON RACIAL EQUITY IN NEW YORK STATE COURTS

VIDYA PAPPACHAN
CHAIR
vidya.pappchan@gmail.com

June 15, 2021

By Email

Honorable Shirley Troutman, Co-Chair
Honorable Troy K. Webber, Co-Chair
Mary Lynn Nicolas-Brewster, Esq., Executive Director
Franklin H. Williams Judicial Commission
25 Beaver Street – Room 861
New York, New York 10004

Re: May 19, 2021 Williams Commission Meeting with New York City Family Court Stakeholders

Dear Justice Troutman, Justice Webber and Ms. Nicolas-Brewster:

We write on behalf of the New York City Bar Association Working Group on Racial Equity in New York State Courts, which is comprised of a diverse group of thirty-four (34) City Bar members who work and participate meaningfully in the New York State Court system, primarily in New York City, including judges, other court personnel, attorneys and advocates at legal services organizations, and members of the private bar.[1] Many of our members work in the New York City Family Court on a daily basis. The formation of this working group is a direct follow up to Secretary Jeh Johnson's Equal Justice in the State Courts report, which was published on

[1] The attached list of the Working Group's members indicates the various City Bar committees represented on the Working Group, demonstrating the diverse range of practice areas, extensive knowledge and particularized context of the relevant issues. This letter was reviewed and approved by the Working Group and by the City Bar's Council on Children (Dawne Mitchell, Chair), Family Court and Family Law Committee (Michelle Burrell, Chair), and Pro Bono and Legal Services Committee (Jennifer K. Brown and Nicole L. Fidler, Co-Chairs).

October 1, 2020,[2] and the Council on Judicial Administration's letter providing input and recommendations, dated September 1, 2020.[3] Our Working Group started its work in early 2021 and we had the pleasure to meet recently with the Williams Commission on May 5, 2021. Pursuant to your invitation, many of our members attended the Williams Commission meeting with New York City Family Court stakeholders on May 19, 2021. In response to the May 19, 2021 meeting, we provide the Williams Commission with our feedback and comments as detailed herein.

We note initially that we believe the May 19, 2021 meeting was extremely productive and a thoughtful approach to addressing the issue of systemic racism in a meaningful manner by hearing from the advocates who spend so much time in the Family Court on a daily basis. We believe the speakers accurately represented the reality of the Family Court, which we know from first-hand experience is all too often a toxic and broken culture for litigants and their counsel. In this regard, we observe that, while there may be short-term, medium-term and long-term solutions, there are no quick solutions. A deeply problematic and racist culture that has existed for decades in the Family Court cannot be fixed quickly. That said, we are delighted to know that the Williams Commission and others within the management of the Office of Court Administration ("OCA") recognize the hard work that is required on this long journey to reform the culture. We offer our support to your efforts and each of our members is willing to contribute meaningfully to the mission of the Williams Commission to eradicate racism and to create a fair, just and dignified court process for all.

Given the nature of our Working Group, and the diverse interests of our members, we limit our recommendations to the following, but support the full panoply of views that were shared with the Williams Commission on May 19, 2021. We sincerely hope that we can work collaboratively to have each of these recommendations implemented and recognize the difficulty of this work.

Our recommendations are as follows:

1. **OCA and jurists must confront and eliminate the dehumanizing culture that exists in the Family Court**.

First and foremost, jurists need to set the right example. Among many things, they should act professionally and with a proper judicial temperament, including calling litigants by their names; always refraining from yelling or shouting; and respecting all legal positions, even those with which the jurist disagrees.

As an example, one of our members recounted this experience with a trial in front of a jurist in Bronx County Family Court (support part):

> *It was obvious that the jurist did not like my African American client, who was a hard-working, diligent mother. The court never called her by her name and treated her time and time again when I made*

[2] Report from the Special Adviser on Equal Justice in the New York State Courts, http://www.nycourts.gov/whatsnew/pdf/SpecialAdviserEqualJusticeReport.pdf.

[3] Available at https://www.nycbar.org/member-and-career-services/committees/reports-listing/reports/detail/racial-inequities-in-nys-courts.

> *applications for relief for her like we were asking the jurist for something special. In the middle of my case, the jurist told my client that she should not be in the court, and he told me that I was only going to be given 10 more questions to ask of the respondent father even though we were in the middle of trial. I told the jurist that I could not do that, and he told me he was giving me a break and when he recalled the case, he expected to see the 10 questions on my notepad. I obviously did not comply, and incurred his wrath, but this is typical of how litigants are treated.*

2. **The Family Court must create procedural rules that govern all parts so there is uniformity, particularly as virtual courtrooms seem to be here for the long-term**.

Judges cannot set their own rules that vary from part to part. Varying and ad hoc rules allow for dehumanizing conduct to persist because there are no set standards for how jurists and court personnel should conduct proceedings. Requiring uniform rules relating to procedure does not interfere in any way with the discretion of jurists to run their courtrooms. To the contrary, it instills confidence, particularly in the litigants, that they will be treated fairly and respectfully because they know what to expect and their fate is not left in the hands of the assignment wheel that selects their jurist for them.[4]

3. **The Family Court must either grant UCMS access to all attorneys with cases in the court, or preferably, create an electronic filing system, *e.g.*, a NYSCEF model, so there is dignity and formality to filings and the processing of cases**.

Without a dignified and professional filing and docketing system, litigants are often left in the dark about their cases, and even those that have counsel are disadvantaged if their counsel are among the many who do not have access to UCMS. The court system has demonstrated that its resources allow litigants in other courthouses across New York State to have access to a modern, electronic filing system, and the Family Court should not be different. The families who come before the Family Court are entitled to the same level of respect and professionalism as litigants in any other New York State court.

4. **Jurists must confront and eliminate explicit bias and unprofessional behavior in the Family Court**.

Ultimately, judges, referees and support magistrates manage and control their courtrooms. They must set a proper tone and root out unprofessional, disrespectful and racist conduct, whatever its source. One of our members offered this example of a court's failure to exert such control.

> *A court officer in Bronx County Family Court told me that I "don't f----- know what I'm doing" because I advocate for my client and push back against disrespectful conduct. The jurist knows that this court officer mutters expletives and disrespects clients and lawyers as the officer does when she sees the member. But nothing is done*

[4] The Working Group is working on a proposal draft of uniform Family Court rules and we anticipate submitting it as an addendum to this letter in the coming weeks.

time and time again to keep the court officer under control. Thus, the toxic culture permeates.

In this capacity, jurists should feel supported in their efforts to respond effectively to and exert control over any behavior in their courtrooms that creates a disrespectful and unprofessional environment.

5. Observation and feedback for jurists from colleagues/supervisors.

Unless there is some particularly egregious incident that is called to the attention of supervisory personnel, jurists generally do not receive any feedback about their courtroom demeanor or behavior until they are seeking reappointment. As a result, they may actually be unaware of incidental or habitual conduct that is plainly inappropriate or, at the very least, a product of implicit bias and susceptible to significant improvement. We thus recommend that a system be implemented whereby a judge is regularly observed in the courtroom by his or her colleagues and supervisors who can then discuss their observations, highlight issues they spotted and offer remedial recommendations. We are also cognizant that judges may not be able or feel comfortable to provide open and honest feedback to colleagues for a variety of reasons. As a result, any peer observation group would need adequate training and guidelines to streamline a mechanism that ensures accountability.

6. Polling of litigants.

As a corollary, litigants and attorneys should be encouraged to report issues to supervisory judicial personnel, who should address such reports with the individual jurist in a manner that will assure that the reporter will not be subject to express or implied retribution by the subject of the criticism. Polling of litigants' experiences in the courtroom should be encouraged and can be effectuated through non-legal staff (perhaps even social workers) who are culturally competent and relatable, and who can interpret and explain for litigants, while also assisting in processing complaints, if any, *i.e.*, incidents of bias, racism, unprofessionalism, or disparate treatment, like those shared in the May 19, 2021 meeting and incidents expressed by our members in our own internal meetings. The mechanism would ensure a channel to promote accountability, educate jurists and court staff, and most significantly, help litigants not feel so helpless while engaged in the already anxiety-provoking process of litigation.

7. UCS should create an ombudsman system to investigate and address incidents of bias and unprofessional behavior immediately after their occurrence.

Too often, litigants, attorneys, and witnesses experience inappropriate and uncomfortable exchanges with judges, or court personnel, in and around the courtroom. Typically, such incidents go undetected and unreported because lawyers and litigants alike fear retaliation, or that simply raising a concern will instigate formal action. Moreover, litigants and lawyers often wait before filing a formal complaint, at which point an offender may no longer be able to be identified or disciplined, or exchanges with an offender may have intensified and worsened.

To address these issues, we recommend the creation of an Ombudsman Program, where a designated group of neutral personnel sit on-site at every courthouse, and offer a safe and confidential place for attorneys, court staff, litigants, and members of the public to report any

inappropriate conduct as soon as it happens. Furthermore, designated ombudsmen could clarify courthouse policies and procedures for escalating complaints, and offer informal interventions to resolve complaints, conflicts, or problems in a timely and discreet manner.[5]

8. Full transparency for the Inspector General's Office for Bias Matters.

More accessible reporting to the Inspector General's Office for Bias Matters is important but it is not enough to create an atmosphere of equity and respect. Those reporting bias or harassment must also be told what, if anything, will be done to address a substantiated complaint. As recently as this February 2021, a substantiated report letter was sent to a complainant. However, when the complainant wrote back to obtain information on OCA's response to the substantiated report against a court officer, the complainant received no substantive response. This is almost worse than previous delays of months and years spent investigating reports. If a report is substantiated, a complainant must have access to information regarding what will be done to respond. If bias exists and a complainant is left to believe that nothing will be done to address it, the entire court system is implicated in the act of bias or harassment itself.[6]

* * *

As an organization whose membership includes thousands of attorneys and members of the judiciary within New York City, it is our sincerest hope that the Williams Commission continues to engage in honest and productive discussions such as the meeting on May 19, 2021. In our many discussions with various stakeholders and court personnel, a recurring theme has become notably apparent – there exists a disheartening lack of support and resources for a court system that is overburdened. As we have steadfastly committed ourselves over these past several months, the Working Group intends to focus our collective efforts in creating and supporting mechanisms to effectuate a more equitable culture in our Family Courts and State Court System at large. We hope that the OCA will take swift action to ensure that becomes a reality and most notably for the poor people of color who disproportionately are the litigants in our Family Court in New York City.

Respectfully,

/s/ *Vidya Pappachan*
Vidya Pappachan, Chair

Cc: Hon. Edwina G. Mendelson
Karlene A. Davis
Kim Stephens

[5] The Ombudsman Program would be distinct from the Inspector General's Office. The latter is a more formalized process subject to internal protocols and limitations. And, with its limited the IG's Office is less able to offer direct avenues for communication at a grassroots level. The idea behind an Ombudsman Program is that it could offer a less formal manner to address complaints and, if necessary, collaborate with the IG's office.

[6] On June 8, 2021, our Working Group engaged in a productive discussion with Inspector General Sherrill Spatz and Inspector General of Bias Matters, Kay-Ann Porter Campbell.

Working Group on Racial Equity in New York State Courts

Working Group Chair, Vidya Pappachan
Working Group Secretary, Amanda Raines
Council on Judicial Administration Chair, Michael Regan

Member	Committee
Natasha Major	ADR
Judge Kathleen Waterman	Civil Courts Committee
Judge Leslie A. Stroth	Civil Courts Committee
Susan Shin	Civil Courts Committee
Jessica Caruso	Civil Courts Committee
Shirin Mahakamova	Civil Rights Committee
Judge Ron Richter	Council on Children
Nila Natarajan	Council on Children
Adnan Sultan	Criminal Courts Committee
Danielle Jackson	Criminal Justice Operations Committee
Wail Alnwisser	Disability Law Committee
Katherine Carroll	Disability Law Committee
Nadia Hernandez	DV Committee
Lisa Alexander	DV Committee
Michelle Burrell	Family Court and Family Law Committee, Chair
Judge Daniel Turbow	Family Court and Family Law Committee
Sara Wagner	Housing Court Committee, Chair
Mark Ward	Housing Court Committee
Kirlyn Joseph	Juvenile Justice Committee
Fredda Monn	Juvenile Justice Committee
Lisa Salvatore	Juvenile Justice Committee
Cecilia Shepard	Juvenile Justice Committee
Jawad Muaddi	Litigation Committee
Jose Abrigo	LGBTQ Rights Committee
Danielle (Danny) King (she)	LGBTQ Rights Committee, Co-Chair
Judge Alicea Elloras-Ally	Minority in the Courts Committee
Christopher Wilds	Minority in the Courts Committee
Rhonda Singer	Pro Bono & Legal Services committee
Hamra Ahmad	Pro Bono & Legal Services Committee
Rene Kathawala (he)	Pro Bono & Legal Services Committee
Rachel Haskell	State Courts Committee

NEW YORK CITY BAR

June 12, 2020

Via email

Honorable Janet DiFiore
Chief Judge of the State of New York
New York State Unified Court System
25 Beaver Street
New York, NY 10004

Honorable George J. Silver
Deputy Chief Administrative Judge
Courts within New York City
111 Centre Street
New York, NY 10013

Honorable Lawrence K. Marks
Chief Administrative Judge
New York Unified Court System
25 Beaver Street
New York, NY 10004

Honorable Jeannette Ruiz
Administrative Judge
New York City Family Court
60 Lafayette Street
New York, NY 10013

Re: Request for COVID-19 Point Person for New York City Family Court

Dear Chief Judge DiFiore, Chief Administrative Judge Marks, Deputy Chief Administrative Judge Silver, and Administrative Judge Ruiz:

We hope this letter finds you and your families safe and well. Thank you for your service to New Yorkers during these extraordinarily challenging times. We write in consideration of the tens of thousands of people who rely on New York City's family courts to access justice, whether they have not seen their children or siblings in months, require a protective order, or are part of a child protective matter that is causing significant distress.

The New York City Bar Association's (City Bar) Council on Children is comprised of representatives of all the City Bar committees dealing with children, education, family, family court, juvenile justice, and the needs of lesbian, gay, bisexual and transgender youth. During our June 5 virtual meeting, Council members raised serious concerns about the lack of information about, in particular, NYC Family Court's plans to "reopen" the courts amid rumors that judges have been asked to return to Family Court the following week.[1] Lawyers and litigants in the five family courts in New York City lack concrete plans for cleaning, sanitizing, allowing for social distancing, offering sufficient PPE and hand sanitizer to those without their own, and managing various "open" spaces inside these courthouses. Agencies need significant lead time to prepare for staff returning to Court. Council members who litigate in the family courts also expressed frustration about the apparent disconnect between the communications being disseminated by the

[1] Since then, on June 9, 2020, the NYS Unified Court System issued a press release clarifying that courts would begin reopening on June 10; the press release included a generalized list of safety precautions applicable to all state courts in New York City. See "State Courts in New York City to Begin Gradual Return to In-Person Courthouse Operations," https://www.nycourts.gov/LegacyPDFS/press/pdfs/PR20_23.pdf.

Court's administration, i.e., on OCA's website or via press releases, regarding access to "virtual court" (in both essential and non-essential matters) and the experience lawyers and litigants are having on the ground.

We write in the midst of national protests compelling our institutions to end systemic racism. In Family Court, we serve the communities that have been hardest hit by COVID-19, resulting in heightened anxiety and fear about meeting life's basic needs. The uncertainty related to access to the family courts, whether virtual or live, is exacerbated by the limitations on access experienced "on the ground." For example, families have lacked information as fundamental as where to go if an Article 10 case is filed against them. The lack of a coherent "reopening" plan for Family Court compounds this problem. In the Council's view, this is an opportunity for the Court to lead by example, to demonstrate to our communities of color that, as an institution, the Family Court will ease distress and meet community need when the need is greatest.

For these reasons, we urge the NYC Family Court to immediately appoint a "COVID-19 Point Person" with decision-making authority to manage all matters related to Virtual Family Court and Reopening. This person can collaborate with stakeholders to develop the reopening process together and to continue to enhance remote access simultaneously. By identifying one person to communicate on behalf of the Family Court, and to address concerns raised by litigants, institutional providers of legal services, other advocates, and service providers, those who rely on this critical venue will have consistent information and will be able to raise questions with urgency. Court leadership will be able to hold the individual accountable. While the Family Court is part of a larger Unified Court System, the people it serves are disproportionately dependent on access to the Court for the most personal and sensitive matters in their lives. At a time when concerns about the health, safety, and well-being of individuals and families are dramatically heightened, the Court should facilitate communication with those who rely on safe access to the Family Court for their and their family's needs in a way that ensures that the Court bends its arc toward justice.

Respectfully,

Lauren A. Shapiro, Chair
Sarah H. Lorr, Secretary
Council on Children[2]

Melissa J. Friedman, Chair
Children & the Law Committee

Michelle Burrell, Chair
Family Court & Family Law Committee

[2] As mentioned above, the Council is comprised of a broad cross-section of lawyers with expertise in, among other things, family law, matrimonial law and juvenile justice. Multiple committees of the City Bar hold seats on the Council, including the Family Court and Family Law Committee and the Children and the Law Committee.

REPORT BY THE DOMESTIC VIOLENCE COMMITTEE

RECOMMENDATIONS FOR NEW YORK CITY VIRTUAL FAMILY COURT PROCEEDINGS, WITH PARTICULAR FOCUS ON MATTERS INVOLVING LITIGANTS WHO ARE SURVIVORS OF ABUSE

I. INTRODUCTION

During the past year, New York City's courts have faced numerous, unprecedented challenges in responding to the ongoing COVID-19 pandemic. The New York City Bar Association's Domestic Violence Committee is concerned with the pandemic's impact on litigation and on litigants, especially those who are survivors of abuse and those who are representing themselves.

Our committee members practice at a variety of non-profit organizations and private firms across the five boroughs. We represent women, men, teens, and children who have been abused or have witnessed abuse and are seeking safety and assistance from the City's Family Courts. We appreciate the efforts that the judiciary has made to enable access to justice and to pivot to an exclusively electronic platform. However, the transition to all-virtual proceedings, particularly trials, has created new challenges. Our recommendations hope to address the recurring issues we have encountered and to raise additional points for the court system to consider subsequent to the release of its "Virtual Bench Trial Protocols and Procedures."

While the virtual format and the Court's efforts to speed up proceedings have challenged lawyers and litigants alike, domestic violence survivors have been particularly impacted. Many of the clients we serve are low income and do not have access to laptops, cell phones with minutes, or reliable WiFi. Also, the trauma they have endured makes situations like excessive pressure to settle a matter or having to testify in a narrative format particularly difficult. In one case, during a first appearance a judge repeatedly said that the parties had to settle an order of protection matter or immediately start a trial. The client did not want to agree to the offer (made for the first time moments before), but was incredibly stressed and expressed fear of upsetting the judge. Their lawyer had to reassure them that they would not be in trouble for exercising their right to reject an offer, and had to strenuously argue for a later trial date. The client was rattled by the experience; they eventually stopped replying to their lawyer and failed to continue with their case. This is just

one example of how the pressure on the court system to resolve cases and address the significant backlog had an unintended negative impact on a litigant.

Furthermore, the lack of uniform virtual trial procedures within and between boroughs has made it exceedingly difficult to properly prepare our clients and to handle novel issues involving introduction of evidence, virtual testimony, and other matters in an efficient and consistent way. Victims and survivors of trauma are better prepared when they have advance time to prepare, and when procedures and expectations are clear.

We appreciate that the "Virtual Bench Trial Protocols and Procedures" aim to offer consistent guidelines, but worry about if and how they will be applied in practice without a requirement to do so, and whether accommodations will be made based on the practicalities of particular types of cases and court participants. We respectfully offer the following recommendations in the hope of striking a balance between judicial discretion, due process, and best practices for serving survivors of violence and other litigants.

II. RECOMMENDATIONS

Virtual Bench Trial Decorum

(1) While we appreciate the need for Microsoft Teams participants to use professional backgrounds, we disagree with the recommendation that litigants must use their actual backgrounds. Survivors of violence will be at heightened risk if they are prevented from using a virtual background and/or blurring their actual background. Their abusive partners could use information gleaned from the background to determine their whereabouts. This risk is especially pronounced for those residing in a confidential shelter.

(2) Domestic violence survivors should be given the choice about whether to appear by video for non-trial appearances. Seeing an abusive party in court can be traumatic; having to stare at them on a screen for the duration of an appearance can be intimidating in a way not present during in person appearances. This accommodation should also be made for litigants who cannot use video due to poor internet connection or other technological reason.

(3) The Court should avoid displaying the phone numbers of litigants or witnesses during Teams sessions. Oftentimes survivors of violence change their phone numbers upon leaving the abusive relationship. Displaying a confidential phone number puts survivors at risk of harm and forces them to change their number again. To help minimize risk, litigants filing for orders of protection should be instructed to use *67 if they call in and to type their name if they log in via Teams.

(4) Attorneys and litigants should be dissuaded from using the chat function to communicate in Teams. As of this writing, the text is visible to everyone in the Teams meeting and thus confidentiality cannot be ensured. Attorneys have also reported receiving chat communication for cases they are not party to days after they have appeared in that particular virtual part. Additionally, the content of the chats provides for a peculiar

evidentiary issue, as it is unclear as to whether those statements, if relevant for the proceeding, can be used as evidence in court.

(5) Jurists should develop clear and consistent guidelines for whether/when to mute and/or eject participants from a Teams session. In a number of cases litigants accused of domestic abuse have talked over judges and attorneys, have tried to directly speak to survivors, or have otherwise acted in a threatening or disruptive manner. Such behavior, which would result in at least a warning or a finding of contempt, would not be tolerated in person and it should not be tolerated in virtual parts.

(6) Any and all guidelines regarding court decorum, procedure, and/or rules should be available to litigants in languages other than English. Many clients coming to Family Court do not speak or read English as a first language and may not understand what is expected of them.

Safeguarding the Virtual Bench Trial

(1) While we understand the Court's recommendation that participants be "strongly encouraged" to not use public WiFi, this may not be feasible for low-income clients. Many neighborhoods in New York City have unreliable WiFi, and many people are unable to pay their utility bills, resulting in service disruption. Litigants may also need to leave their home to participate in court proceedings for safety, privacy, or another reason; public WiFi may be their only option. We encourage the Court to allow people with limited access to technology, including non-public WiFi, to participate in proceedings from the courthouse. For survivors of violence, the Manhattan Family Justice Center may also be a resource, and pro se parties should be able to use the new centers that the Center for Court Innovation will be opening in the coming months.

(2) When litigants or witnesses provide contact information to the Court to reach them in the event of technical difficulties, the Court should not distribute that information. A survivor's contact information should be provided to the Court outside the purview of the abusive party. In one instance, the Court inadvertently disclosed the e-mail and telephone number of a domestic violence survivor on a summons that was sent to her ex-partner. As a result, she had to change her number.

Maintaining Public Access

(1) Interns and newly admitted lawyers working with attorneys of record should be allowed to observe appearances. The all-virtual platform has disrupted practitioners' ability to have trainees to sit in the back of courtrooms, which is an invaluable learning experience. Interns and newly admitted lawyers should be required to identify themselves on the record.

Pre-Trial Considerations

(1) In addition to a pre-trial conference, at least one appearance with the Court, the attorneys, and the litigants should be conducted prior to the commencement of a trial. Before COVID-19 most cases had multiple appearances during which the jurist could assess credibility, ascertain facts and issues, and build trust with the litigants. Having additional appearances and opportunities to conference cases may result in fewer violation or modification cases in the future and can ensure that critical decisions impacting individuals and families are given due consideration. This is especially important given that in New York City, Supreme Court jurists, who are less familiar with family law issues, are now hearing cases initiated in Family Court.

(2) Instructions about how to appear with up-to-date Teams links and call-in information should be provided to all counsel and litigants at least 24 hours in advance of scheduled proceedings. This information, as well as any instructional materials or videos the court has for pro se litigants, should be available in languages other than English.

(3) The Court should have consistent procedures for contacting litigants and parties who fail to appear. Litigants and counsel have reported instances of not receiving links to dial into parts or having unforeseen technical issues.

Virtual Pre-Trial Conference

(1) All virtual pre-trial conferences should be on the record (in New York City, FTR).

(2) The pre-trial conference should be scheduled with the jurist who will conduct the trial.

(3) In addition to ascertaining whether a litigant or witness will need an interpreter during the trial, the Court should create practices to confirm that the person requiring interpretation understands everything that is occurring during the proceedings. On several occasions we have been told by the individual that they did not understand the interpreter, could not hear them/had the interpretation cut out, or did not think everything that was being said was being interpreted.

(4) A pre-trial conference should occur no less than four weeks prior to the commencement of the trial.

Exhibits

(1) In New York City, attorneys and litigants have access to the Electronic Document Delivery System. The Court should specify whether and when exhibits should be uploaded to that system.

(2) If exhibits must be submitted to the Court Reporter, the Court should inform attorneys or pro se litigants of the process by which, and how, to do so.

(3) What is considered "something other than a document" should be clearly and consistently defined. For example, an audio or video recording is not a document but it is also not a physical object. There is currently no consistently available mechanism by which to provide such evidence to the court and/or display that evidence at trial.

(4) The mechanism for making appointments with the Court to view evidence should be clearly defined.

(5) The Court (a jurist, clerk, court attorney, etc.) should be present for the entirety of any and all evidence inspection to ensure the item is not tampered with or inadvertently altered.

(6) The process for submitting items to the court, such as a physical object, should be clearly defined, i.e. to whom and where should such evidence be directed. There are currently no guidelines available.

Witness Testimony

(1) A number of jurists have been encouraging, or even requiring, litigants to testify in a narrative format. We disagree with this method of testimony for parties in general, particularly for those who are survivors of trauma and abuse. It severely limits the efficacy of counsel, undermines the very bases upon which our adversarial system is premised, and can be an incredibly difficult format of testimony for survivors of domestic violence and other trauma. Trauma impacts the brain's ability to recall details and talk about events in a linear fashion. Forcing domestic violence victims to testify in narrative form puts them at an incredible disadvantage. Litigants generally cannot be expected to testify in narrative fashion and still establish the legal elements necessary to make their case. It is unreasonable and violative of due process to put the onus on the litigant to proffer such testimony without the aid of their attorney.

(2) When a litigant provides witness contact information to the Court, the Court should make an inquiry as to whether that information can be safely disclosed to the other litigant. For example, if a survivor of domestic violence wishes to call their mother as a witness but their ex-partner has previously threatened her, the Court should consider prohibiting the ex-partner's counsel from disclosing the mother's contact information to them. In the case of pro se litigants, witnesses can be asked to create a new e-mail address or use an app like Google Voice for the purposes of litigation.

(3) We understand the Court's recommendation that "there shall be no other computer monitor, screen, TV screen, cell phone or the like in the room wherein the witness is testifying." However, it fails to take several considerations into account. First, some people live in a studio apartment, rent a room in an apartment, or live in another type of small space. It may thus be impossible for them to be in a room absent any of the aforementioned devices. Second, for parties with children or other individuals under their care it is unreasonable to prevent them access to a phone in case of emergency. A possible solution would be for the Court to instruct that they put the phone on vibrate and place it outside of their reach and view.

(4) The use of affidavits in lieu of in-person testimony should be limited to collateral witnesses, and only upon consent of all parties. Litigants and their attorneys may utilize a Notice to Admit to admit undisputed facts. If a witness testifies via affidavit, the affidavit should contain:

(i) That they swear or affirm to tell the truth;
(ii) That they swear or affirm no one has told them what to say; and
(iii) A list of questions, if any, their attorney asked them.

The Court should provide counsel and pro se parties with guidance and/or samples about what can and cannot be included in an affidavit, including page limitations and subject matter limitations. The Court should establish procedures for objections to such affidavits (i.e. hearsay objections) and mechanisms for resolving them (i.e. redaction) prior to the trial.

Ample time for cross-examination via audio and video should be permitted.

(5) Prior to the pandemic, litigants with children had the benefit of in-court childcare services. Many childcare operations are not fully running because of COVID-19. Additionally, many people have lost jobs or otherwise suffered a loss of income which may make childcare difficult to come by. The Court should consider these factors when prohibiting others from being in the room or "so near the witness as to be seen and/or heard by the witness." Due to the litigant's financial resources and/or dwelling's layout this may be impossible.

(6) It is unreasonable to make counsel calling the witness "responsible for ensuring the witness has a suitable location and access to suitable computer equipment and screen(s) . . ." Many organizations and law offices remain closed or have limited space due to the pandemic. They may or may not have access to extra technology for clients or third party witnesses to use. The Court has said that it is open to those without the necessary equipment or resources to access virtual parts; the Court should bear responsibility for providing the necessary space and technology to litigants and witnesses, just as it would during an in-person appearance.

(7) Although the quality of the appearance may not be ideal, clients without access to a computer or tablet should be able to testify by phone if that is their only option. Many litigants can only access the internet via their smartphones. Requiring access to computers or tablets is unrealistic and fails to take into consideration the financial resources of the people accessing Family Court.

Closing Arguments

(1) Whether written summations will be permitted or required should be addressed during the pre-trial conference, as should the process for submission.

***

We respectfully urge the Court to consider the unique circumstances presented by certain proceedings and/or court participants, and to permit or require appropriate accommodations—particularly in the domestic violence context and in Family Court generally, as well as in other contexts in which the practicalities of the situation make such accommodations necessary.

Domestic Violence Committee
Amanda M. Beltz, Chair
abeltz@nylag.org

April 2021

THE FAMILY COURT JUDICIAL APPOINTMENT AND ASSIGNMENT PROCESS

The Family Court Judicial Appointment & Assignment Process Work Group

DECEMBER 2020

THE ASSOCIATION OF THE BAR OF THE CITY OF NEW YORK
42 West 44th Street, New York, NY 10036
212.382.6600 | www.nycbar.org

TABLE OF CONTENTS

Page

I. INTRODUCTION

The objective of the New York City Bar Association Family Court Judicial Appointment & Assignment Process Work Group ("Work Group") is to constructively contribute to efforts to improve the transparency and efficacy of the process by which judges are appointed, reappointed and assigned to the New York City Family Court (the "Family Court") bench to benefit all litigants. The Work Group is comprised primarily of current and former members of the New York City Bar Association's Council on Children, and its Family Court & Family Law Committee, Children and the Law Committee, and Juvenile Justice Committee. Members of the Work Group are former Family Court jurists, a pro bono counsel and pro bono partner from the law firms of Orrick Herrington & Sutcliffe LLP and Proskauer Rose LLP, respectively, and members of the leadership teams from several of the New York City institutional providers of advocacy for parents and children involved in Family Court litigation, including Brooklyn Defender Services, Lawyers For Children, the Legal Aid Society Juvenile Rights Practice and the Children's Law Center, as well as the New York City Administration for Children's Services.[1]

As reflected in the Work Group's mission statement (Appendix A), we began with a consensus that despite the welcome increase in the number of statutorily authorized Family Court judgeships in 2016 and the appointment and reappointment of a number of judges since late 2018, significant concerns remain that can be broadly categorized as follows:

- Family Court parts remaining without judicial officers for lengthy periods of time because of lags in the appointment process or delays in the replacement of judges from other courts whose temporary assignments to Family Court have ended;

- Use of judges from other courts who have not been trained in Family Court practice and have short-term appointments, resulting in significant caseloads being left uncovered, having a single case handled by several different judges over a short period of time and/or requiring exceptionally lengthy adjournments or creating other inefficiencies; and

- Requiring Family Court judges seeking reappointment to repeat the same process as required of new judicial applicants, and not informing them until a few days or less before their terms' expiration whether they will in fact be reappointed.

II. EXECUTIVE SUMMARY

One of the byproducts of New York's antiquated system of 11 separate and distinct trial courts is the great challenge to allocate judges where they are most needed. Nowhere is this challenge more pronounced than in the Family Court, which relies on the assignment of "acting" judges on temporary leave from other courts, including primarily the New York City Civil Court

[1] Organizations provided for identification purposes only.

(the "Civil Court").[2] Even assuming the perfect process, temporarily assigning judges from one court to another on a regular basis is highly disruptive and inefficient. It creates a vacancy in an assigned judge's home court, necessitating the reassignment of cases and thereby causing delay.[3]

For the judges reassigned to the Family Court, it is often difficult to perform on the same level of efficiency as other Family Court Judges given a lack of experience and expertise in family law. Further complicating the process is that most reassigned judges only preside in the Family Court for limited periods of time, usually about two years. Every time an acting judge departs from the Family Court, that judge's cases must be reassigned.[4] While some departures from the Family Court are planned, others happen unexpectedly. Because vacancies are not filled immediately, cases in front of a departing judge will be adjourned until a new judge is reassigned from another court or is appointed to the Family Court. Sometimes a judge cannot take the bench until having completed the training process. Thus, the current system leaves the Family Court in a state of constant flux, referred to by some in court leadership as a "transient bench," that compromises the administration of justice, often at critical points for the safety and security of families and children.

This report endeavors in Section III to describe the general concerns outlined above in greater detail, utilizing examples provided by most major institutional providers of advocacy for children and families in New York City. These include:

- The impact on litigants and practitioners when a Family Court jurist is re-assigned;
- Delayed resolution of cases due to unfamiliarity with relevant laws and facts;
- The impact of extended vacancies and rapid turnover;
- Delays while jurists await transfer;
- Confusion when litigants and practitioners do not know where/when to appear; and
- The impact of interim Civil Court appointments.

In Sections IV and V, respectively, the Report then provides detailed explanations of the roles and processes of the two entities responsible for the appointment, assignment and

[2] Usually, acting Family Court judges are drawn from elected Civil Court judges, but occasionally a Criminal Court judge or an elected New York City Supreme Court justice may be assigned. At present, all acting Family Court judges are elected Civil Court judges.

[3] The root cause of this problem is the lack of an adequate number of Family Court judges. Out of necessity, OCA draws generally from the Civil Court which, in turn, creates additional dysfunction. It is common for Civil Court judges to be elected to the Supreme Court, thereby creating the opportunity to appoint a Civil Court replacement. To the extent these newly appointed judges are then temporarily assigned to Family Court, the Civil Court's staffing needs go unaddressed.

[4] Almost every time, an acting judge may take the unfinished cases to the new court, which often requires parties to travel to a different borough for court appearances. The unexpected travel can cause case delay and severe stress and financial burdens to the parties, the vast majority of whom are low-income.

reassignment of jurists to the Family Court: the New York City Mayor's Office and its Mayor's Advisory Committee on the Judiciary ("MACJ") and the New York State Office of Court Administration ("OCA").

These latter sections will also offer the Work Group's insights, conclusions and recommendations that its members believe will mitigate the delay and disruption that result from judicial vacancies and transfers.[5] The Work Group's recommendations can be summarized as follows:

- Increase the number of MACJ members;
- Enhance communication and planning between MACJ and OCA;
- Reevaluate the current rule that fully vetted judicial applicants who are identified as excellent candidates for appointment but are not appointed within six months must begin the application process anew if they wish to continue to be considered for appointment;
- Select appointees before vacancies arise and take the additional steps necessary to fill vacancies expeditiously;
- Enhance both MACJ's and OCA's technological resources and improve data collection and analysis;
- Use a distinct application and review process for judicial reappointments in order to complete the reappointment process more expeditiously;
- Improve training programs offered to judges presiding in the Family Court;
- Allocate short-term cases to judges who are transitioning out of the Family Court; and
- Increase transparency in the reassignment process managed by OCA.

Finally, we urge the Bar Association to maintain the Work Group so that it may, in nine months' time, receive, evaluate and report upon updates we urge be provided by MACJ and/or OCA regarding their efforts to address the important issues identified in this Report.

III. DEFINING THE PROBLEM: VIEWS FROM THE FRONT LINES

The information gathering phase of this effort included soliciting feedback from Family Court practitioners to enable the Work Group to be in the strongest position possible to identify

[5] These recommendations are made with recent events very much in mind, including the impact of COVID-19 and anticipated budget cuts at least in the short-term. They are meant to increase efficiencies without unduly burdening the resources of the court.

and evaluate the issues and concerns that should be the focus of this initiative.[6] Consequently, the Work Group requested information from a broad array of Family Court practitioners, and it received responses from the Administration for Children's Services - Family Court Legal Services, the Assigned Counsel Panels for the First and Second Departments, The Bronx Defenders, Center for Family Representation, Children's Law Center, Lawyers For Children and the Legal Aid Society - Juvenile Rights Practice.

The Work Group is very grateful for the 11 sets of robust responses provided by these practitioners and organizations.[7] The information they so generously shared provides a depth of detail about and compelling examples of their concerns, from the invaluable perspective of the practitioners most directly impacted and the parties and children they represent on a daily basis.

The Work Group received nine responses to the following preliminary question:

> *On a scale of 1 – 10, to what extent do your office and clients experience negative impacts due to delays in judicial appointments and/or assignments?*

Two respondents (22%) rated the negative impact at 4 or less, the remaining seven responses (88%) rated the negative impact at 5 or greater and, of those, four (44%) rated the negative impact from 8 to 10.

Provided with a list of negative impacts to identify, the Work Group received 10 responses. Listed below are the negative impacts identified and the percentage of all responding organizations that identified that negative impact as a significant concern:

90% - *Delayed resolution of cases*
90% - *Unproductive court dates*
90% - *Travel to another county to follow a judge who is reassigned during the pendency of a proceeding and related difficulties such as cost, time and impact on employment*
60% - *Appearing unnecessarily as a result of lack of notice that cases will be adjourned*
20% - *Inability to obtain necessary interim relief*
10% - *Inability to obtain judicial subpoenas*

A sampling of the practitioners' detail-rich narrative responses appears below.

A. Impact on Litigants and Practitioners When a Family Court Jurist Is Re-Assigned

The hardship and delays imposed on children, families and practitioners when a jurist is transferred to another borough without ample time or an adequate process in place to complete

[6] Information and data gathered from MACJ and OCA are described in Sections IV and V, respectively, below.

[7] Legal Aid provided separate responses from four borough offices.

ongoing proceedings was a consistent theme. In these cases, the court system's administrative imperatives seem to drive the process, to the detriment of litigants and counsel. For example:

> *An elected Civil Court judge was appointed to Kings County Family Court [KFC] and presided over [that part] for approximately two years.... After her departure, she sat in Kings County Civil Court for a little over a year, and then moved to Staten Island Civil Court. Throughout these moves, this jurist continued to hear those trials that she had commenced prior to her departure from KFC. Thus ... litigants and counsel engaged in front of this jurist were forced to travel to different courthouses throughout the NYC court system. In at least one ... case, the litigants and counsel appeared before this jurist in all three courthouses in which she sat. The frequent appearances in different courthouses imposed additional stressors for the litigants in what was already a stressful family law case, and unnecessarily prolonged the matter, which should have been concluded as efficiently as possible for the sake of the children and parents involved. The moves also proved taxing for the attorneys, who ... carried full caseloads primarily in KFC, and therefore had difficulty finding sufficient blocks of time in which to schedule continued trial dates in other courthouses. Moreover, given the differences in courthouse practices and the fact that this trial originated in KFC, counsel were unable to procure transcripts necessary to prepare for subsequent trial dates, and to prepare their summations at the close of the case.*

Another advocate summarized the negative impact on litigants and practitioners this way:

> *The impact ... is that I am unable to fulfill my obligation to my client. The client is frustrated, and sometimes settles simply to avoid coming back to court. They take time off of work and/or have to make child care arrangements for an unproductive Court appearance. It is also time that could be better spent on other clients.*

As mentioned in the first example above and the one to follow, lawyers also emphasized the impact such delays can have on the availability of critical evidence:

> *In some cases, the judicial vacancies and transfers cause unnecessary delay, and result in evidence growing stale and witnesses no longer being available.*

B. Delayed Resolution of Cases Due to Unfamiliarity with Relevant Law and Facts

Another negative impact on children, families and practitioners that lawyers consistently raised is when a newly appointed or assigned jurist lacks sufficient expertise and experience in

family law and/or practice and/or the law and facts most relevant to the cases they must take over. One institutional provider described the resulting delays in the ability to obtain timely interim relief and the ultimate resolution of proceedings:

> *A judge's lack of knowledge of relevant case law, statutes, and family court practice results in unnecessary delays, as attorneys ask for adjournments to brief issues, or run to the Appellate Division to seek a stay that will impact the course of a case. Such delays are unfair to litigants and subject children, who want their emotionally-challenging cases to end. In the child protective cases, this can also result in a delay in the achievement of permanency for children.*

Even when a case is transferred from one experienced jurist to another, the severity of the impact on all involved is frequently significant:

> *We … identify the rotation of judges as the issue … that has the greatest, and most detrimental, impact on our practice. When new Judges are assigned to on-going cases, there is significant delay and a family's case is detrimentally impacted. These issues include, mistrials, … having a new Judge who is unfamiliar with the case or family, and having Judges unwilling to issue orders that move the family toward reunification because they do not know the family.*

Another advocate's office provided this example:

> *Just as one jurist grew familiar with a case, they transferred courthouses, leaving a new jurist to relearn the cases on that part's caseload. This was frustrating and upsetting to litigants, who missed work or scrambled for coverage of family care responsibilities, only to appear in court for unproductive appearances during which they rehashed sensitive information already provided to the previous jurist.... Although the jurist who transferred out … had been on the bench there for several years, his successor remained … for no more than a year. As a result, [some] litigants in [that part] … have had three different jurists presiding over their cases.*

C. <u>Impact of Extended Vacancies and Rapid Turnover</u>

Many of the lawyers and advocates who provided information to the Work Group described compounding negative impacts, such as instances where there are extended vacancies and a rapid turnover of jurists:

> *[A part] … sat empty for several months between late March until late October 2018, when an elected civil court judge was placed there. However, that judge remained … for approximately two months, after which he transferred to criminal court and a new jurist*

> *replaced him in January 2019. The rapid turnover of jurists in that part resulted in delays and frustration for litigants and counsel.*

It is important to note that in these instances, the negative impact includes an undermining of the credibility of the judiciary itself:

> *[W]hen a judge changes abruptly, [it] contributes to a lack of trust in the judicial system, a feeling that no one knows their family or cares about them and their children, or a concern that the system is disorganized. As for our lawyers and social workers, it creates work and confusion when there is not a smooth transition. As well, our staff really cares about their clients and are in a position to receive the disappointment, sometimes quite profound, when a court appearance cannot be used for the purpose we all were expecting, such as an application for an improvement in visiting or for the reunion of the family.*

Another institutional provider also voiced serious concern about the detrimental effect that the lack of accurate information has on the credibility and legitimacy of the Family Court itself:

> *The bottom line is that there is a lot of uncertainty and misinformation about the comings and goings of Judges. The speculation regarding the status of the bench generally starts in October and picks up steam in November after the elections. We have received guarantees about Judges remaining in our borough, but they nonetheless leave.*

We are concerned that the current operations of the Family Court are undermining its own credibility, which has a negative impact on the public's trust in Family Court, specifically, and in judicial institutions, generally.

D. Delays While Jurists Await Transfer

Another area of concern that was well documented in the responses is the negative impact of having jurists delay the commencement of hearings as they await transfer. The following example illustrates the reality that, even when pending reassignments are known in advance, there is an inadequate system in place to mitigate the negative impact on families, children and practitioners. It also reflects, once again, the intersecting nature of the concerns being discussed—in this case delays pending transfer and multiple jurists cycling through a Court part:

> *Several jurists … prior to transfers purposely delayed the commencement of trials, so that the case would remain in [that borough] after the judge had moved to his or her new courthouse. [One] case that commenced in 2015 was scheduled to commence fact-finding in late 2018, but did not because of an impending jurist['s] move. As a result, this case, which involved a child with special needs, was further delayed. Delay was particularly harmful*

> *in this case, because … the non-custodial father frequently called in false reports to the [State Central Registry] against the custodian grandmother, in an effort to bolster his claim and make her appear as if she was an unfit caretaker. Further, prior to his transfer to a new courthouse, the third judge who presided over this case declared a mistrial because the father's counsel missed a court appearance. This family in this highly contentious, emotionally-fraught litigation is about to appear in front of a fourth judge in five years.*

E. Confusion When Litigants and Practitioners Do Not Know Where/When to Appear

It might come as a surprise to the wider legal community that the current appointment and assignment processes often result in families and practitioners not knowing when and where to appear on a matter. In this regard, it is important to distinguish between notice that a vacancy will occur and notification of where and when cases that are transferred to another part will be heard as a result of that vacancy. This was a common thread in the responses:

> *The lack of timely information about judicial vacancies results in confusion among counsel, litigants and often the Courthouse as to which jurist will eventually hear a pending matter and whether and when a hearing will actually go forward. It causes anxiety and confusion to children and families who desperately want their matters resolved. It delays the preparation of hearings and the calling of lay witnesses and expert witnesses. A recent example of this in New York County Family Court is the confusion around [p]arts 4, 4X and 5, which has litigants and attorneys physically running up and down the stairs to try to locate their cases....*
>
> *Furthermore, the failure to be timely noticed of jurist re-assignments has resulted in last-minute adjournments of hearings, significantly inconveniencing witnesses, litigants and children who had come prepared to testify or otherwise participate, with all of the emotional preparation that comes with that (not to mention missing school and work). Adjournments are frequently months in the future, and necessitate the continued anxiety related to the upcoming court appearance.*

Another organization emphasized the extent to which the Court's failure to provide sufficient information in advance undermines the planning that is necessary for practitioners to be adequately prepared to provide meaningful representation:

> *We make intake calendars, plan coverage, and schedule hearings months in advance. When there is uncertainty or abrupt change that we are not notified of, it is hard to ensure that an attorney with knowledge can appear.*

F. Impact of Interim Civil Court Appointments

The impact of temporary interim Civil Court appointments to the Family Court is a chronic, recurring source of concern among Family Court practitioners:

> *It generally takes these Civil Court Judges, who are appointed as temporary Family Court Judges, one or two years to become fully familiar with the applicable laws, at which time they are often transferred out of Family Court and back to Civil Court, and are often replaced with a new Civil Court Judge who must now also become familiar with the families before them and the relevant laws. This cycle furthermore harms families and children by suddenly removing jurists who have become fully familiar with the facts of a child's case in the middle of litigation, to be replaced by another temporary Acting Family Court Judge. Many of the Family Court cases are factually and emotionally complex and the families before Family Court deserve Judges fully familiar with their cases and the applicable law. These families deserve stability and continuity, which is inherently absent from the current practice of rotating Civil Court Judges.*

This practice, which is discussed in greater detail later in this Report, involves the temporary assignment of elected Civil Court judges to the Family Court for a period that is usually between 12-24 months, but may be less. Here are two examples from two different organizations of the extent to which this practice contributes to significant delay in the resolution of cases and negatively impacts the children and families who come before the Family Court:

> *In Manhattan, we had 4 different jurists … occupying [p]art 4 over the course of the last 6 years. Judge James and Frias-Colon are Civil Court Judges who left the part rather abruptly. This created challenges for continued hearings. We have a [termination of parental rights proceeding] that was adjourned so many times, that it remained in a pre-fact finding state and delayed permanency for our client. While the cause of action remains, the disposition is going to be very contested. This delay will extend the amount of time that my client will not have stability.*

> *A Custody Proceeding … before a Civil Court Judge who was temporarily placed in Family Court and then suddenly transferred to another civil courthouse, had to be referred to a new Judge who was neither familiar with the family nor the legal issues involved. This matter had been before the acting Family Court Judge for over a year and involved complex emotional and legal issues. The transfer caused the family unnecessary concern, confusion and delay of their case.*

IV. THE NEW YORK CITY MAYOR'S OFFICE AND MAYOR'S ADVISORY COMMITTEE ON THE JUDICIARY

Created by Executive Order ("E.O.") No. 4 of 2014, MACJ is a body within the Office of the Mayor charged with the responsibility to "recruit, to evaluate, to consider and to nominate judicial candidates highly qualified for appointment and to evaluate the incumbent judges for reappointment to the following courts within The City of New York: Criminal Court, Family Court and, for interim appointments, Civil Court."[8] Specifically, it is obligated to present three highly qualified nominees to the Mayor for each judicial vacancy and to recommend to the Mayor whether an incumbent should be reappointed.[9] The Mayor may not appoint or reappoint anyone who has not received this imprimatur of MACJ.[10]

In order to obtain a full understanding of the manner in which this mission is effected, and in particular the Committee's role in the filling of vacancies of judges who preside in Family Court, members of the Work Group met personally or spoke by phone, in some cases several times, with the following: the Committee's Chair, Hon. Carmen Beauchamp Ciparick (Ret.); its Vice-Chair, Hon. Barry A. Cozier (Ret.); its Executive Director, Desirée Kim; former New York City Corporation Counsel, Zachary W. Carter; and Kapil Longani, Counsel to the Mayor.

In summary, the Work Group believes MACJ evaluates the qualifications of judicial candidates and incumbents with genuine diligence, professionalism and competence. However, we also believe that steps can be taken to improve the process by which MACJ performs its mission so as to both (i) reduce the period of time that judicial positions remain vacant; and (ii) simplify and expedite the reappointment process.

A. MACJ Structure and Process Overview

MACJ is composed of 19 members, all of whom are experienced and highly qualified members of the New York Bar. They serve on a voluntary basis and are appointed by the Mayor to renewable two-year terms. MACJ administration is supervised by the Office of the Executive Director ("OED"), currently Ms. Kim, who has a staff of two persons, neither of whom are attorneys.

In broadest outlines, the MACJ process works as follows. Candidates for appointment and reappointment submit a Uniform Judicial Questionnaire ("UJQ") to MACJ, which is available for download on the MACJ website. Candidates may ask to be considered for appointment to any or all of the three courts within MACJ's purview. Subject to certain constraints described below, applications for initial appointment are accepted and considered on a continuous basis. Applications for reappointment are solicited by MACJ approximately six months before the expiration of an incumbent's term.

[8] Executive Order No. 4, May 29, 2014 ("E.O."), § 1.

[9] *Id.* § 2. However, if there are numerous vacancies, the Committee may, in its discretion, present fewer than three candidates per vacancy, unless the Mayor requests otherwise.

[10] *Id.* § 4.

Upon receipt of the UJQ, the OED reviews it for facial adequacy to assure, for example, that all questions have been answered or that a candidate has met the requirement of having been a member of the Bar for 10 years. If facially sufficient, OED then conducts an investigation to confirm the accuracy of the information provided, communicating as necessary by telephone or mail with the applicant or third parties, including, but not limited to, educational institutions, tax authorities and employers.

Once deemed complete, Ms. Kim and the committee Chair and Vice-Chair review all applications in comparison to the entire pool of applicants to ensure that they are among the strongest pending candidates. The completed applications of those candidates are then sent to an MACJ subcommittee.[11]

Each subcommittee is composed of four MACJ members, at least one of whom has significant experience with the court for which the candidate is being considered. The subcommittee interviews the candidate and obtains input regarding the candidate's qualifications from all relevant perspectives, including but, not limited to, references, supervisors and adversaries. In addition, if the candidate is seeking reappointment, the subcommittee contacts attorneys who have appeared before the jurist as well as colleagues.

The subcommittee makes a recommendation, which is then considered by the MACJ Executive Director, Chair and Vice-Chair. Depending on the press of its business, MACJ meets in person up to eight times per year. A quorum of 10 members is necessary to act. A vote is taken as to whether an incumbent is to be recommended for reappointment or whether an initial applicant is deemed highly qualified to be nominated to be considered by the Mayor, generally as one of three candidates, for appointment to the bench.[12]

MACJ was unable to readily provide the precise number of applications it receives or how many proceeded to each of the described steps. However, it was estimated that in recent years approximately 60 individuals reached this point in the process. In 2018, an exceptionally busy year, the full Committee considered 36 reappointments, 12 or 13 interim Civil Court appointments, 9 Criminal Court appointments and 4 Family Court appointments.

All incumbents, as well as applicants who are being nominated to see the Mayor, are then interviewed by a committee (known informally as the "Executive Committee") composed of several of the Mayor's senior advisors.[13] At this time, it is made up of Corporation Counsel James Johnson, Counsel to the Mayor Mr. Longani and Counsel to MACJ Henry Berger.

---

[11] For example, if someone has indicated that they are only interested in appointment to the Family Court, but has no background in family law and no trial experience in the Family Court, that application, while formally complete, will not move forward.

[12] *See* footnote 2 and accompanying text, supra.

[13] This committee, which has long filled this de facto role, is apparently not formally authorized by executive order or regulation.

Candidates nominated by the committee are interviewed by the Mayor, who decides whether an incumbent should be reappointed and which, if any, of the nominees for a new position is to be appointed.

Those individuals' candidacies are then reviewed by the New York City Bar Association's Judiciary Committee,[14] and, if approved, are subject to a public hearing. If no objection is encountered, formal appointment by the Mayor follows.[15]

Pursuant to E.O. 4, once one of the nominees is presented to the Mayor, the other two nominations expire, unless there are other vacancies in the same court, in which case the nomination remains valid for six months. As a general matter, however, a nominee must affirmatively inform the OED if they wish to remain under consideration.

B. MACJ Process in Practical Application

In order to understand the problem of Family Court parts remaining "vacant," i.e., without a presiding judicial officer, for undue periods of time, it is important to remember that judges presiding in Family Court parts include both judges appointed to 10-year terms as Family Court Judges in addition to those appointed or elected to other courts and assigned by the OCA to sit in Family Court for shorter periods of time. Included in that latter category are the so-called "Interim" Civil Court Judges,[16] whose appointments are also subject to the MACJ procedures outlined above. This practice provides the context for much of the discussions the Work Group had with MACJ regarding the manner in which those procedures actually impact the timing of the appointment of jurists who will preside in the Family Court. In essence, the Work Group sought to learn why MACJ could not have nominees for initial appointment sent to the Mayor in advance at a time that would permit the appointment to occur immediately, or almost immediately, after a vacancy arises. We set forth the highlights of those discussions:

a. As a preliminary matter, MACJ emphasized that pursuant to E.O. 4, the Mayor has 90 days to fill a judicial vacancy, "unless a longer period is required in the public interest."[17]

---

[14] Candidates for reappointment are actually considered by the City Bar before they are passed on to the Executive Committee and the Mayor, the rationale being that, if they are rejected by the City Bar, there is no need for them to see the Executive Committee and the Mayor. Reciprocally, there is no need to burden the City Bar with reviewing the candidacies of all three nominees, so its work awaits the Mayor's choice.

[15] Before consideration by the entire MACJ, candidates are also subject to a thorough background check by the New York City Department of Investigation, which informs MACJ of any adverse information it discovers. There have been instances where MACJ has not gone forward with a candidate because DOI has indicated adverse information, for example, relating to tax issues.

[16] They hold that title because they are appointed to fill, temporarily, a Civil Court seat that is statutorily required to be filled permanently through the electoral process. In other words, if a judge who holds an elected Civil Court seat leaves that office because they are elected to the Supreme Court, or for any other reason, an individual may be appointed by the Mayor, upon the nomination of MACJ, to fill the slot on an "interim basis" until December 31 of the next year, after which a judge who had just been elected in the immediately preceding November assumes the position.

[17] Executive Order No. 4, *supra*, § IV.

Although precise data was unavailable, MACJ estimated that vacancies are on average filled within two months.

b. Although applications for appointment are accepted on an ongoing basis, and although most applications for reappointment might be timely anticipated and processed, the workload of MACJ is subject to significant peaks and valleys for a variety of reasons, the most significant being that it is frequently difficult for it to find out in advance whether a vacancy will arise. This circumstance might arise in a variety of ways.

For example, MACJ reported that it often has not received advance notice from OCA supervisory personnel of a judge's intended retirement. Or, on at least one occasion, a vacancy arose suddenly because of a Family Court Judge's appointment to the Court of Claims and there was no one available to sit in that part and no clear procedure for how to handle her caseload. Most significantly, uncertainty surrounds the number of Interim Civil Court appointments that will be required. This is because, as a general matter, the Civil Court vacancies will not be known for certain until Election Day, when the incumbent Civil Court judges might be elected to Supreme Court, thus creating the vacancies in Civil Court and impacting the availability of judges in Family Court.

These uncertainties make it very difficult for MACJ to perform its work without bottlenecks that might suddenly impose burdens on both the OED, as well as the Committee members. For example, after Election Day, the need to fill newly created Interim Civil vacancies, as well as other anticipated vacancies, creates a press of work that might not exist during the summer. Moreover, as was repeatedly emphasized during our discussions, the Committee members all serve in a pro bono capacity and must dedicate significant time and effort to their subcommittee-vetting work in addition to the host of other significant responsibilities they carry in their legal practice. Accordingly, as a practical matter, there is a limit to how much can be asked of them and, in turn, a limit to how many applications might be fully considered in a compressed time period. As a result, it is not reasonable to expect that candidates will be ready for appointment on January 1, when many of the vacancies arise.

c. The Work Group suggested that some of these concerns could be addressed by having a "pool" of candidates who had already gone through the MACJ process and were thus ready for nomination to the Mayor immediately upon a vacancy's creation. MACJ presented a number of reasons why it did not think this would be practical.

First, it noted that the nomination to a court of someone who is not selected by the Mayor indeed remains valid for six months if another vacancy to that court exists. It emphasized too that such applications, as well as the applications of other candidates who have not been nominated to the Mayor, would become stale after that period of time, with material changes having occurred affecting the candidate's qualifications. Indeed, the candidate might no longer even be interested in pursuing a judicial post. Most importantly, MACJ stated that since it was receiving new applications on an ongoing basis, candidates might present themselves who are better qualified than those whose nominations were still viable or in the pool.

Moreover, as noted above, the number of vacancies that will have to be filled in each court year is very difficult to predict. In addition, if someone serving as an Interim Civil Court Judge has done well, MACJ seeks to find a permanent judicial position to which they can be appointed, reducing the need for additional new candidates. It would be impractical and burdensome to have the Committee members process applications for possible entry into a "pool" of qualified candidates when it is unknown whether there will in fact be vacancies for those candidates to fill.

d. Certain issues unique to the reappointment process were raised with MACJ. First, in response to an inquiry why an incumbent must complete the entire UJQ, which seeks a good deal of basic personal information that would not be different from that provided during the incumbent's initial application process, the Work Group was told that the issue had not been previously brought to MACJ's attention, but would be reviewed.

Second, we recounted the repeated reports from incumbent judges that they were not told whether they were going to be reappointed until almost immediately before—sometimes the day before—the expiration of their term. This practice seemed to unnecessarily create uncertainty in the administration of the court in which the incumbent sat, and to subject the judge (and the judge's family) to significant and unwarranted stress. MACJ stated that it generally began the reappointment process six months before a term's expiration, and tried very hard to complete the reappointment process in a way that avoided such a result. MACJ noted that all candidates for reappointment also have to be approved by the Judiciary Committee of the City Bar Association before they see the Mayor, which MACJ points to as adding an additional time period to the review process.[18]

C. Recommendations

It merits reiteration that the Work Group believes MACJ excellently performs its labor intensive and critically important substantive task of identifying highly qualified individuals for judicial appointment or reappointment. We thus set forth below only those recommendations that we believe would aid in the efficient administration of MACJ's work and, by extension, advance the administration of justice in the Family Court by addressing the experience of litigants who find, far too often, that Family Court parts are closed and thus not accessible.

1. *Increase the Number of MACJ Members*

E.O. 4 fixes the number of MACJ members at 19. As discussed above, particularly because the workflow over the course of the year is uneven, the processing of applications—and thus the ensuing judicial appointments or reappointments—may sometimes be delayed because subcommittee members who are doing the hands-on vetting find themselves overburdened. Put simply, there just are not enough MACJ members to do that vetting work with optimal efficiency.

[18] It is not one of the purposes of this report to weigh in on the relationship between MACJ and the City Bar Judiciary Committee, and whether the interaction of the two causes or contributes to any delay in the reappointment process. Both bodies play important roles. Later in the report, we do recommend that representatives of MACJ and the Judiciary Committee meet to identify ways in which applications for reappointment may be processed more efficiently.

Both MACJ's Co-Chairs and Ms. Kim stated that appointment of additional MACJ members would help address this issue and would be a change they would welcome.

2. *Enhance Communication and Planning with OCA*

MACJ's ability to plan is inhibited by the uncertainty of how many vacancies will arise over any period of time. Some of this uncertainty is difficult to address, since it is structurally related to the uncertainties attendant to the judicial election process that cannot be finally resolved until after Election Day in November. However, given the local political realities, often that resolution can be safely predicted during the preceding summer, when the electoral candidates—who often run unopposed—are nominated. In addition, vacancies resulting from retirements might generally be anticipated and planned for, particularly since some retiring judges are statutorily prohibited from remaining in office because of their age, and others generally notify their supervisors of their intention well before they actually leave the bench.

There appears to be a disconnect between OCA and MACJ with regard to judicial retirements. Specifically, OCA mentioned that it sometimes did not receive a timely judicial appointment to fill a vacancy even though it provided advance notice of a judge's retirement. On the other hand, MACJ reported that it often has not received notice from OCA of a judge's intended retirement. Significantly, the Work Group notes that there is no effective procedure in place by which senior personnel at OCA and MACJ regularly meet and discuss anticipated judicial staffing needs. We believe it is imperative that such a procedure for ongoing meetings be implemented. At a minimum, there should be actual meetings no less than three times per year—in January, when the scope of the year's anticipated needs can be addressed; in the summer, after the nominating conventions, so that the anticipated impact of the election can be assessed; and immediately after the election, so that its actual impact can be determined and addressed. In addition, a "hot line" procedure should be implemented so that MACJ is notified immediately by OCA of any unexpected judicial staffing issues, and OCA can be kept abreast of MACJ's efforts with respect to any extant vacancies or impending reappointments.

3. *Reevaluation of the "Six-Month" Rule*

Under the Executive Order and MACJ practice, if a nominee is seen by the Mayor, but not selected for appointment, the nominee's candidacy remains viable for six months, but only if other vacancies in the relevant court exist. In any event, the candidacy expires after six months. This practice precludes the maintenance of a "pool" of individuals ready to be appointed when a new vacancy arises.

MACJ explained that the reasons behind this practice are (i) that applications grow "stale," and become inaccurate; and (ii) that it is constantly receiving applications from new candidates whose credentials might prove superior to those of prior nominees. While these are valid concerns, the Work Group believes the six-month rule is applied in a manner that unnecessarily impedes the speedy appointment of qualified candidates. We thus urge MACJ to reevaluate the rule's application.

In the easiest example, as we understand it, an exceptionally well-qualified individual might apply for a Family Court position in January, be fully vetted and be nominated by MACJ to

see the Mayor in April for possible appointment to a single extant vacancy. The Mayor decides to appoint another nominee. Assuming that no other Family Court vacancies arise until November, the rejected candidate would no longer automatically be subject to consideration. Rather, as we understand it, the candidate would be required to regularly stay in touch with MACJ to make it known of the candidate's continuing interest in a position, and then go through the entire application process afresh after six months.

We believe this to be burdensome to both the candidate and MACJ and creates the risk that excellent viable candidacies will expire unnecessarily. MACJ should consider, instead, creating a system whereby the applications of candidates who have been vetted and approved by MACJ remain viable, unless withdrawn, and in which, by online process or otherwise, the candidate may easily amend or supplement an application with any material updated information. Of course, MACJ would still retain the discretion of determining which applicant might be nominated to the Mayor. But it would then have a large, readily available pool of candidates from which to choose.

4. *Vacancies Should be Filled Expeditiously; Where Possible, the Mayor Should Select Appointees Before Vacancies Arise*

Under the E.O., the Mayor is required only to fill a judicial vacancy "within ninety days unless a longer period is required in the public interest."[19] The Work Group believes this to be an unduly lengthy period, particularly in view of the harm to the administration of justice in Family Court, as detailed elsewhere in this Report. Indeed, where possible, a new appointee should be able to assume his or her position on the day the vacancy arises. Accordingly, we recommend that the E.O. be amended to provide that a vacancy be filled "as promptly as practicable but in no event later than 30 days after the vacancy arises."

Certainly, where a vacancy can long be anticipated by, for example, an impending retirement, the vetting process should be completed well-enough in advance so that the Mayor can interview three nominees at least 30 days prior to the vacancy's occurrence. The Mayor can choose one of those nominees, who can then be formally sworn into office on the day the vacancy actually arises.[20]

5. *Enhance Technological Resources and Improve Data Collection and Analysis*

During its discussions with MACJ, the Work Group came to believe that MACJ does not take advantage of technologies that would permit both the more efficient processing of judicial applications and a data-driven analysis of the work it performs. Thus, we understand that most of the administrative work is accomplished with "hard copies" of documents. As a single example, the entire UJQ, together with numerous addenda, writing samples, etc., must be printed and physically returned to MACJ by the applicant. Better use of digital technology could, consistent

[19] E.O. § 4(b).

[20] When we raised the possibility of such a procedure with MACJ, they expressed a concern that issues affecting the candidate's qualifications or credentials might arise between the time the Mayor selects the candidate and the formal swearing into office. We believe the ethical constraints on attorneys who are candidates for judicial office, as well as those on judges, would serve to minimize any such concerns as a practical matter.

with security and privacy concerns, significantly lessen the administrative burdens associated with such paper records.

In addition, it appears as if MACJ does not maintain easily accessible records reflecting the number of applications it receives, how many reach each stage in the vetting process or even how many initial appointments or reappointments it has reviewed in any given period. Obviously, it is difficult to assess appropriately how its processes could be improved without tracking such information.

We strongly recommend that MACJ review its technological capabilities and adopt methods that would address these issues.

6. *Use a Distinct Application for Reappointments*

As are those seeking initial appointment, sitting judges seeking reappointment are required to complete and submit the highly demanding 23-page UJQ. The Questionnaire, which seeks detailed information concerning an applicant's background, is appropriate for new candidates for office, but largely inapposite to incumbents since it seeks, in greatest part, the identical information previously provided by the incumbent.

We recommend that a new questionnaire be designed and utilized for incumbents that will call for the disclosure of material personal information that has changed since his or her initial appointment, as well as information relevant to his or her performance of judicial duties, as currently demanded by Item 38 of the UJQ. This will make the process easier for MACJ members to focus on vetting new judges. The focus of vetting judges who are eligible for reappointment should be on gathering feedback from the attorneys who regularly appear before the judge to determine if the judge is eligible for reappointment.

7. *Complete the Reappointment Process Earlier*

Although MACJ reaches out to incumbents to begin the reappointment process six months prior to the expiration of the incumbent's term, the Mayor often does not decide whether to reappoint until the literal eve of the expiration date. As discussed earlier, MACJ has suggested that the City Bar Judiciary Committee vetting process—no matter how expeditiously conducted—adds an additional review period before the candidate can be seen by the Mayor. We make two recommendations in response.

First, we recommend that MACJ pay special care to process the applications of incumbents speedily because, in addition to the difficulties the uncertainty of continued tenure creates for the incumbent's supervisors, that uncertainty imposes tremendous and wholly unnecessary emotional burdens upon the incumbents and their families. Second, we recommend that representatives of MACJ and the Judiciary Committee meet to identify ways in which applications for reappointment may be processed more efficiently. For example, it may be salutary to have both committees review the application simultaneously, rather than sequentially.

V. THE NEW YORK STATE OFFICE OF COURT ADMINISTRATION

OCA is the administrative arm of the court system under the direction of the Chief Administrative Judge of the Courts of New York State, currently Lawrence K. Marks. The Deputy Chief Administrative Judge of the New York City Courts, currently George J. Silver, oversees the day-to-day operations of the trial-level courts in New York City, including the Family Court. The Administrative Judge of the New York City Family Court manages the operations of the Family Court and is currently Jeanette Ruiz. The Honorable Anthony Cannataro serves as the Administrative Judge of the Civil Court of the City of New York.

This portion of the Report provides background, addresses the factors contributing to delay and interruption caused by judicial vacancies and constant reassignments and makes recommendations to help OCA better address such delay and interruptions.

However, before discussing the issues in respect of judicial assignments and reassignments in detail, the Work Group must note that New York's antiquated court system and the limited number of Family Court judges significantly contribute to the delays in the Family Court. Because those issues would require legislative or constitutional changes, they are beyond the scope of this Report. However, the Work Group thinks it is necessary to provide a brief overview of those two key issues.

First, the current court structure—made up of 11 separate trial courts with varying jurisdictions—is complex and costly, and adversely affects all litigants. It especially impacts the poor and unrepresented, who are expected to navigate the limited jurisdiction of these different courts with their different procedures and rules, in order to pursue claims (or defend against them) simultaneously in more than one forum. Court simplification would put an end to the current practice of appointing—from other courts—temporary acting judges.[21]

Second, the Family Court simply does not have enough judges to meet the demand of the caseloads, many of which are statutory mandates. It is imperative to increase the number of Family Court Judges, so that the heavy caseload carried by Family Court Judges could be alleviated and so that if a judge leaves, and their position is not promptly filled, their caseload could more easily be absorbed by the remaining members of that bench.

A. <u>The Major Responsibilities of OCA in the Judicial Assignment Process</u>

1. *Management of Vacancies*

There are two types of vacancies in the Family Court. The first is created by a Family Court Judge's departure, through retirement or otherwise.[22] These vacancies are filled by new

[21] It should be noted that the City Bar has long supported court simplification. *See, e.g.*, Written Testimony of [Former City Bar President] Roger Juan Maldonado, Public Hearing on Court Consolidation, Nov. 21, 2019, https://s3.amazonaws.com/documents.nycbar.org/files/2019605-CourtRestructuringTestimonyMaldonado112119.pdf.

[22] The number of New York City Family Court Judges is fixed at 56 by statute. N.Y. Family. Ct. Act § 121.

Mayoral appointments upon the recommendation of MACJ.[23] Once known, the Administrative Judge of the New York City Family Court informs MACJ of such a vacancy. After a judge is appointed to fill the vacancy, the Chief Administrative Judge of the Courts of New York State and the Deputy Chief Administrative Judge of the New York City Courts, with input from the Administrative Judge of the New York City Family Court, assign the new judge to a specific county in New York City. OCA does not have a mandatory notice requirement for retiring judges but indicated that such a requirement is not needed because Family Court Judges generally give adequate notice of their impending retirement.[24]

The second type of vacancy is a function of the general lack of a sufficient number of Family Court judgeships. This need is met by the temporary assignment of primarily Civil Court Judges to the Family Court, resulting in vacancies caused by the departure of judges on temporary assignment to the Family Court. To make up for the shortfall of Family Court Judges, OCA by necessity assigns at any given time approximately 12 Civil Court judges to the Family Court. The specific number of Civil Court judges assigned in a particular year varies.

The temporary assignments usually last for two years (sometimes longer), though it is not uncommon for these judges to sometimes be reassigned from Family Court even earlier. Since 2019, a more formal policy has been in place where a temporarily assigned judge is expected to notify the Deputy Chief Administrative Judge of the New York City Courts at least six months in advance of when that judge wishes to be transferred out of the Family Court.

2. *Factors Used to Determine Temporary Judicial Assignments*

In determining how to administer temporary judicial assignments, OCA considers a number of factors including, among other things, an individual judge's background and the potential effect on the different courts, taking into account the average caseload per judge and the turnover rate in each court.

OCA makes every effort to assign judges with prior family law experience and those who express an interest in the Family Court. However, this applies only to a fraction of the judges being assigned.

3. *Training*

OCA provides both in-person and online training to new and experienced Family Court Judges through the New York State Judicial Institute as well as an in-house training program developed by the Family Court. The Judicial Institute schedules a week-long training program for new judges in January because many judges take office following the November judicial elections. Immediately after the week-long training program, judges who will preside in the Family Court attend a two-week training program offered by the Family Court. Once a judge completes the Family Court training, they shadow experienced judges before taking the bench. In the end, a new

[23] *See* Section IV.A of the Report for a more detailed discussion on the judicial appointment process administered by MACJ.

[24] It is worth noting, however, that from time to time, judges may change or be ambivalent about their retirement plans, which can lead to inadequate retirement notices.

judge who is being temporarily assigned to Family Court is trained for approximately two months before they start hearing cases. Chief Judge DiFiore has also reinstated the annual Judicial Institute Summer Seminars, which provide three days of instruction on general topics appropriate for all courts combined with some court-specific topics.[25] The Judicial Institute Summer Seminars are recorded and available online.

The New York City Family Court Judges Association hosts two master classes per year, at which noted guest speakers present on various substantive family court matters. The Family Court has also created a library of "CourtCasts," which consists of brief podcasts on law and procedure. It also provides seminars, including training on case management skills, for judges, court attorney referees, support magistrates and court attorneys.[26] In addition, a judge assigned to the Family Court at any time during the year can shadow other Family Court Judges to the extent his or her own courtroom schedule permits.

OCA has expressed, and the Work Group acknowledges, that OCA does not have an unlimited amount of resources to address the many pressing needs in judicial training. OCA considers the training programs by the Judicial Institute robust.

4. *Limitations Faced Both by OCA and the Administrative Judge of the New York Family Court*

It is important to note that OCA does not have complete control over the filling of vacancies or the assignment of judges. Specifically, although OCA can request that the Mayor, through MACJ, appoint judges to a court, it does not control how many judges will be appointed or when. In addition, although the Administrative Judge of the New York Family Court proposes a budget for the Family Court each fiscal year, neither she nor OCA control the amount allocated in the State budget to the court system—an amount which is widely considered to be inadequate given all the pressing needs.

B. <u>The Work Group's Request for Relevant OCA Data</u>

On May 14, 2019, the Work Group asked OCA for detailed data relevant to determining the number and length of judicial vacancies, and the effect of vacancies and reassignments on caseloads and dispositions.[27] Thus, the Work Group, among other things, sought records of how

[25] The 2020 Judicial Institute Summer Seminar was cancelled due to COVID-19.

[26] The Family Court conducted a multi-day seminar in 2019 for judges, court attorney referees, support magistrates and court attorneys. Another was planned for summer 2020, but was canceled due to COVID-19.

[27] The Work Group sent an initial letter with data requests to OCA on May 14, 2019, seeking the following information:

I. How many Court parts are there in each county in New York City over which judges ordinarily preside ("Court Parts")? What type of cases are heard in each such Court Part?
   A. For each county and each type of Court Part, how many are staffed by judges who were appointed as Family Court Judges?
   B. For each county and each type of Court Part, how many are staffed by non-Family Court Judges from another court? Please also indicate the type of judges.
   C. What is the average length of time for non-Family Court Judges to stay in Family Court?

many Family Court parts had been vacant, and for how long. In addition, the Work Group asked for information that would permit it to compare the length of time it took to complete cases in those parts to the time it took in parts where vacancies had not occurred.

In response, OCA met with the Work Group in August and December 2019 for two one-hour meetings. OCA provided the Work Group with data relevant to the number of Family Court Judges, the number of judges temporarily assigned to the Family Court, the average caseload per judge in each county and the average length of time from fact finding to disposition for certain cases. Specifically, as of October 2019, the Family Court had 55 judges with an additional 17 Civil Court judges temporarily assigned. The data clearly demonstrated that Family Court Judges across each county have heavy caseloads—although they appear to vary significantly from county to county. The data also provided some insight into the amount of time cases take from filing to disposition. *See* Appendices B through F.

Unfortunately, however, OCA informed the Work Group that much of the information requested—including that directly related to reassignments, to the number and length of vacancies and to the impact of those reassignments and vacancies on the progress and disposition of cases—was not collected. We were thus unable to gain insight from the data provided on how the constant reassignments and resulting vacancies impact the court system.

D. What is the average length of time for Family Court appointed judges to serve in the Family Court?
E. For each of calendar years 2017 and 2018, how many appointed Family Court Judges are assigned to courts other than Family Court?

II. What is the current average caseload by county and by judge, and what was the average caseload for each of the past five calendar years?
III. What are the two most recent years that OCA has data on the time from filing to fact-finding and disposition in cases brought under Articles 3, 6, 7, 8 and 10 of the Family Court Act?
IV. For the two most recent years for which the information in "III" above is available, is OCA able to identify any Court Parts that did not have a judge presiding for 30 days or more in each borough? Can it report how long each Court Part remained without a judge?
V. For each of the Court Parts identified in "IV" above, is OCA able to identify those matters that were initiated prior to the Court Part becoming vacant and were still active when the Court Part became vacant? Does OCA have data on how many cases moved through multiple Court Parts due to vacancies?
VI. With respect to each of those matters identified in "V" above, is OCA able to provide the data identified in "III" above?
VII. For any borough in which one or more Court Parts are identified in "IV" above, can OCA provide data on that borough's average time from filing to fact-finding and disposition? Can OCA provide such data with respect to each Court Part?
VIII. With respect to each of the cases identified in "V" above, how many adjournments were there between the time of the vacancy and the next appearance at which some substantive legal event occurred? Is data available with respect to (a) whether the parties and/or their attorneys were notified about the adjournments before the next scheduled appearance, and/or (b) whether the case was actually on a calendar and called (by a court attorney or clerk), with the parties and/or their attorneys actually present?
IX Is Family Court able to report, on any given day in real time, which Court Parts are vacant on that day?

C. Factors Identified by OCA as Contributing to Delay in Proceedings and OCA's Initiatives to Address Those Factors

Although pointing to several other compelling factors that contribute to the delay in the disposition of Family Court matters, OCA acknowledged that delays in filling vacancies and the process of rotating judges from other courts has a significant prejudicial impact upon the court process. It made the Work Group aware of several initiatives it has already undertaken to address the issue.

As a prefatory matter, it should be reemphasized that the limited number of judges available to preside in Family Court is the most significant factor in causing both the delay in processing cases as well as the problems attendant to identifying solutions for that delay, such as the temporary assignment of judges from other courts.[28] In short, the Family Court does not have a sufficient number of judges to handle its high volume of cases, and borrowing judges from another court does not efficiently enhance Family Court's judicial resources. Moreover, the practice of borrowing judges also impacts negatively on the "lending" court's operations.

As mentioned above, to minimize the unpredictability of judges leaving the Family Court and to reduce the resulting delay in cases, OCA in 2019 implemented a six-month notice requirement on any temporarily assigned judges who wish to leave the Family Court. Despite this policy, however, judges at times leave for reasons out of their control. For example, one judge was appointed by the Governor to the New York Court of Claims with an immediate effective date, creating a Family Court vacancy overnight.

In connection with the notice requirement, OCA also asks judges who request transfers out of the Family Court to finish pending cases and not to start any new cases within the six-month period. The Work Group acknowledges that not allowing judges to take new cases helps with managing the transition process. However, we also note that the requirement means that the

[28] OCA has also identified several factors other than judicial vacancies that contribute to case delay. First, OCA emphasized that certain cases, such as those involving statutorily mandated emergency hearings, must often supersede other scheduled proceedings. Judges may need to postpone other cases to accommodate those superseding cases to the extent they lack flexible deadlines. (We note that this issue is not unique to the Family Court. For example, the Criminal Court must deal with speedy trial requirements, and every court must, to some extent, deal with emergency proceedings and other last-minute emergencies for reasons out of the court's control.) Second, individual judges' case management skills vary greatly, which can significantly affect the length of time between adjourn dates and the time to resolution of a matter. Third, attorney substitutions can also cause disruption of cases. According to OCA, this happens often with the Family Court Legal Services attorneys that represent the Administration for Child Services.

Recognizing case delay cannot be eliminated by addressing judicial vacancies alone, OCA has implemented other initiatives to mitigate such delay. For example, beginning in September 2019, OCA started making alternative dispute resolution (ADR) readily available to Family Court litigants in certain categories of cases. OCA stated that the use of ADR has reduced the burden somewhat on the Family Court, and that parties who participated in ADR generally provide positive feedback. OCA also strongly urges counties to use dedicated trial parts and encourages judges to conduct day-to-day trials. In addition, funding from the Casey Family Foundation has allowed the Family Court to host the Jurist Case Management Program in 2019 and a follow-up training in 2020.

judge's Family Court part is thus not operating at full capacity, and the shortfall adds to the burdens of other judges in the county.[29]

In addition, to better plan for the needs of the Family Court, in the summer of 2019, the Deputy Chief Administrative Judge of the New York City Courts, the Administrative Judge of the New York City Family Court and the Administrative Judge of the Civil Court of the City of New York met to review the Court's staffing needs to estimate how many judges will be leaving the Family Court through retirement, reassignment or otherwise, and how many judges could be available for assignments from the Civil Court. It is anticipated that such a planning meeting will be held on an annual basis and should permit the more effective allocation of resources and better anticipation of judicial staffing problems.

D. Contributing Factors Identified by the Work Group

On top of the factors identified by OCA, the Work Group has identified the following factors that contribute to delay caused by judicial vacancies, transfers and reassignments.

1. *Training*

As noted above, the annual training for judges is held in January based on the fact that many judges assume office at the beginning of the year following the November elections. Together with the other training previously described, that means that a judge whose term begins in January generally cannot begin to hear cases until approximately the end of February. However, Family Court Judges' terms do not all begin at the start of the year, and some Civil Court judges are assigned temporarily to Family Court at other times as well. To the extent these jurists assume office at some other time, they must wait until the next annual training to receive the foundational training necessary to fulfill their role. During the interim, as discussed in Section V.A.3, a judge can only rely on resources available online and shadow Family Court Judges. While these inexperienced judges do begin to preside in Family Court while awaiting this training, that lack of experience often becomes a significant cause of delay in the resolution of proceedings.

2. *Caseloads Across Five Counties*

Although OCA has expressed that the caseloads per judge are generally consistent across each county, data shows that judicial caseloads vary greatly between the counties with, as a general matter, caseloads being heavier in Bronx, Kings and Richmond Counties than in New York and Queens Counties.[30] *See* Appendix E. The difference in caseloads impacts the extent of the delay when there are judicial vacancies.

---

[29] We have made a recommendation in Section V.E.2 of this Report to address this specific concern.

[30] For example, in 2018, Richmond County Family Court judges had on average 2,136 new child protective ("CP"), custody and visitation ("CVO") and juvenile delinquency ("JD") filings; Bronx County judges on average had 2,173 such new filings; and Kings County had 2,453 such new filings on average per judge. By comparison, New York Family Court judges on average had 1,898 such new filings, and Queens County judges each had 1,729 new filings on average. During the same year, Richmond judges on average reached disposition on 2,471 CP, CVO and JD cases with 921 cases pending at the end of the year; Kings County judges on average reached disposition on 2,650 such cases with 1,660 cases pending; and Bronx judges on average reached disposition on 2,587 such cases with 1,178 cases pending. During the same period, New York judges on average reached disposition on 1,875 such

3. *Coordination Between OCA and MACJ*

It appears, through our dialogues with both OCA and MACJ, that OCA from time to time would not know when the Mayor planned to fill a vacancy, while MACJ expressed that it often did not receive advance notices from OCA that a vacancy was expected. *See also* Section IV.C.2 of the Report. This lack of communication and the consequent lack of coordination contributes to the delay in the filling of vacancies, further decreasing the number of judges available to preside in the Family Court and exacerbating case delays.

E. The Work Group's Recommendations

The Work Group recommends that OCA take the following steps to mitigate the delay and disruption caused by judicial vacancies and reassignments. The Work Group acknowledges that OCA has already implemented advance planning by having annual management meetings in the summer and requiring six-month notices from departing judges. However, the Work Group believes that OCA can further improve the planning by (1) improving the training programs, (2) allocating short-term cases to judges during the six-month transition period, (3) collecting robust data on judicial vacancies and their impact, and (4) coordinating with MACJ with respect to judge appointments.

1. *Improve Training Programs*

There is a significant need for new judges to be better trained in the substantive areas they are hearing, in trial procedure and evidence, and in case management. With respect to the training programs, with sufficient resources, OCA could schedule a second training during the year that is substantially similar to the one held in January, with the option to cancel if OCA determines such training is not needed. Alternatively, in addition to the two-week training for new judges, the Family Court could offer training sessions in segments throughout the year for judges assigned throughout the year. OCA should also consider allowing new judges with significant family law and Family Court experience to start hearing cases while they shadow experienced judges.

The Work Group recognizes that OCA has limited resources and may not be able to offer the formal training program more than once a year. We further recognize that the current COVID-19 pandemic imposes a significant challenge to providing training. Nonetheless, with the assistance of technology, those challenges can be alleviated by offering (at least part of) the training virtually if needed, so that the scheduling and locations of training programs could be more flexible and allow a judge to access materials remotely. We also recognize that OCA has already established certain online resources (such as the CourtCasts), and taped certain seminars, such as the Judicial Institute Summer Seminars. However, we believe that the online platform can be improved and enhanced with more robust materials. For example, instead of cancelling the trainings scheduled for summer 2020 due to COVID-19, certain portions of the lectures could be hosted online via video conferences. In addition, to the extent it is not already done so, the Work Group recommends OCA record all trainings and make them available online throughout the year.

cases with 1,049 cases pending; while Queens judges on average reached disposition on 2,185 cases with 812 cases pending.

2. *Allocate Short-Term Cases to Judges During Transition*

In addition, judges during the six-month transition period could hear more cases that usually last for less than six months, for example, certain emergency hearings. This could address the concern that not having these judges take on new cases at first glance appears to reduce the overall capacity of the Family Court. It could also reduce the caseload of other judges presiding in the Family Court.

3. *Improve Data Collection*

The Work Group recommends that OCA collect, compile and analyze all of the data outlined in Section V.B above. This data should include, for example, (i) the length of time a Family Court part has no judge presiding, (ii) the number of matters and the length and frequency of the delays of Articles 3, 6, 7, 8 and 10 cases affected by such vacancies, (iii) the average length of time of cases from fact finding to disposition in each county, including as impacted by vacancies, and (iv) real-time tracking of vacancies in each court part. Such data not only would help OCA track the caseload and staffing needs in the Family Court but also would help identify the causes of delay. The Work Group believes that OCA should comprehensively analyze the data so that it can develop effective solutions to these issues. Tracking such data does not appear unreasonably burdensome to OCA and would serve the public by making the court system more transparent and responsive to legitimate, documented concerns relating to the issues identified in this Report and raised by diverse Family Court constitutes.

4. *Coordinate with MACJ*

To address the lag in the coordination between OCA and MACJ about judicial appointment, the Work Group believes that MACJ and OCA would both benefit if they undertook a full review of the protocols of their interactive working process, the manner in which they communicate and liaison with each other and the challenges each face in fulfilling their responsibilities. *See* Section IV.C.2 and Section V.D.3 of the Report.

5. *Increase Transparency in the Assignment and Appointment Process*

The current process of assigning and appointing Family Court judges remains mired in confusion and secrecy. Rumors about appointments and changes in judicial assignments are often revealed to stakeholders through word of mouth informally before OCA makes official announcements. Decisions are usually announced at the very last minute and changes are made to plans without any explanation. This causes added confusion in an already chaotic system. It is important for OCA to find ways to be more open and transparent about the appointment and assignment process and the decisions that it makes. OCA should consider sharing information with the stakeholder community as early as possible in the process.

VI. CONCLUSION

Before offering our thanks to those who shared their time and provided the information that formed the foundation for this Report, we offer a final, critical recommendation that the Bar

Association maintain this Work Group to receive and evaluate any updates provided by MACJ and/or OCA regarding their efforts to address the issues identified in this Report, to update our evaluation in nine months and to provide a comprehensive addendum to this Report on the status of efforts to address the concerns addressed herein.

VII. ACKNOWLEDGMENTS

The Work Group is indebted to Chief Administrative Judge of the Courts of New York State, the Hon. Lawrence K. Marks, for his early commitment to OCA's cooperation with this effort, and to Deputy Chief Administrative Judge of the New York City Courts, the Hon. George J. Silver, and Administrative Judge of the New York City Family Court, the Hon. Jeanette Ruiz, for taking the time to meet and share information and their insights with the Work Group, along with Deputy Administrative Judge Hon. Anne-Marie Jolly. The Report would also not have been possible without the generous time, expertise and thoughtful feedback provided by MACJ's Chair, the Hon. Carmen Beauchamp Ciparick (Ret.), its Vice-Chair, Hon. Barry A. Cozier (Ret.), its Executive Director, Desirée Kim, and Counsel to MACJ, Henry Berger, as well as former New York City Corporation Counsel, Zachary W. Carter and Kapil Longani, Counsel to the Mayor. We are also grateful to both the OCA and MACJ leadership for their review of a prior draft of their sections of this report, and have incorporated much of their much-appreciated factual clarifications. The Work Group also offers its profound thanks to the advocates and practitioners who generously shared their front-line and institutional experience and insights. We also wish to acknowledge the exceptionally valuable contribution of Judge Jody Adams (Ret.), who served on the Work Group until she was appointed to MACJ in February 2020. The Work Group also benefited enormously from the invaluable substantive input and keen editing of Xiaoyang Ma, Associate at Proskauer Rose LLP. Finally, we want to acknowledge and thank former Queens County Family Court Supervising Judge, the Hon. Carol Stokinger (Ret.), and the former Chair of the Bar Association's Judiciary Committee, Kevin Schwartz, for their much-appreciated input.

December 2020

Family Court Judicial Appointment & Assignment Process Work Group
Glenn Metsch-Ampel, Co-Chair
gmampel@lawyersforchidlren.org

Hon. Daniel Turbow (ret.), Co-Chair
turbow@courtsandlaws.com

Members of the Work Group
Hon. Jody Adams (ret.)*
Hon. Sidney Gribetz (ret.)
Sara Hiltzik
Rene Kathawala
Dawne A. Mitchell
Fredda Monn

Lauren Shapiro
William Silverman

*Member of the Work Group until December 2019

Endorsing Committees

Children and the Law, Melissa J. Friedman, Chair
Council on Children, Dawne A. Mitchell, Chair
Council on Judicial Administration, Michael P. Regan, Chair
Family Court and Family Law, Michelle Burrell, Chair
Juvenile Justice, Maura A. Keating and Jennifer Marie Gilroy Ruiz, Co-Chairs
Pro Bono and Legal Services, Jennifer K. Brown and Nicole L. Fidler, Co-Chairs

APPENDIX A

NEW YORK CITY BAR

COMMITTEE ON FAMILY COURT AND FAMILY LAW

COUNCIL ON CHILDREN

CHILDREN & THE LAW COMMITTEE

JUVENILE JUSTICE COMMITTEE

We are pleased to announce the establishment of an inter-committee New York City Bar Association *Family Court Judicial Appointment & Assignment Process Work Group*. The Work Group will gather and evaluate information, prepare a report and issue recommendations aimed at improving the efficiency and efficacy of the process by which judges are appointed, reappointed and assigned to the New York City Family Court bench. Such an effort has the potential of serving as a blueprint to improve a process that negatively impacts the families that appear in that forum, creates gaps in the filling of vacant seats, and subjects sitting judges to unnecessary and stressful uncertainty about their future assignments.

Members of the Family Court and Family Law Committee and the Council on Children, as well as other Family Court practitioners have raised several troublesome issues regarding current practices, including:

a. Family Court parts remaining without judicial officers for unduly lengthy periods of time because of lags in the Family Court judicial appointment process or delays in the replacement of judges from other courts whose temporary assignments to Family Court have ended;

b. use of judges from other courts that have no experience in family court and have short term appointments, resulting in case loads -- often of 700 or 800 cases – being left uncovered, having several judges over a short period of time, and/or requiring exceptionally lengthy adjournments and, at times, mistrials where hearings have already started; and

c. requiring Family Court judges seeking reappointment to repeat the same process as required of new judicial applicants, and not informing them until a few days or less, before their terms' expiration whether they will in fact be reappointed.

Because of these and related issues, judicial staffing of the Family Court is perceived by many as a haphazard, chaotic, and unnecessarily lengthy process, devoid of long term planning.

The Work Group will first set out to interview stakeholders to learn precisely how the process currently works and its impact upon the public, bench and bar. It will then explore possible avenues of improvement through consultation with those stakeholders as well as various experts in the field of judicial administration. A report with recommendations will follow.

FAMILY COURT JUDGES, CITY OF NEW YORK
APPENDIX B

Bronx County Family Court 900 Sheridan Ave., Bronx, NY 10451

Tracey Bing - CP	
Keith E. Brown - CP	
Ariel D. Chesler - CVO	AJFC, (Civil)
Sarah P. Cooper - CP	AJSC, Supervising Judge
Karen M.C. Cortes - CP	
Alma M. Gomez – JD/PINS	
Ronna Gordon-Galchus -CVO	
David J. Kaplan - CP	
Shawn T. Kelly - JD	AJSC, AJFC (Civil)
Lynn M. Leopold_CP	
Ruben A. Martino - CVO	
Michael R. Milsap - CP	
Emily Morales-Minerva - CVOAJFC (Civil)	
Peter J. Passidomo - CP	
Phaedra F. Perry - CVO	AJFC (Civil)
Leticia M. Ramirez - CP	AJFC (Civil)
Elenor C. Cherry - CP	
Fiordaliza Rodriguez - CP	
Gilbert A. Taylor - CP	
Aija Tingling - CVO	AJF (Civil)

Kings County Family Court 330 Jay St., Brooklyn, NY 11201

Suzanne J. Adams - JD	AJFC (Civil)
Elizabeth Barnett - CP	
Rupert V. Barry - CVO	AJFC (Civil)
Alan M. Beckoff – JD	
Linda M. Capitti - CP	AJFC (Civil, Interim)
Diane Costanzo - CP	
Ben Darvil, Jr. - CP	
Jacqueline B. Deane - CP	
Alicea Elloras - CP	
Lisa J. Friederwitzer-CVO	
Melody Glover - CP	
Ilana Gruebel - CP/JD	
Ann E. O=Shea – CP	AJSC (Civil)
Erik S. Pitchal - CP/JD	
Susan Quirk - JD	AJFC (Civil)
Javier E. Vargas - CVO/SPP	
Judith D. Waksberg - CVO	
Kathleen C. Waterman - CVO	AJFC (Civil)
Amanda E. White - CP/JD	AJSC, Supervising Judge
Jacqueline D. Williams - CP	AJFC (Civil)

New York County Family Court 60 Lafayette St., New York, NY 10013

Maria S. Arias - CP	
Patria Frias-Colon – CP	AJFC (Civil)
Carol J. Goldstein - JD/CVO	
Karen I. Lupuloff - CP	AJSC, Supervising Judge
Emily M. Olshansky - CVO	
Jane Pearl – CP	
Valerie A. Pels - CP	
Clark V. Richardson - CP/FTC	
Jonathan Shim – CP	AJFC (Civil, Interim)
J. Machelle Sweeting - CVO	AJFC (Civil)

APPENDIX B

Queens County Family Court 151-20 Jamaica Ave., Jamaica, NY 11432

Adetokunbo O. Fasanya - JD	
Elizabeth L. Fassler - CVO	
Connie Gonzalez - CP/JD/PINS	
Anne-Marie Jolly -CP/CVO/JD	
AJSC, Deputy Administrative Judge	
Dean T. Kusakabe - JD/PINS	
Margaret Morgan - CP	
Robert D. Mulroy - CVO	
Mildred T. Negron - CP/CVO/JD	
Dweynie E. Paul – CVO	AJFC (Civil)
Joan L. Piccirillo - CP	
Emily Ruben - CP	
Monica Shulman -CVO	
Carol A. Stokinger - CP/CVO/JD	AJSC, Supervising Judge

Richmond County Family Court 100 Richmond Terrace, Staten Island, NY 10301

Peter F. DeLizzo - JD/PINS/CP/CVO	
Gregory L. Gliedman -	
Alison M. Hamanjian - JD/	AJSC Youth Part
Helene D. Sacco - JD/PINS/CVO	AJSC, Supervising Judge
Karen B. Wolff - CP	

Family Court Judges Assigned to other Courts:

Tandra Dawson – NY Supreme Criminal
Catherine DiDomenico – Richmond Supreme Civil
Douglas Hoffman – NY Supreme Criminal
Gayle Roberts – NY Supreme Civil – Youth Part

APPENDIX C

NEW YORK CITY FAMILY COURT 2017 STATISTICS

This material is for internal use only and not for distribution without the permission of the NYC Family Court Administrative Judge or her designee

Family Court 2017 Dispositions of A-Dockets: Days from Date Petition Filed to Disposition

County	Total	0-7 Days	8-14 Days	15-21 Days	22-30 Days	31-90 Days	91-180 Days	181-365 Days	366-730 Days	731 or More Days
Bronx	261	0	0	1	5	120	88	42	5	0
Kings	357	2	2	1	1	96	156	65	30	4
New York	268	0	3	4	17	130	67	38	9	0
Queens	200	1	1	7	2	68	73	36	12	0
Richmond	69	0	0	0	0	15	32	20	1	1

Family Court 2017 Dispositions of Original G-Dockets: Days from Date Petition Filed to Disposition

County	Total	0-7 Days	8-14 Days	15-21 Days	22-30 Days	31-90 Days	91-180 Days	181-365 Days	366-730 Days	731 or More Days
Bronx	976	12	8	10	71	365	283	181	42	4
Kings	1,255	58	12	16	30	566	397	119	33	24
New York	341	41	10	6	12	153	72	39	8	0
Queens	997	9	4	5	15	104	288	377	191	4
Richmond	104	3	2	7	6	28	45	9	4	0

Family Court 2017 Dispositions of Original V-Dockets: Days from Date Petition Filed to Disposition

County	Total	0-7 Days	8-14 Days	15-21 Days	22-30 Days	31-90 Days	91-180 Days	181-365 Days	366-730 Days	731 or More Days
Bronx	11,187	570	150	180	2,860	2,993	2,232	1,580	562	60
Kings	9,461	622	179	732	937	2,714	1,593	1,438	1,087	159
New York	4,266	236	86	92	225	1,623	912	676	366	50
Queens	7,687	377	134	381	673	2,109	1,713	1,593	626	81
Richmond	1,699	51	52	30	203	603	414	251	78	17

Data Source: UCMS Quarterly Data

10/22/2019

APPENDIX C
NEW YORK CITY FAMILY COURT 2017 STATISTICS

Table 1
FAMILY COURT
Dispositions of Original Abuse (NA) & Neglect (NN) Petitions: Days from Date Petition Filed to Fact-Finding 2017

County	Total	0-7 Days	8-14 Days	15-21 Days	22-30 Days	31-90 Days	91-180 Days	181-365 Days	366-730 Days	731 or More Days	No Fact-Finding	No Petition Filed Date*
Total New York State	**26,897**	**381**	**139**	**148**	**253**	**3,249**	**8,651**	**7,236**	**1,837**	**208**	**4,340**	**455**
Total New York City	**11,623**	**65**	**14**	**18**	**24**	**434**	**3,332**	**4,480**	**1,353**	**171**	**1,584**	**148**
New York	**1,398**	3			9	48	448	609	77	9	152	43
Kings	**3,584**	16	4	7	9	82	636	1,497	647	59	589	38
Queens	**2,019**	9	4	5	1	87	553	840	168	40	300	12
Bronx	**3,671**	30	4	6	4	167	1,467	1,144	349	32	418	50
Richmond	**951**	7	2		1	50	228	390	112	31	125	5

Note: Data based on number of disposed petitions; not on number of respondents.
* Includes cases with a pre-petition date but no subsequent petition date recorded.

Table 3
FAMILY COURT
Dispositions of Original Abuse (NA) & Neglect (NN) Petitions: Days from Fact-Finding to Disposition 2017

County	Total	0-7 Days	8-14 Days	15-21 Days	22-30 Days	31-90 Days	91-180 Days	181-365 Days	366-730 Days	731 or More Days	No Fact-Finding	No FF Date/ Disposed Prior to FF
Total New York State	**26,897**	**17,110**	**251**	**280**	**354**	**2,295**	**1,225**	**713**	**205**	**37**	**4,340**	**87**
Total New York City	**11,623**	**7,003**	**78**	**110**	**119**	**1,205**	**757**	**543**	**154**	**29**	**1,584**	**41**
New York	**1,398**	821	17	18	16	173	116	68	6	5	152	6
Kings	**3,584**	2,252	18	26	30	199	195	170	81	17	589	7
Queens	**2,019**	1,097	8	18	23	295	142	100	30	4	300	2
Bronx	**3,671**	2,277	27	36	40	419	228	167	32	3	418	24
Richmond	**951**	556	8	12	10	119	76	38	5		125	2

Note: Data based on number of disposed petitions; not on number of respondents.

Table 19
FAMILY COURT
Dispositions of Original Juvenile Delinquency (D) Petitions: Days from Date Petition Filed to Fact-Finding 2017

County	Total	0-7 Days	8-14 Days	15-21 Days	22-30 Days	31-90 Days	91-180 Days	181-365 Days	366-730 Days	731 or More Days	No Fact-Finding *	No Petition Filed Date**	FF Date Before Petition File Date
Total New York State	**5,511**	**491**	**348**	**222**	**276**	**1,767**	**751**	**205**	**39**	**1,349**	**8**	**3**	**52**
Total New York City	**2,093**	**211**	**59**	**52**	**63**	**489**	**264**	**117**	**30**	**790**	**4**	**3**	**11**
New York	**390**	49	10	7	10	71	17	8		217			1
Kings	**588**	56	13	14	26	99	79	30	10	257	1	1	2
Queens	**357**	49	16	9	13	140	35	6	2	83	1	1	2
Bronx	**661**	45	14	16	9	143	120	70	18	218	2	1	5
Richmond	**97**	12	6	6	5	36	13	3		15			1

* May include pre-petitions that were ultimately denied or dismissed.
** These are cases with a pre-petition date but no subsequent petition date recorded.

Table 20 FAMILY COURT
Dispositions of Original Juvenile Delinquency (D) Petitions: Days from Fact-Finding to Disposition 2017

County	Total	0-7 Days	8-14 Days	15-21 Days	22-30 Days	31-90 Days	91-180 Days	181-365 Days	366-730 Days	731 or More Days	No Fact-Finding*	Dispo Date Before FF Date
Total New York State	**5,511**	**1,933**	**99**	**106**	**184**	**8**	**1,382**	**330**	**98**	**6**	**1,349**	**16**
Total New York City	**2,093**	**481**	**24**	**28**	**50**	**-**	**495**	**149**	**64**	**3**	**790**	**9**
New York	**390**	71	4	4	8		58	23	5		217	
Kings	**588**	112	7	6	16		128	31	28		257	3
Queens	**357**	81	2	5	7		127	38	11	2	83	1
Bronx	**661**	201	9	8	12		144	46	17	1	218	5
Richmond	**97**	16	2	5	7		38	11	3		15	

* May include pre-petitions that were ultimately denied or dismissed.

Table 48
FAMILY COURT
Dispositions of Original Designated Felony (E) Petitions: Days from Date Petition Filed to Fact-Finding 2017

County	Total	0-7 Days	8-14 Days	15-21 Days	22-30 Days	31-90 Days	91-180 Days	181-365 Days	366-730 Days	731 or More Days	No Fact-Finding	No Petition Filed Date
Total New York State	**76**	**7**	**5**	**5**	**6**	**26**	**7**	**4**	**-**	**-**	**16**	**-**
Total New York City	**18**	**1**	**2**	**-**	**1**	**7**	**1**	**3**	**-**	**-**	**3**	**-**
New York	**3**					3						
Kings	**7**					3	1	1			2	
Queens	**4**		2		1	1						
Bronx	**4**	1						2			1	
Richmond	-											

Note: These petitions exclude removals from Criminal Court.

Table 49
FAMILY COURT
Dispositions of Original Designated Felony (E) Petitions: Days from Fact-Finding to Disposition 2017

County	Total	0-7 Days	8-14 Days	15-21 Days	22-30 Days	31-90 Days	91-180 Days	181-365 Days	366-730 Days	731 or More Days	No Fact Finding
Total New York State	**76**	**27**	**4**	**1**	**1**	**25**	**1**	**1**	**-**	**-**	**16**
Total New York City	**18**	**10**	**-**	**-**	**-**	**3**	**1**	**1**	**-**	**-**	**3**
New York	**3**	3									
Kings	**7**	3					1	1			2
Queens	**4**	2				2					
Bronx	**4**	2				1					1
Richmond	-										

Note: These petitions exclude removals from Criminal Court.

APPENDIX C
NEW YORK CITY FAMILY COURT 2017 STATISTICS

Table 75
FAMILY COURT
Dispositions of Original Family Offense (O) Petitions: Days from Date Petition Filed to Disposition 2017

County	Total	0-7 Days	8-14 Days	15-21 Days	22-30 Days	31-90 Days	91-180 Days	181-365 Days	366-730 Days	731 or More Days
Total New York State	**54,806**	**10,870**	**3,437**	**3,224**	**4,541**	**18,224**	**9,292**	**4,118**	**941**	**159**
Total New York City	**21,972**	**3,560**	**779**	**929**	**1,787**	**8,174**	**3,862**	**2,092**	**660**	**129**
New York	**2,876**	395	112	128	204	1,113	549	262	87	26
Kings	**6,031**	995	200	164	243	2,094	1,213	710	331	81
Queens	**5,197**	1,276	216	248	396	1,560	863	511	114	13
Bronx	**6,492**	680	159	276	769	2,943	1,035	508	114	8
Richmond	**1,376**	214	92	113	175	464	202	101	14	1

Table 80
FAMILY COURT
Dispositions of Original PINS (S) Petitions: Days from Date Petition Filed to Disposition 2017

County	Total	0-7 Days	8-14 Days	15-21 Days	22-30 Days	31-90 Days	91-180 Days	181-365 Days	366-730 Days	731 or More Days	No Petition Filed Date
Total New York State	**2,248**	**117**	**79**	**65**	**114**	**824**	**708**	**272**	**58**	**7**	**4**
Total New York City	**527**	**31**	**16**	**11**	**35**	**153**	**167**	**69**	**38**	**6**	**1**
New York	**53**		1		7	25	10	8	2		
Kings	**149**	15	5	3	15	42	36	15	14	3	1
Queens	**90**	2	1		4	12	47	15	8	1	
Bronx	**184**	11	4	5	5	62	62	23	11	1	
Richmond	**51**	3	5	3	4	12	12	8	3	1	

APPENDIX D
NEW YORK CITY FAMILY COURT 2016 STATISTICS

Table 1

FAMILY COURT

Dispositions of Original Abuse (NA) & Neglect (NN) Petitions: Days from Date Petition Filed to Fact-Finding 2016

County	Total	0-7 Days	8-14 Days	15-21 Days	22-30 Days	31-90 Days	91-180 Days	181-365 Days	366-730 Days	731 or More Days	No Fact-Finding	No Petition Filed Date*
Total New York State	**26,051**	**407**	**108**	**165**	**279**	**3,537**	**8,011**	**7,114**	**1,894**	**227**	**3,852**	**457**
Total New York City	**9,991**	**43**	**14**	**20**	**32**	**396**	**2,582**	**4,088**	**1,355**	**170**	**1,140**	**151**
New York	**1,253**	6	4	2	4	42	362	535	117	10	134	37
Kings	**3,331**	10	2	8	10	107	587	1,474	565	112	419	37
Queens	**1,535**	1	6	3	10	85	438	615	218	19	131	9
Bronx	**2,981**	16		3	3	97	1,010	1,094	329	23	339	67
Richmond	**891**	10	2	4	5	65	185	370	126	6	117	1

Note: Data based on number of disposed petitions; not on number of respondents.

* Includes cases with a pre-petition date but no subsequent petition date recorded.

Table 3

FAMILY COURT

Dispositions of Original Abuse (NA) & Neglect (NN) Petitions: Days from Fact-Finding to Disposition 2016

County	Total	0-7 Days	8-14 Days	15-21 Days	22-30 Days	31-90 Days	91-180 Days	181-365 Days	366-730 Days	731 or More Days	No Fact-Finding	No FF Date/ Disposed Prior to FF
Total New York State	**26,051**	**16,497**	**212**	**271**	**386**	**2,451**	**1,381**	**726**	**176**	**18**	**3,852**	**81**
Total New York City	**9,991**	**5,443**	**74**	**110**	**206**	**1,360**	**956**	**540**	**128**	**9**	**1,140**	**25**
New York	**1,253**	595	17	22	32	216	120	68	37	4	134	8
Kings	**3,331**	1,888	24	13	58	389	281	211	38	4	419	6
Queens	**1,535**	774	9	16	33	272	169	103	21		131	7
Bronx	**2,981**	1,725	19	39	62	354	271	140	27	1	339	4
Richmond	**891**	461	5	20	21	129	115	18	5		117	

Note: Data based on number of disposed petitions; not on number of respondents.

Table 19
FAMILY COURT
Dispositions of Original Juvenile Delinquency (D) Petitions: Days from Date Petition Filed to Fact-Finding 2016

County	Total	0-7 Days	8-14 Days	15-21 Days	22-30 Days	31-90 Days	91-180 Days	181-365 Days	366-730 Days	731 or More Days	No Fact-Finding *	No Petition Filed Date**	FF Date Before Petition File
Total New York State	**6,639**	**552**	**417**	**229**	**417**	**1,963**	**759**	**319**	**67**	**15**	**1,828**	**63**	**10**
Total New York City	**2,639**	**244**	**87**	**63**	**81**	**625**	**316**	**210**	**55**	**10**	**930**	**12**	**6**
New York	**539**	62	19	14	17	115	28	12	1	1	269		1
Kings	**759**	74	22	17	27	148	87	72	18	2	290	1	1
Queens	**344**	49	14	12	10	119	42	7	2		87		2
Bronx	**871**	46	27	13	18	204	140	116	34	7	257	8	1
Richmond	**126**	13	5	7	9	39	19	3			27	3	1

* May include pre-petitions that were ultimately denied or dismissed.
** These are cases with a pre-petition date but no subsequent petition date recorded.

Table 20 **FAI**
COURT
Dispositions of Original Juvenile Delinquency (D) Petitions: Days from Fact-Finding to Disposition 2016

County	Total	0-7 Days	8-14 Days	15-21 Days	22-30 Days	31-90 Days	91-180 Days	181-365 Days	366-730 Days	731 or More Days	No Fact-Finding*	Dispo Date Before FF Date
Total New York State	**6,639**	**2,311**	**100**	**110**	**181**	**1,569**	**409**	**112**	**8**	**2**	**1,828**	**9**
Total New York City	**2,639**	**664**	**22**	**25**	**48**	**642**	**219**	**79**	**7**	**2**	**930**	**1**
New York	**539**	88	2	6	21	111	32	10			269	
Kings	**759**	175	10	5	9	155	84	27	3	1	290	
Queens	**344**	62	2	7	11	116	42	15	1	1	87	
Bronx	**871**	310	7	5	6	210	49	24	3		257	
Richmond	**126**	29	1	2	1	50	12	3			27	1

* May include pre-petitions that were ultimately denied or dismissed.

Table 48
FAMILY COURT
Dispositions of Original Designated Felony (E) Petitions: Days from Date Petition Filed to Fact-Finding 2016

County	Total	0-7 Days	8-14 Days	15-21 Days	22-30 Days	31-90 Days	91-180 Days	181-365 Days	366-730 Days	731 or More Days	No Fact-Finding	No Petition Filed Date
Total New York State	**80**	**6**	**5**	**7**	**6**	**18**	**8**	**10**	**1**	**-**	**19**	**-**
Total New York City	**27**	**1**	**2**	**2**	**3**	**3**	**1**	**7**	**-**	**-**	**8**	**-**
New York	**5**			1	1	2					1	
Kings	**7**				1		1	2			3	
Queens	**4**					1					3	
Bronx	**10**	1	1	1	1			5			1	
Richmond	**1**		1									

Note: These petitions exclude removals from Criminal Court

Table 49
FAMILY COURT
Dispositions of Original Designated Felony (E) Petitions: Days from Fact-Finding to Disposition 2016

County	Total	0-7 Days	8-14 Days	15-21 Days	22-30 Days	31-90 Days	91-180 Days	181-365 Days	366-730 Days	731 or More Days	No Fact Finding
Total New York State	**80**	**28**	**1**	**2**	**7**	**15**	**7**	**1**	**-**	**-**	**19**
Total New York City	**27**	**10**	**-**	**2**	**-**	**3**	**4**	**-**	**-**	**-**	**8**
New York	**5**	4									1
Kings	**7**	1		1			2				3
Queens	**4**			1							3
Bronx	**10**	5				2	2				1
Richmond	**1**					1					

Note: These petitions exclude removals from Criminal Court.

Table 75
FAMILY COURT
Dispositions of Original Family Offense (O) Petitions: Days from Date Petition Filed to Disposition 2016

County	Total	0-7 Days	8-14 Days	15-21 Days	22-30 Days	31-90 Days	91-180 Days	181-365 Days	366-730 Days	731 or More Days
Total New York State	**54,615**	**10,726**	**3,364**	**3,530**	**4,618**	**18,377**	**8,860**	**3,948**	**969**	**223**
Total New York City	**22,351**	**3,779**	**845**	**1,079**	**1,798**	**8,316**	**3,786**	**1,912**	**659**	**177**
New York	**2,862**	495	129	146	186	1,077	482	243	86	18
Kings	**5,950**	1,109	266	236	315	2,015	1,060	556	279	114
Queens	**5,671**	1,322	200	260	398	1,805	957	567	136	26
Bronx	**6,529**	631	138	266	748	3,015	1,115	474	131	11
Richmond	**1,339**	222	112	171	151	404	172	72	27	8

Table 80
FAMILY COURT
Dispositions of Original PINS (S) Petitions: Days from Date Petition Filed to Disposition 2016

County	Total	0-7 Days	8-14 Days	15-21 Days	22-30 Days	31-90 Days	91-180 Days	181-365 Days	366-730 Days	731 or More Days	No Petition Filed Date
Total New York State	**2,637**	**129**	**90**	**86**	**119**	**951**	**851**	**313**	**80**	**13**	**5**
Total New York City	**627**	**34**	**21**	**10**	**28**	**176**	**207**	**102**	**43**	**6**	**-**
New York	**71**	5		1	4	25	19	12	5		
Kings	**172**	14	6	4	11	46	50	23	14	4	
Queens	**106**	1	2		1	19	62	14	7		
Bronx	**234**	13	10	2	10	69	68	45	15	2	
Richmond	**44**	1	3	3	2	17	8	8	2		

APPENDIX E

AVERAGE JUDGE CASELOAD BY COUNTY: 2016-2017

This material is for internal use only and not for distribution without permission of the NYC Family Court Administrative Judge or her designee.

			AVERAGE FILINGS			AVERAGE DISPOSITIONS			AVERAGE PENDINGS		
JUDGES	Year	County	CP	CVO	JD	CP	CVO	JD	CP	CVO	JD
	2016	Bronx	565	1,235	537	528	1,541	746	405	519	139
		Kings	563	1,240	737	511	1,362	756	599	694	343
		New York	655	949	649	544	955	627	489	320	212
		Queens	621	1,006	505	607	1,254	509	469	334	101
		Richmond	764	1,565	317	731	1,802	311	543	443	52
	2017	Bronx	700	1,061	589	561	1,466	684	541	484	145
		Kings	674	1,260	810	443	1,354	735	739	714	262
		New York	772	1,012	426	588	938	399	619	362	106
		Queens	761	952	402	604	1,069	438	572	380	88
		Richmond	1,035	2,207	212	814	2,233	238	717	400	29
	2018	Bronx	671	894	608	638	1,245	704	554	506	118
		Kings	607	1,247	599	653	1,349	648	736	821	103
		New York	585	870	443	571	906	398	541	386	122
		Queens	626	711	392	640	1,094	451	471	272	69
		Richmond	776	1,186	174	914	1,381	176	610	276	35

This chart depicts the county averages of judges in their designated specialties.

KEY:
CP: A, AC, AS, B, L, K, NN, NA
CVO: G, O, V
JD: D, E, S

Date: 3/10/20

APPENDIX F

NEW YORK CITY FAMILY COURT 2017 STATISTICS

This material is for internal use only and not for distribution without the permission of the NYC Family Court Administrative Judge or her designee

Family Court 2017 Dispositions of A-Dockets: Days from Date Petition Filed to Disposition

County	Total	0-7 Days	8-14 Days	15-21 Days	22-30 Days	31-90 Days	91-180 Days	181-365 Days	366-730 Days	731 or More Days
Bronx	261	0	0	1	5	120	88	42	5	0
Kings	357	2	2	1	1	96	156	65	30	4
New York	268	0	3	4	17	130	67	38	9	0
Queens	200	1	1	7	2	68	73	36	12	0
Richmond	69	0	0	0	0	15	32	20	1	1

Family Court 2017 Dispositions of Original G-Dockets: Days from Date Petition Filed to Disposition

County	Total	0-7 Days	8-14 Days	15-21 Days	22-30 Days	31-90 Days	91-180 Days	181-365 Days	366-730 Days	731 or More Days
Bronx	976	12	8	10	71	365	283	181	42	4
Kings	1,255	58	12	16	30	566	397	119	33	24
New York	341	41	10	6	12	153	72	39	8	0
Queens	997	9	4	5	15	104	288	377	191	4
Richmond	104	3	2	7	6	28	45	9	4	0

Family Court 2017 Dispositions of Original V-Dockets: Days from Date Petition Filed to Disposition

County	Total	0-7 Days	8-14 Days	15-21 Days	22-30 Days	31-90 Days	91-180 Days	181-365 Days	366-730 Days	731 or More Days
Bronx	11,187	570	150	180	2,860	2,993	2,232	1,580	562	60
Kings	9,461	622	179	732	937	2,714	1,593	1,438	1,087	159
New York	4,266	236	86	92	225	1,623	912	676	366	50
Queens	7,687	377	134	381	673	2,109	1,713	1,593	626	81
Richmond	1,699	51	52	30	203	603	414	251	78	17

Data Source: UCMS Quarterly Data

10/22/2019

Testimony by Philip Katz, Esq. to the Committee on Oversight and Investigations Regarding Family Court Operational Challenges – April 24, 2023

I am extremely grateful to the Committee on Oversight and Investigations for its efforts to review and address the operational challenges in Family Court and for permitting me to address you today with some of my ideas and concerns.

There is no more important work done by our court system than the work done for children and families. For this reason, I am here to tell you that the Family Courts should be given the highest priority when New York City resources are allocated, and their operations should receive the maximum support that the City can provide. Sadly, experience has shown me that the Family Court is not given the appropriate level of priority in terms of resources or operational assistance.

Families are the foundation of our City. As with any structure, if the foundation is not given priority, then everything built on top of that foundation will ultimately crumble. Thus, it is imperative that New York City put its foundation, its families, first in when making policy and legislative decisions in order to ensure that our city remains a safe, strong, and prosperous one.

Let me start with a bit of positive news. Our Family Court administration and judiciary are, for the most part, hardworking, caring, and qualified people. They truly care about children and families, and they do all that they can, with the limited resources that they are given, to make our Family Courts places where the best interests of children, protection of victims of intimate domestic violence, and the rights of parents are given the highest priority.

As an attorney who has been a member of the Assigned Counsel Panel in New York City Family Court for well over a decade, as a leader of my Manhattan Family Court Panel, and as the Vice President of the Assigned Counsel Association of the State of New York, I have spent my days, nights, and weekends helping children and families to navigate the Family Court. That means that I come face-to-face with its many operational challenges. In addressing the operational challenges in the Family Courts, what can the City do? The short answer is that I think there is a lot that you can do to provide support.

Everything that the Court system, and the City, does relative to Family Court proceedings should center around the most important players in the process, the litigants. Families and children need to be assured of a process that is fair, efficient, and easily accessible. This requires sufficient funding, adequate facilities, and a review of some of the arcane rules that impact Family Court operations.

For example, the City could encourage and facilitate the use of virtual proceedings in Family Court. Our Family Courts, in fact all our courts, learned through the COVID-19 pandemic that justice can be dispensed virtually. Virtual appearances can be used in lieu of in-person appearances to the same effect in many cases. In fact, they are better in some ways than in person proceedings. The use of virtual technology has made the Family Court more accessible and more inviting to litigants. Mothers and fathers who were unable to travel to the courthouse to file cases pre-COVID because of caregiving or work responsibilities suddenly had a way to file and appear in court and have their family matters addressed without being placed in any jeopardy. Virtual proceedings lifted one barrier to victims of intimate partner violence (IPV) in reaching out to the Court for protection. IPV victims who historically had been afraid to file for an order of protection in Family Court for fear of meeting up with their abusers in the courthouse, found a safe way to file for an order of protection and appear in court. The City should support and encourage the continued use of virtual proceedings by providing appropriate funding and facilities for litigants to appear remotely within their community. By setting up virtual kiosks in shelters, community centers, and other locations throughout the city, litigants would have safe and convenient spaces to file and virtually appear in court. Similarly, not all jurists would need a courtroom if more proceedings were done virtually. Jurists could operate virtually from almost any location, enabling our courthouses to facilitate a higher volume of proceedings while utilizing less space.

In helping families in Family Court, the concept of "one family one judge" is an important one. Just imagine for one moment that you represent a father, a mother, a child, or an abuse victim. Imagine having them spend months or years detailing their most intimate family issues to a judge. Imagine that they have finally become familiar with the judge and are beginning to trust that jurist. Then imagine having to tell that extremely vulnerable person that the judge is being transferred away and that they must appear before a new judge. This horrible all-to-common situation causes further trauma to a family in crisis. I believe the City can minimize this additional trauma being caused to families in a few ways.

First, our Family Courts need more appointed judges. The Mayor's office can help by appointing more judges and streamlining the process so that it is faster. Second, when elected judges are assigned to our Family Courts, it is my understanding that New York City assignment rules limit elected judges' Family Court assignments to two years. Given that many cases can take well over a year from start to finish, some more than two, this "2-year rule," is problematic. Elected judges assigned to Family Court should be permitted to, and even encouraged to, remain in Family Court as long as they wish but in no event should their Family Court terms be less than three years.

To understand how the City can help support our Assigned Counsel Panel members, I think it is important to understand who we are and what we do.

In sum, we are the front-line advocates for indigent litigants in Family Court. We are a diverse group of individuals hailing from many cultures, coming from many ethnic backgrounds, and speaking many languages. What binds us is our singular focus; we want to help New York families. We are independent practitioners who are grossly under compensated for what we do. We are required to maintain offices, provide our own insurance, pay for our own office supplies, and employ our own staff. We are given no benefits and we are provided with no rate increases unless they are compelled by litigation. We do what we do because we know how important our work is. We know how important families are to the future of New York City, New York State, and the United States.

When an indigent parent, child or victim of domestic violence arrives in the Family Court, they have a Constitutional right to counsel if they wish assistance. Since most of these individuals cannot navigate the process without counsel, more often than not they request counsel. Attorneys like me on the Assigned Counsel panels are summoned by the Family Court jurist to advocate for these individuals.

Each one of us is required to make ourselves available on one or more days each month to accept assignments to individuals when indigent children and parents require counsel. I first joined the Manhattan Family Court panel well over a decade ago. At that time I was one of approximately 70 people on my panel. By 2020 the numbers dwindled to approximately 35 individuals. The fact that panel membership dropped by 50% due to a neglect of the panel by the City and State in the past decade should come as no surprise. It should also come as no surprise that case volumes have grown during that same period citywide. You should also understand that with less panel members and more cases, many active panel members have had to take a pause from accepting new cases due to the high caseloads that they are managing. This means that it is not uncommon for 10-20% of the active panel members to be unable to accept new cases, thereby reducing the effective number of people on any given panel even more. Less attorneys with less time to appear in court due to their busy schedules means that there are more delays in the court process.

Assigned Counsel panels in this city have a far higher rate of attrition than new members joining. The reason for this is obvious. The City and State have failed to properly fund and support the program. For two decades, legislation has provided a $75 per hour rate for experienced attorneys doing this complicated work. This rate has been the equivalent of minimum wage after all expenses incurred to do the job are considered. Litigation has been the only way to compel the City and State to increase these rates. This dynamic has made it extremely hard to recruit new, qualified attorneys to the panels. The City must support, both financially and legislatively, an

increase in Assigned Counsel rates. They must support the increase of the Assigned Counsel rate to one equal to the federal defender rate, inclusive of cost-of-living adjustments.

Another way that the City could help indigent litigants in Family Court, and actually save money in the process, would be by providing these attorneys with access to its Language Line account. Many indigent litigants in Family Court do not speak English. According to the NYC Department of Planning, New Yorkers speak over 200 different languages. Thus, it should come as no surprise that interpreter services are vital to effective representation in Family Court. At present, an Assigned Counsel panel member could be assigned to an individual who only speaks Chinese, Spanish, Bengali, or an Arabic language, just to name a few of the many languages our clients speak. Under the present system, before an attorney can speak with their non-English-speaking client, they must draft an order for permission to privately hire an interpreter, submit the order for a judge to review, wait for the judge to sign the order, locate an interpreter that will assist, and then find a time that the attorney, interpreter, and client are available to speak. This process can take hours in the best of cases. In the worst cases, interpreters cannot be found because the network is so limited. When families are pulled apart and hearings need to be scheduled but are delayed because interpreters are needed and cannot be located quickly, the City should not continue to sit on its hands when the solution is simple and within its reach. The City must do more for its non-English speaking families, it must provide Assigned Counsel panel members with access to its Language Line account.

While there is much more that I could opine on with respect to how our Family Court system can be helped operationally by greater support of the New York City Council, I am aware that this Committee's time is limited. I welcome future inquiry from this Committee, however, I will end my testimony with one final thought.

There is no more important institution than the family. The New York City government must do all it can to support families, which means that it must do all it can to support the New York City Family Courts. For if it fails to do this, it will have failed all New Yorkers

2 Lafayette Street, 3rd Floor, New York, NY 10007
T 212.577.7700 F 212.385.0331 www.safehorizon.org

safehorizon
moving victims of violence from crisis to confidence

April 24, 2023

New York City Council
Committees on Oversight and Investigations; Public Safety; & General Welfare
Hon. Gale A. Brewer; Hon. Kamillah Hanks; Hon. Diana Ayala

Testimony of Stacy A. Schecter, Esq., Interim Director, Domestic Violence Law Project
Operational Challenges of Family Court

Good morning and thank you for the opportunity to provide testimony before the Committees on Oversight and Investigations; Public Safety; and General Welfare. My name is Stacy Schecter, and I am Interim Director of Safe Horizon's Domestic Violence Law Project. Safe Horizon is the nation's largest non-profit victim services organization. We offer a client-centered, trauma-informed response to 250,000 New Yorkers each year who have experienced violence or abuse. We are increasingly using a lens of racial equity to guide our work with clients, with each other, and in developing the positions we hold.

Safe Horizon's Domestic Violence Law Project (DVLP) provides direct legal advocacy and representation to indigent victims of domestic violence in New York City's Family, Supreme, & Integrated Domestic Violence Courts. We assist with orders of protection, child support, custody, visitation, and uncontested divorce proceedings. We also run a legal helpline that provides information, referrals, and assistance to domestic violence survivors. Additionally, Safe Horizon has programs in all of New York City's five Family Courts, staffed by case managers and social workers who assist survivors of domestic and family violence with understanding their options and assisting with navigating Family Court. In fact, when the courts were closed during the COVID "PAUSE," our DVLP and Family Court Programs, as well as staff from other civil legal programs, assisted survivors with petitioning for emergency orders when the courts were otherwise closed. Therefore, we and our sibling organizations deeply understand what is and is not working in our Family Courts.

Families across New York State, especially survivors of domestic and family violence, depend on our Family Court system to adjudicate important, often very complex and very personal, legal issues. We all wish for our Family Court system to function in a professional manner and to make what are fundamentally life-changing decisions in a judicious and timely manner. However, our Family Courts are not living up to what we would expect from such an essential part of our judicial system. Our DVLP and Family Court Programs would like to highlight the following challenges:

1. **Funding for Attorneys**
   - The court system itself needs more funding, of course, but also the nonprofit organizations that provide direct assistance and representation to survivors desperately need more funding.
   - To help ensure domestic violence survivors can be successful in seeking an order of protection, custody, visitation, or child support, they need attorneys who understand the complexities of domestic violence and can navigate our Family Courts.

- City Council funding through the Safe Alternatives to Violent Encounters (SAVE) Initiative helps ensure Safe Horizon's Domestic Violence Law Project can offer expert legal services to low-income survivors of domestic violence in the city's Family & Integrated DV Courts. This essential funding, which also supports our colleagues at Sanctuary for Families and Her Justice, must be fully restored in FY24.
- To help sustain the health and vitality of Safe Horizon and our colleagues in the nonprofit legal services community, the City needs to include a 6.5% COLA in the final city budget.

2. Racial Bias

- Experts have been sounding the alarm about racial biases in the Family Court system for decades, and yet little has changed. From judges to clerks to court officers, Black and brown litigants face deep-rooted biases even as they seek safety and justice from the courts. There's no question these systems would look very different if the majority of litigants were White.
- Judges have enormous discretion to make life-altering decisions for litigants, which is why we need judges who truly understand the dynamics of domestic and family violence. One of the recommendations we made to Mayor-elect Adams was to select jurists who "understand the complex decisions that survivors make for themselves and their families, and work with them and their attorneys to craft decisions that increase paths to safety and healing." Although the City has limited power and oversight over our court system, this is one area where our City's leadership can do more. Stop placing jurists who do not want to be in Family Court in Family Court. New York's families deserve jurists who want to be on the bench in Family Court, and survivors deserve judges who actually care about survivors and understand domestic, intimate partner, and family violence.
- Seeking relief in Family Court can be re-traumatizing for survivors of domestic and family violence. Litigants must sit in a courtroom just a few feet away from the person who caused them harm. They are subject to cross-examination by opposing counsel who seek to cast aspersions on our clients' integrity. When we factor in the racial harm that so many of our clients experience, it's no wonder many believe the entire system is rigged against them. New York owes survivors the opportunity to seek justice in a fair, impartial setting free of overt bias and discrimination.

3. Options for Survivors

- Survivors understand their safety better than anybody else. However, our Family Courts offer limited and inconsistent options for survivors to navigate their safety. When the courts were closed during COVID, we saw that some survivors deeply appreciated being able to appear in court virtually, and we also saw that other survivors wished that they could appear in court. We **know** that the courts can provide options, allowing survivors to appear in court in person or virtually, but the current system does not provide those options. In our experience, there is inconsistency between boroughs, and even between judges in the same courthouse. We recommend that judges be willing to grant virtual proceedings across the board in all proceedings or at the very least when requested on behalf of a survivor of domestic, intimate partner, or family violence.

4. Court Resources

- There is a significant lack of qualified language interpreters in the Family Courts, which often leads to cases being unnecessarily delayed or postponed. In a city as diverse as New York City, there should always be *quality* language interpreters on call.
- The State needs to invest in filling vacancies in the Family Courts, including judges, clerks, and other essential personnel. Litigants face repeated delays due to these vacancies.
- All official court forms must be translated into Spanish and other languages to make them more accessible for our clients.

The Office of Court Administration and the courts themselves must take accountability for the functioning of our Family Courts and the ways they interact with survivors. And our City and our State must ensure that our courts have the resources they need to function in a timely and judicious manner. Our courts are in desperate need of reform, and Safe Horizon is here to partner with all stakeholders to ensure that we do right by survivors and their families.

Thank you, and I am happy to answer any questions you may have.

THE CHILDREN'S LAW CENTER TESTIMONY REGARDING OPERATIONAL CHALLENGES IN FAMILY COURT FOR THE NYC COUNCIL'S COMMITTEES ON GENERAL WELFARE, PUBLIC SAFETY, AND OVERSIGHT AND INVESTIGATION

The Children's Law Center ("CLC") is a 25-year-old, not-for-profit legal services organization that has represented over 130,000 children in legal proceedings in the New York City Family Courts and the New York State Supreme Court Integrated Domestic Violence Parts. We are the first organization in New York City dedicated primarily to the representation of children in custody, guardianship, and visitation matters, and we also represent children in family offense, domestic violence, and child protective cases. On each case to which CLC is assigned, we strive to give our young clients an effective voice in the legal proceedings that have a critical impact on their lives. Thank you for giving me the opportunity to testify today.

As attorneys for children ("AFCs") involved in emotional and important Family Court litigation, we are thankful to the General Welfare, Public Safety, and Oversight and Investigation Committees, and the Chairs and members of those Committees, for holding this important hearing today. Unfortunately, we have much to say about the issues that have plagued New York City's Family Courts and hindered their efficient functioning. Please note that our perspective is informed by the fact that the majority of the children whom we represent come from low-income families and families of color in New York City. It is the members of these marginalized communities who are denied access to justice because of the Family Court's significant inefficiencies. Based on our substantial experience, we could not agree more with Secretary Jeh Johnson's findings, detailed in his *Report from the Special Adviser on Equal Justice in the New York State Courts*,[1] that New York's court system remains "under-resourced" and "over-burdened," and that the NYS Family Courts, which overwhelmingly serve the poor and people of color, has been rendered "second class."[2]

We wish to focus our remarks today on custody and visitation cases, because they make up the majority of CLC's sizeable caseload, and because we are aware that my esteemed colleagues from the other wonderful AFC organizations that serve New York City's children will be testifying regarding a variety of the other types of cases heard in Family Court. With respect to custody and visitation cases, undoubtedly the biggest court operations issue that we face is the immense and unconscionable delay in resolution of our cases. We share the following examples, which illustrate how great the delay is in scheduling custody/visitation appearances, and resolving these cases:

---

[1] Report from the Special Advisor on Equal Justice, October 2020, https://nycourts.gov/whatsnew/pdf/SpecialAdviserEqualJusticeReport.pdf.

[2] *Id.* at 54.

- A litigant filed a routine custody petition in Bronx Family Court in October 2021. Beyond receiving confirmation that her petition was successfully filed, she heard nothing from the court for several months, until she finally received notice, in mid-2022, that her first appearance in that case would not occur until October 2022. In other words, an entire year passed before she had the opportunity to appear before the court simply to state her position, be assigned an attorney, and begin the proceedings.

- Earlier in 2023, litigants appeared on a Brooklyn Family Court case that had been pending for several years, prepared to pick trial dates in a custody/visitation matter that they were unable to resolve. The court attorney who conferences cases for the judge presiding over that family's case informed the litigants, their counsel, and the AFC that the judge had absolutely no trial time available in 2023. Not only would trial dates have to be picked for 2024, but the court attorney was unable to do so during that conference, because she was not yet provided with the court's official 2024 calendar.

- In 2021, the Brooklyn Family Court ordered that a forensic evaluation be conducted in a case that had been pending for approximately four years. One litigant lived in Brooklyn, and the other lived in Syracuse with the child. For 10 months, the court was unable to identify a qualified evaluator who was available to conduct the forensic evaluation, in either jurisdiction where the parties resided. Finally, the court ordered that the family members travel to meet with an evaluator in Albany, despite the significant distance of that city from the litigants' homes.

- In a pending guardianship petition in Queens Family Court, the presiding jurist had no available adjourn dates to hear the case in a timely fashion. A short adjourn date was critical in this matter, because the involved young person was applying for Special Immigrant Juvenile Status ("SIJS"), and needed a guardianship order from Family Court for that application. The jurist dismissed the petition and urged the young person to refile the petition, because doing so may result in the court scheduling the new petition for a sooner appearance date.

As these examples demonstrate, custody and visitation cases are pending for far too long on the court's calendar, while critical issues, such as who will make a child's medical, educational, and religious decisions, where that child will live, and whether that child will be permitted to visit a parent, remain undecided—sometimes for years. The following are comments, made by our child clients during interviews with CLC attorneys and/or social workers, that illustrate just how frustrating, painful, and traumatic protracted custody/visitation cases can be for the children whom we serve:

- Fred,[3] a thirteen-year-old boy who has been the subject of several family court cases, including an almost four-year custody and visitation case, told his attorney that he started

[3] Clients names have been changed to protect their confidentiality.

smoking marijuana at age eleven, in order to deal with the stress that his parents' prolonged and bitter conflict had caused him.

- Seven-year-old Ashley felt an enormous amount of pressure to "make the right choice" whenever she came to speak to her attorney, despite her attorney assuring her that she did not have to choose between her parents. Ashley expressed feelings of anxiety and sadness during numerous interviews. Ashley's family participated in a forensic evaluation, after the case had been pending for four years. The experienced evaluator, who held a Ph.D. in psychology and had conducted hundreds of such evaluations, concluded that the custody dispute caused Ashley understandable and overwhelming stress. He believed that her stress would greatly decrease upon the conclusion of the case, which then continued for another year and a half.

- The center of a five-year-long custody case, fourteen-year-old Lori wrote a poem about her parents' conflict, which she shared with her attorney. In the poem, Lori described herself as "depressed" and "crying whenever she is alone," and concluded that she was not a "trophy on a shelf."

- When six-year-old Jackson described his parents' long-standing custody battle to his attorney, he said, "We are like a mouth. My mom is like the top teeth, my father is like bottom, and I am like the tongue." Then, he stuck out his tongue and bit it with his teeth, in order to illustrate his parents' conflict and how it made him feel.

- Three years into her parents' almost six-year custody dispute, then twelve-year-old Jasmine started to express suicidal ideations. Jasmine started to refuse to attend school or participate in any extracurricular activities, because her parents' courtroom debates often centered around their disagreements regarding her education and extracurricular activities.

To be clear, the unconscionable delay that has caused these children to suffer has long been a problem that has plagued the New York City Family Courts. However, the COVID-19 pandemic seriously exacerbated that delay with respect to custody and visitation cases, primarily because of the State's approach to those cases during the height of the pandemic crisis. Specifically, at the onset of the pandemic, and for months thereafter, the Family Court heard only those cases that satisfied its extremely narrow definition of "essential," and thus most Family Court cases—including most custody and visitation matters, which were deemed non-essential—were at a standstill. As a result, CLC's young clients suffered a host of negative consequences, such as agonizing separations from parents who could not access the court to seek enforcement of visitation orders, delayed decisions regarding whether the court would permit a custodial parent to relocate outside of the jurisdiction, and lack of direction regarding how to conduct visitation and visitation exchanges in those cases where parents had vastly different approaches to pandemic safety precautions.

Although the emergency phase of the pandemic has subsided, the delay experienced by custody and visitation litigants, and the children who are the subject of those cases, persists. This is, in part, due to the woefully inadequate resources devoted to those tools that are critical to resolving custody and visitation cases. For example, there are not enough Observed & Evaluated ("O&E") visit providers.[4] O&E visits are a limited number of supervised visits, ordered by the court, in cases where there are concerns and/or allegations that a parent is behaving in a manner that is inappropriate or harmful to a child, or in which the parent-child relationship is strained or unfamiliar. O&E visits are a critical tool to the court, because O&E visit supervisors, who are licensed social workers, provide detailed written reports that help the court to better understand the relationship and interactions between the parent and child, and whether visits present any risk to the child. Unfortunately, the number of organizations and individual social workers who provide O&E services is extremely limited, and there are waitlists for these services. As a result, several court appearances may be adjourned without any action taken on a case, while the court awaits commencement of O&E visits and reports from the providers.

In addition to the dearth of supervised visitation providers, there also is a scarcity of other qualified professionals whose services are necessary to resolve custody/visitation cases. For example, we have experienced significant delays on cases in which the court cannot identify a qualified evaluator who is available to conduct a forensic evaluation. Forensic evaluations are comprehensive reports, usually conducted by a PhD in psychology, issued after that professional has interviewed the parties, children, and collateral contacts, and has observed the parent-child interactions. These reports provide insight and recommendations that help the court and counsel to understand which custody and/or visitation arrangement will best serve the interests of a child, and thus may help resolve a case. When no evaluator is available, a case may be repeatedly delayed. Similarly, we frequently have had cases adjourned because there are no available members of the 18-b panel available for assignment to low-income litigants whom the court has deemed eligible for free counsel.

Unfortunately, now that the Family Courts have returned to full functioning, we anticipate the delay in case resolution will worsen, as litigants who previously were unable to file new petitions and motions are returning to the Family Courts to do so. The proverbial floodgates have opened, and we are experiencing a significant increase in filings and assignment of cases. As of April 2023, we already were assigned to represent more than 4500 children—which is approximately 1,000 children more than we had been assigned to represent by the same time last year. Certainly, our organization is not the only entity experiencing this overwhelming number of custody and visitation filings, as earlier this year, the Chief Administrative Judge of the Bronx

[4] It is important to distinguish between supervised visitation orders on custody/visitation cases, and those on child protective cases that have been filed by ACS against a parent who is alleged to have committed an act of abuse or neglect. With respect to the latter, parents are guaranteed supervised visitation, except if the court directs otherwise, and ACS or the foster care agency is able to provide that supervision. This is not the case in custody/visitation cases, where the resources for O&E visits, as well as other court-ordered supervised visits, are extremely scarce. Further, although O&Es can be provided at no cost to indigent litigants, the court can only order up to six O&E visits, and other long-term supervised visitation services are very costly. As a result, many parents and children involved in custody/visitation litigation who wish to see each other and need supervision to do so may end up unable to visit, or may visit one another very rarely, as a result of the cost and the lack of supervision providers with available slots.

Family Court, Hon. Sarah Cooper, referred to the number of filings in that courthouse as a "tsunami" of cases.

To be blunt, there simply are not enough resources available to AFC organizations like CLC, to effectively and efficiently serve the families involved in these cases. State statute limits the number of clients each AFC is supposed to represent to 150—a number that already is far too high. Given the onslaught of filings, the number of clients that our individual attorneys are now being assigned to represent is beginning to exceed that number. While we endeavor to provide the highest quality representation to each child whom we serve, there is no escaping the truth that an AFC who has more than 150 clients, some of whom are in acute crisis, simply does not have the time to develop meaningful and trusting attorney-client relationships, to meet with each client before every court appearance, and to adequately prepare for court appearances and trials. As a result, we anticipate that we will need to ask for adjournments of court appearances, rather than proceed without proper preparation, and this, too, will cause greater delay.

Although the situation is dire, I do wish to highlight one positive development, borne of necessity in recent years: the use of technology for virtual appearances. CLC attorneys consistently have stated that the virtual appearances for return of service and pre-trial conferences in custody, visitation, and guardianship cases are efficient and effective for litigants, the court, and counsel. In-person appearances for these purposes, which are usually brief and narrow in scope, require many litigants to miss a day of work, secure childcare, and spend money on travel costs, and thus virtual appearances are significantly more convenient for them. Further, it has been CLC's experience that virtual return of service and conference appearances tend to occur on-time far more often than in-person appearances, and allow attorneys to move more easily from one appearance to another, and to appear on time far more often. Given the substantial caseloads that AFCs and other family court practitioners carry, the value of such efficiencies cannot be overstated.

Moreover, in contentious cases or cases involving disruptive litigants, virtual appearances help maintain safety and order. It is an unfortunate reality that verbal and physical altercations sometimes occur in family court waiting rooms. During virtual appearances, litigants are not within physical proximity of one another, thereby eliminating the opportunity for those altercations to occur. Further, in family offense cases, virtual appearances obviate the need to keep the protected party in a separate location and then have that party escorted to the courtroom by court security, which is a stressful process that sometimes causes delay. Finally, a jurist can much more easily mute a disruptive litigant during a virtual appearance, rather than having that litigant ejected from a physical courtroom. Thus, virtual return of service and conference appearances help maintain order and ensure physical safety for litigants, counsel, and court staff.

Given these benefits, we are appreciative that the most jurists in the Family Courts still conduct virtual proceedings for initial and pre-trial appearances. We hope that they will continue to do so, as in our experience they have enhanced effective and efficient Family Court functioning.

****

In sum, despite the positive addition of virtual appearances, the functioning of the New York City Family Courts with respect to custody and visitation litigation is truly at a crisis point. The significant delay in resolution of these cases, caused by a historical and continuing underinvestment of resources and exacerbated by the pandemic, has denied families access to justice and left critical rights and familial relationships suspended—for months and years—in states of uncertainty. Children are perhaps the greatest victim of this inequity, as they pass significant portions of their childhood waiting for resolution of custody/visitation cases that are central to their stability and identity.

We know that the City Council is committed to remedying these inequities and ensuring all New Yorkers have access to justice, in the Family Courts and beyond. We hope you will continue to be a vocal support on these issues in Albany, and will continue to hold hearings such as this one, which shine a bright light on the denial of access to justice that is occurring in the NYC Family Courts. We also wish to explore opportunities to direct city resources to support supervised visitation on custody/visitation cases, and the critical work that AFCs do. Thank you again for this opportunity to share our young clients' stories and experiences in the Family Court system, which is so desperately in need of greater support.

****

Deana Tietjen, Esq.
Deputy Executive Director
dtietjen@clcny.org

Louise Feld, Esq.
Senior Writing and Policy Attorney
lfeld@clcny.org

Testimony of Brian Zimmerman, Esq
Kings County Assigned Counsel Panel

Good morning,

My name is Brian Zimmerman, Esq and I have been practicing in Family Court for the last 36 years, predominantly in Kings County. I am also the President of both the Kings County Panel and the relatively new Assigned Counsel Association of New York State.

Before discussing the Operational Challenges of Family Court, I want to take the time to note for the Committees overseeing this hearing: that for those of us who operate in Family Court, we rarely take the time to acknowledge how much is accomplished every day in Court. All too often, the focus is purely negative and focused on what is not done.

Globally the greatest challenges for Family Court are the lack of resources, combined with the fact that aspects of Family Court are State controlled while other aspects of the Court are city controlled.

Family Court is a Court that is open, at no cost, for all that need assistance with issues involving some of the most important and emotional ones confronting New Yorkers. Domestic violence, custody and visitation, child protection, child support, and juvenile delinquency. What fuels these cases are most often the stress of one's life's circumstances, poverty, housing instability, food insecurity, low paying employment, mental health issues, substance abuse to name a few. When the pressures of life build up, the Family Court is critical for providing safety and order for those in need, like an emergency room, for those in distress until a path forward is determined by a Jurist for the best interests of all.

In the end, the Court has limited powers to fix problems, but they can help mitigate, given time, the crisis and improve situations by repairing fractures within families.

Thus, the first operational challenge for Family Court is how do we divert families or individuals from needing to come to Family Court. Greater investment in housing, food security, employment, mental health, and substance abuse services are amongst the areas that warrant investment.

Every jurist has 6 and ½ hours they can devote in a day to the litigants that come before it. That amounts to 13 one half hour blocks of time, or 13 families a day. If you factor in lengthier trials and hearings, that reduces how many families can be heard by any one jurist. Reducing the number of people who turn to Family Court in crisis allows Jurists more time to devote to each family and it would aid the Court to make best decisions. Increasing the number of jurists, support staff and critically attorneys can also help serve more of the families that need help.

There are other ways that we can invest in diverting families.

Many are lessons learned from or changes necessitated by the Pandemic. Some changes pre-dated the pandemic.

During the pandemic, the number of child protective cases and the number of juvenile delinquency cases filed decreased. On child protective matters, only cases where removals were necessary or the issuance of an order of protection was required to assure safety, did the case end up in Court. By necessity, the decline in filings could occur by better utilization of preventive services and interventions that would alleviate the need to file in Court. The same held true for juvenile delinquency matters, as more matters were diverted to services rather than court filings. The City should build upon those successes and resource those programs within ACS and the Department of Probation, which allows for the Family Court to use its limited resources for more complex and difficult cases. Lessons learned are that some city agencies can help divert cases from the Court.

For many years, a parent was permitted to file a PINS petition only after they agreed to services that would divert the matter from Court.

In Custody and Visitation cases there could be an increased use of mediation and alternative dispute programs that would help resolve some of the disputes filed in Court that would better be resolved outside of Court. Efforts could be made for some of these mediation sessions to occur during not workday hours to facilitate participation.

While most domestic violence matters are not appropriate for mediation, there are some situations that mediation, via Teams or Zoom, could be utilized, after filing in Court, to help reduce a crisis for the benefit of the child. There are some cases where a properly resourced and trained staff could understand the power and control dynamics and work to divert the matters.

Once a case is in Court and in a litigation posture, tensions rise, and cases do not settle until the parties' views change and they desire settlement. Thus, any service that can serve to deescalate a litigation is worth investing in. This will assist Family Court operations.

Other matters are also potentially matters that could be diverted. Some order of protection cases are housing court cases dressed up as family court matters, where families are fighting over succession rights to a piece of property. Properly trained, city funded, alternative dispute resolution mediators with housing expertise could assist in these matters.

Similarly, in child support cases, the tension around money for those with limited means (or even those with means) can cause domestic violence, retaliatory filings of petitions, loss of livelihood that spirals into contentious litigation. Some of these matters could be resolved with appropriate diversion or mediation programs. The petitioner simply wants support, not a battle.

The pandemic caused the Family Court to robustly use platforms like Teams. The benefit of this use of technology has been a sharp increase in attendance for the parties in a case. In child

support matters, for instance, that parties can appear virtually and explain their financial situations better, permitting the Court to issue orders that are consistent with actual ability to pay, and not a one-sided order based on one set of facts that inevitably leads to more litigation. In every discipline, increased participation allows for orders that are more likely more durable or on consent.

Central to these advances during the pandemic was the recognition that many Family Court litigants do not have the means to take multiple days off to attend brief 30 minutes appearances, or the childcare options, or can keep their employment while they have Court cases. Moreover, there are cost of transportation and related items for coming to Court that effect participation. It is far easier for a non-respondent parent, or a foster parent or a petitioner on an order of protection to take a job break for a few minutes to appear, and not choose between Court and work.

It also reduces the number of case adjournments that would previously occur due to litigant illness, witness or caseworker absence, attorney conflicts or departures. Cases more routinely get heard on time or within minutes now. To be clear, some matters, trials for instance, should still be heard in person in most instances but far few cases are simply adjourned now.

Family Court operations would improve if there was a continued investment in enhanced Teams platforms, that included easier use of options like breakout rooms. The ability to have a bench conference with the Judge or have a litigant step outside, more cumbersome on teams could be remediated if there was increased investment.

Operationally, in Kings County, the use of Teams has allowed attorneys the ability to appear on more cases per day or even a willingness to appear virtually on days off, rather than simply have a case adjourned. That aides Family Court operations.

Family Court administration has been a leader in understanding the benefits of remote Court to the disproportionately impacted communities that appear in Family Court. Credit is to due Judge Jolly.

These suggestions will not solve all the issues in court.

Family Court does need more Jurists to hear cases. Obviously, the Court needs more jurists to handle to enormous workload. However, increasing jurists does not resolve the issues if you do not also invest in the resources needed to support a Courtroom. There is a need for clerks, and court officers and support staff for the Court. They are a critical part of the backbone for the Court to operate.

There is also a need for attorneys to appear in those parts. In Kings County Family Court, for example, there is in excess of 40 jurists. However, the number of attorneys that are assigned counsel, or work for ACS, defender institutions and children's attorney offices are insufficient. A properly resourced system requires an investment in the attorneys and proper compensation.

Each institution has attorney attrition. Every time an attorney leaves, it creates adjournments. Retaining attorneys or having sufficient staff to bridge those losses is critical but that can only occur with an investment.

The number of assigned counsel has shrunk considerably over the years dues to a 20 year lack of compensation increase. A NYC Supreme Court jurist had to order an increase, by temporary injunction, but the City chose to appeal a portion of that decision, rather than recognize that appealing that portion sends a message that attorneys who do this work are not valued with a byproduct of hampering recruitment.

For assigned counsel, the city also needs to invest in ancillary services such as easily accessible interpreter and investigative services, not that the services do not exist, but that they need to be more easily accessible.

There needs to be an investment in supervised visitation services for parents who need those services.

In the Courthouses, there needs to be better wi-fi. Kings County Family Court has erratic service. There needs to be more electrical outlets on each floor so that litigants waiting for cases can charge their phones. In Kings County, the handful of outlets are insufficient, and litigants sit on the floor to use them.

There needs to be more places for attorneys to work while in the Courthouse. While attorneys do go back to their offices, that impacts their availability to the Court.

Remote locations to appear in Court was explored in the early parts of the pandemic but should be seen to through fruition, in particular, for domestic violence victims but also for the elderly or anyone who getting to Court is difficult.

Those that have chosen to make Family Court their home, do so by choice and work hard every day to help those in crisis and whose families need the aide of the Court. This most important of Courts struggles with a shortage of resources to assist those that come before it, and is richly deserving of greater resources.

Thank you to all 3 committee chairs for today's critical public hearing.

I did want to defer my time to my younger sister, Jennifer Blanco - an impacted parent that has experienced the foster system but unfortunately the ACS Cares program is conducting a home visit as we speak.

My family continues to struggle with generational trauma and now impacting my sister's children in which the ACS Cares program does not address or mitigate, but exacerbate it.

Although the public hearing held today is focused on 'operational challenges of family court' I wanted to emphasize that we cannot continue to fund/contract within systems of punishment. And I strongly urge the council to partner with the NYC Department of Youth and Community Development for the expansion of the Family Enrichment Centers instead of ACS.

'The devil is in the details of the contract'

More importantly, let's not fall under the guise of safety/protection through fear-mongering tactics that perpetuates mass criminalization and incarceration to separate families and communities.

It's morally imperative to pass family miranda rights now.

https://bit.ly/40tipaI

The deplorable infrastructure and procedures of family court is a reflection of the dehumanization of families and communities targeted by the family policing system.

Family court is not designed for improved outcomes for children or families - identical to the criminal legal system. The historical fabric of the family judicial system is entrenched in weaponizing trauma, chronic street homelessness, incarceration, and death.

An invisible system = modern day slavery in real-time that separates families and cripples communities.

The correct term to identify ACS attorneys are 'Prosecutors' that seek to terminate parental rights which is equivalent to the death penalty.

New York City Administration for Children Services is negligent and doesn't protect or keep anyone safe but their pockets and bloated budget.

The only collaboration that Commissioner Jess Dannhauser should speak of is investing in families and communities outside of the foster system; instead of separating families and paying strangers (foster parents) to retraumatize (abuse/neglect) children under the care of ACS.

Far too often foster youth come in contact with our family/criminal legal systems as young adults/parents.

While many foster youth struggle with repairing and preserving family bonds as they transition into adulthood - and not prioritize by the family regulation system in their ‘reasonable efforts’ that fails with family reunification/permanency in which young adults need a support system to thrive.

We should expand the child welfare housing subsidy to all young adults (18-25) living below or above the federal poverty-line whether or not they have involvement with the child welfare or criminal legal systems.

It's becoming a norm (business as usual) for foster youth to ‘age out’ of the child welfare system like myself (15-21).

Unfortunately, many foster youth cycle to other systems of punishment/harm to merely survive in a city with no pathway to heal and become self-sufficient. Similar to their peers living at home - from the same communities.

Proud to have been a part of an evidenced based model such as the Close-to-Home program - an alternative to incarceration for young adults due to the root causes of ‘community disinvestment’ and contact with the family/criminal legal systems.

Let’s continue to move away from band aid reforms.

The legitimacy and expertise of family court judges are questionable around trauma informed care that is not a vicious cycle of generational trauma/poverty. Current resources made available to courts to keep families together is an expansion of surveillance of ACS through preventative services.

There’s absolutely no coordination with city agencies and community based organizations on the frontlines outside of the carceral systems.

We need some serious comprehensive and holistic oversight and accountability.

And equitable implementation of public policies and community investments that changes the conditions and livelihoods for families and communities to thrive with dignity away from ACS surveillance.

We need transformative justice training for our new york city public schools and new york city public hospitals as mandated supporters and end mandated reporters to reimagine safety and support.

The only ‘parent coaches’ = client advocates the council should fund are through public defense organizations in New York City to ensure that we are not sustaining a punitive system such as

ACS; and or nonprofit advocacy organizations that are co-led by directly impacted leaders with no ties to ACS.

As we collectively demand to fund fairness to improve the operational challenges in family court, New York City Council should provide quarterly evaluations of public defense organizations throughout NYC to ensure that they are in fact implementing an abolitionist framework and not extension of the family policing system due to inadequate daily practices, support, and representation towards positive outcomes in and outside family court.

And provide equitable compensation/funding not only for public defense attorneys but for social workers and advocates as well.

We need our public defense organizations equipped with the necessary tools to lead by action and not rhetoric - that also includes ‘traditional’ child welfare advocacy organizations.

As we are working tirelessly to ensure that state elected officials free New York and demand no roll backs to bail reform and get Rikers closed.

We need that same energy to combat negligence of discovery laws/speedy trials in family court to reimagine safety, support, and end family policing.

Thank you again for centering the disparities within the family court system and focusing on investing in families and communities.

Darlene Jackson
Supporter of the Parent Legislative Action Network

CASA
Court Appointed Special Advocates
FOR CHILDREN
NEW YORK CITY

48 Wall Street, 11th Floor
New York, NY 10005
(212) 334 4010
info@casa-nyc.org
www.casa-nyc.org

5/9/2023

Dear Committee Chairs and Councilmembers,

I offer this written testimony on behalf of CASA-NYC. CASA-NYC is a volunteer-based organization dedicated to helping children and youth in foster care receive the services and support they need to thrive in spite of their typically traumatic circumstances. Our mission is to ensure that children involved in the child welfare system have their needs met and rights protected and move out of foster care and into permanent, safe and loving homes as quickly as possible. Family court judges appoint CASA-NYC by court order to children's cases when they are concerned that a child in foster care is not getting their needs met or is at risk of languishing in foster care longer than necessary.

This committee heard testimony regarding the shortages of judges, clerks, and other support personnel, as well as the high turnover rate of FCLS attorneys and the abysmal pay for attorneys representing parents and children in child protective matters. These factors accentuate the vital role that CASA serves through our volunteer-based model, as there remain many gaps in services for CASA to fill. However, CASA's ability to receive appointments from judges in a timely manner has been impacted by the shortage of clerks, as they are typically responsible for generating orders appointing CASA to a case and for sending them to CASA staff. Any delay in allowing us to open a case is a delay in services that we can be providing to children and families in need. Therefore, CASA-NYC joins others in urging the state and Mayor Adams to do everything in their power to fill vacancies and to add more judges and support personnel so that families do not need to be subjected to unnecessarily drawn out proceedings.

Since many others have testified in detail to the shortages mentioned above, I'd like to focus my testimony on something that is squarely within the city's control: that of the Department of Citywide Administrative Services (DCAS). CASA's ability to provide adequate services to the families we serve has been meaningfully impacted by DCAS's failure to maintain the Family Court buildings. It is DCAS's inadequacies that I wish to focus my testimony on.

In Manhattan Family Court (60 Lafayette St.), the only major telecommunications provider that currently services the building is Verizon. Verizon has yet to install fiber optic cables in the building or area, so customers are forced to rely on DSL for internet. Internet speeds have therefore always been poor in the building for Verizon customers but the problem has become much more acute due to the reliance on video conferencing in today's world. At some point during the pandemic, our

Verizon services at Manhattan Family Court were totally disrupted and they have still yet to be fully restored (our main phone line continues to be down). I explored getting Spectrum into the building but were told by Spectrum that someone must pay the upfront costs (potentially $100,000) of getting fiber optic cables into the building, which was apparently a non-starter for OCA. I then learned that a provider, Pilot Fiber, was already wired into the building and servicing several other non-profits and legal services organizations. Pilot was ready and willing to take CASA on as customer, and only needed to pull cable down from the floor above our offices in order to get us online. Having dealt with DCAS in the past, Pilot engaged them in the same manner they had for their other clients, only to eventually be told by DCAS's Facilities Management team that they were working to reimplement some procedures that had been neglected in the past. Pilot and I were then passed off to DCAS's Real Estate Services, which ultimately revealed that a thirteen page lease application (attached) would need to be filled out by Pilot. After Pilot completed the application, despite not understanding its applicability to extending existing services within the building, DCAS then said the following steps were required:

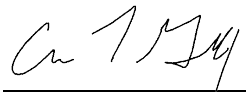
- Obtain approval for Pilots' scope of work from DCAS engineering team
- Draft license, circulate for internal review and send to Pilot for signature
- Pilot to provide check for a onetime fee of $350 payable to DCAS Real Estate Services
- Pilot to provide check for security deposit in the amount of $5,000 payable to NYC Comptroller's Office
- Pilot to provide lease application processing fee in the amount of $25 payable to DCAS Real Estate Services
- Pilot to provide proof of liability insurance in the amount of $2 Million per occurrence and $4 Million aggregate. The City of NY must be named as an additional insured for the property known as 60 Lafayette Street, New York, NY
- Proof of workers compensation or a waiver.
- Once all of the above mentioned are received, then DCAS will counter sign license and send to Pilot. Access will be granted to Pilot at that point.

Ultimately, Pilot decided that for a small, local team like theirs, adding a number of one-offs into their established processes was too challenging because they were not equipped to support and track those one-offs. Originally, Pilot had an agreement in place with DCAS that also allowed them to install future tenants, which is why they already had their fiber in the building for several tenants. That agreement had since expired and the new process adopted by the city was too much for Pilot to proceed with servicing new clients.

The only way that we have been able to reconcile this lack of adequate office space within the courthouse has been to rent additional office space at our Wall St. headquarters, which has caused our Manhattan Family Court staff to split their time between offices, depending upon their daily needs. CASA has also have experienced internet related issues in our Bronx, Brooklyn, and Queens courthouse offices, though none have risen to the level of disruption that we have experienced in Manhattan. It appears well within the city's ability to not stand in the way of organizations utilizing services that they are willing to pay for themselves, let alone the city itself undertaking to make its facilities completely operational for all who utilize them.

We urge the city to take better charge of the facilities that they own and operate, and ask the City Council to join us in this effort.

Respectfully,



Colin T. Gilland, Esq.
Policy Coordinator; Borough Coordinator for Manhattan and Staten Island
CASA-NYC
cgilland@casa-nyc.org

LEASE APPLICATION REQUIREMENTS

I. INDIVIDUAL

A. Complete a lease application and disclosure statement.

B. Provide a copy of a government issued photo identification including signature (e.g. driver's license).

C. Include a non-refundable processing fee of $25 in the form of a certified check or money order payable to DCAS/Real Estate Services.

II. CORPORATION OR PARTNERSHIP

A. Complete a lease application and disclosure statement on behalf of corporation or partnership. In addition, a separate disclosure statement is required for each individual member and/or officer of the corporation or partnership whose ownership interest is 20% or greater.

B. A corporation must provide all of the following:
   1. Certificate of Incorporation;
   2. Certificate of Good Standing issued within the past six months;
   3. A Certificate of Doing Business in New York State if the Certificate of Good Standing was not issued in New York State.

C. A partnership must provide:
   1. Certificate of Partnership.

D. If doing business under an assumed name, a Certificate of Doing Business under an Assumed Name.

E. Include a non-refundable processing fee of $25 in the form of a certified check or money order payable to DCAS/Real Estate Services.

III. NOT-FOR-PROFIT ORGANIZATION

A. Complete a lease application and disclosure statement on behalf of the not-for-profit organization.

   In addition, a separate disclosure statement is required for each officer of the non-for-profit organization.

B. The not-for-profit organization must provide:
   1. Certificate of Incorporation;
   2. Proof of 501(c)(3) status;
   3. Certificate of Good Standing issued within the past six months.

C. Include a non-refundable processing fee of $25 in the form of a certified check or money order payable to DCAS/Real Estate Services.

NYC DCAS
Citywide Administrative Services

Real Estate Services
1 Centre Street
20th Floor South
New York, NY 10007
Attn: Short Term Leasing

A $25 non-refundable processing fee is required upon submission of the completed lease application. Please take notice that the City of New York (the City) makes no representation as to the availability of the property for lease. The City does not guarantee the applicant the right to lease based on the payment of the fee and submission of the lease application/disclosure statement.

LEASE APPLICATION

Please type your response or print using a ballpoint pen.

I. APPLICANT INFORMATION (Check one): ☐ Individual ☐ Corporation ☐ Partnership ☐ Not-for-Profit Organization

Name: _____
Last First Middle Initial

Corporation Name: _____

Doing Business As (D/B/A): _____

Home Address: _____

Business Address: _____

Mailing Address (if different): _____

Email Address: _____ Fax #: _____

SS # ____/____/_____ Employer ID #_____ Daytime Phone (____)_____ Evening Phone (_____)_____

II. PROPERTY INFORMATION

1. Location of Property You Wish to Lease: Borough___ Block_____ Lot_____ Address: _____
House Number & Street\Zip Code

2. Description of Property: ☐ Unfenced Lot ☐ Fenced Lot ☐ Garage Space ☐ Building Space
Other (please specify): _____

3. Do you wish to lease the entire lot? ☐ Yes ☐ No. If no, approximate square footage required: _____

4. Please check the proposed use for the premises: ☐ Side yard ☐ Retail ☐ Clean and Fence ☐ Office Space
☐ Auto Repair ☐ Personal Parking ☐ Residential Accessory Parking ☐ Business Accessory Parking ☐ Public Parking
☐ Not-for-Profit Parking ☐ Storage (Specify type of Storage) _____
☐ Other (Specify use and activities) _____

5. Where are you located in relation to the property you wish to lease? ☐ Adjoining ☐ On same block ☐ Directly behind
☐ Other _____

6. Are you currently occupying the property you wish to lease? ☐ Yes ☐ No. If yes, date of occupancy _____

7. How did you come to occupy the property: ☐ Former owner ☐ Tenant of former owner ☐ Other (please specify) _____
If tenant of former owner, please state rent paid to former owner and attach a copy of your lease and/or a cancelled rent check. $_____
(Copy of ☐ lease and/or ☐ cancelled check received and attached.)

III. ACKNOWLEDGEMENT

This is an application for a lease only. I understand that this lease application may not be approved by the City. I further understand that if I occupy the property without City approval, I am liable for payment for use and occupancy and subject to any legal action to remove me from the premises. I further acknowledge that the property will not be used for any illegal purposes. I agree that if anything arises which changes any of the statements I have made, I will promptly notify the Department of Citywide Administrative Services in writing. I have answered all questions on this application truthfully and to the best of my knowledge. I understand that any misstatement is grounds for rejection of this application and denial of a lease.

_____ _____
Signature Date

Notary Statement:
State of New York :
County of _____:
Sworn before me on this _____ day of _____, 20____

(Seal)

For office use only:
App. #_____ CB_____

Mgmt._____ Own Code_____

Zone_____ OL _____ Disp._____

Rev. 05/2018

INDIVIDUAL
DISCLOSURE STATEMENT FOR COMMERCIAL LEASING

THIS DISCLOSURE STATEMENT MUST BE NOTARIZED

Date_____

If any additional space is required for any response, attach additional pages to this document. All additional pages must be identified at the top with the applicant's name, borough, block and lot of the property requested for leasing and the page and number of the question to which the response corresponds.

Applicant's Name:_____Borough:_____Block:_____Lot/s:_____

1. INDIVIDUAL (complete information below):

_____ _____ _____
(Name) (Date of Birth) (Social Security #)

_____
(Home Address) (City) (State) (Zip Code)

How long at this Address? _____

_____
(Employer) (Occupation)

_____
(Business Address) (City) (State) (Zip Code)

_____
(Home Telephone Number) (Business Telephone Number)

2. Have you owned, leased or managed any non-City owned real property (this includes residential, commercial, vacant land, etc.) in New York City within the last 5 years?

_____Yes _____No

If yes, list the borough, block, lot, address, owner of record, dates owned, managed or leased (add additional page, if necessary).

BORO BLOCK LOT(S) OWNER OF RECORD/ADDRESS DATES OWNED/MANAGED/LEASED

_____
_____
_____

3. Have you defaulted on any obligations to pay any of the following?

Real Estate Taxes	**_____Yes**	**_____No**
Water/Sewer Rents and Charges	**_____Yes**	**_____No**
Other Legally Mandated Charges	**_____Yes**	**_____No**

If yes, please provide pertinent details of the default below or on a separate piece of paper.

_____

_____

4. Are there any judgments currently outstanding against you resulting from lawsuits brought by the City of New York or any of its Agencies?

_____Yes _____No

If yes, specify the type and amount of the judgment, the date, court, county and docket number.

_____

_____

5. Are there any judgments currently outstanding against you other than those listed in question 4?

_____Yes _____No

If yes, specify the type and amount of the judgment, the date, court, county and docket number.

_____

_____

6. Are you currently a party in any lawsuit in which the Department of Citywide Administrative Services or Real Estate Services or the City of New York or any of its Agencies is also a party? If yes, specify the nature of the litigation, court, the date and docket number.

_____Yes _____No

_____

_____

7. Please provide name of current employer or name of business, if self-employed and annual income.

Name:_____

Address:_____

Annual Income:_____

Year Employed: _____

If you are a City employee, please state your position and the name of the agency.

_____

(Agency) (Position)

8. Within the past ten (10) years, have you ever been convicted of a crime(s)?

_____Yes _____No

If yes, identify the charges, the court(s) in which you were convicted, and the disposition of each matter.

_____

_____

9. Have you had a lease, license or permit for the use or possession of property from the City of New York? If yes, specify the address(es) of the property and the dates of the lease, license or permit.

_____Yes _____No

_____

_____

If yes, have you defaulted on any of your obligations relating to any lease, license or permit for this property? If yes, specify the reason for the default.

_____Yes _____No

_____

_____

10a. Have you purchased property from the City of New York? If yes, specify the address of the property and date you bid and/or purchased this property.

_____Yes _____No

_____

_____

10b. Do you have a mortgage with the City of New York? If yes, specify the property associated with this mortgage.

_____Yes _____No

_____

_____

10c. If yes to 10a or 10b, have you defaulted on any of your obligations relating to the purchase and/or mortgage of this property? If yes, specify the details.

_____Yes _____No

_____

_____

11. Have you ever defaulted on any local, state, or federal government contract? If yes, specify the details.

_____Yes _____No

_____

_____

12. Have you ever been barred from bidding or declared not responsible by a local, state, or federal government agency, entity or authority? If yes, please explain.

_____Yes _____No

_____

_____

13. Have you declared bankruptcy within the past 5 years?

_____Yes _____No

_____

_____

14. Are you a principal (holding a 20% or greater voting or equity interest) in any entity that has defaulted on any contract or other obligation to the City within the last 5 years?

_____Yes _____No

_____

_____

15. Please provide two (2) bank references:

BANK REFERENCES

Bank Name (1)_____
Bank Address_____
Account #_____
Name on Account_____
Type of Account_____

Bank Name (2)_____
Bank Address _____
Account #_____
Name on Account_____
Type of Account_____

I understand that the City of New York (the City) will rely on the truthfulness of this disclosure statement and any financial statements, representations of net worth and credit information statements submitted as part of my bid (The Statement) in determining my eligibility to lease property. The City may obtain a credit report(s) on me in connection with this application or any lease or occupancy relating thereto. If I ask, the City will tell me whether it has obtained a credit report and the name of the credit bureau.

I hereby authorize the release of information to the Deputy Commissioner or designee of the New York City Department of Citywide Administrative Services, Real Estate Services, pertaining to applicant's payment of taxes, fees, charges or other obligations to the United States government and the City and State of New York by the appropriate agents of said governmental bodies.

I understand that this lease application and bid packet may be rejected by the City of New York. I further acknowledge that the property will not be used for any illegal purposes. I agree that if anything arises which changes any of the statements I have made, I will promptly notify the Department of Citywide Administrative Services in writing.

This Statement and all documents pertaining to the bid submission are intended to be a written instrument as defined in Article 175 of the Penal Law, and I understand that any false statement may be punishable as a Class E felony. If the Department of Citywide Administrative Services discovers any material misrepresentation, omission or false statement, the Department of Citywide Administrative Services will not grant me the right to lease, and I may be prohibited from leasing City-owned property.

_____	_____
1) Individual's Name (print)	1) Individual's Name (print)
_____	_____
2) Individual's Signature	2) Individual's Signature
Sworn to and subscribed before me this _____day of _____, 20____	Sworn to and subscribed before me this _____day of _____, 20____
_____	_____
Notary Public/Commissioner of Deeds	Notary Public/Commissioner of Deeds

_____
Name of Entity (Print)

_____
Name of Officer/Title

_____
Signature of Officer

Sworn to and subscribed before me this

_____day of _____, 20____

_____	_____
Notary Public or Commissioner of Deeds	Affix Corporate Seal

PARTNERSHIP/CORPORATE
DISCLOSURE STATEMENT FOR COMMERCIAL LEASING

IF THE APPLICANT IS A PARTNERSHIP, CORPORATION OR NOT-FOR-PROFIT ORGANIZATION, PLEASE ALSO COMPLETE THE INDIVIDUAL DISCLOSURE STATEMENT FOR COMMERCIAL LEASING FOR <u>EACH MEMBER</u> WHO HAS AT LEAST 20% OWNERSHIP INTEREST IN THE BUSINESS ENTITY.

** ALL DISCLOSURE STATEMENTS MUST BE NOTARIZED**

Date_____

If any additional space is required for any response, attach additional pages to this document. All additional pages must be identified at the top with the applicant's name, borough, block and lot of the property requested for leasing and the page and number of the question to which the response corresponds.

Applicant's Name_____Borough_____Block_____Lot/s_____

1. THE APPLICANT IS: (A) <u>Partnership</u> (B) <u>Corporation</u> (C) <u>Not-for-Profit Organization</u> (CHECK ONE)

(A)_____Partnership

_____
(Name of Partnership) (Employer ID #)

_____
(Address) (City) (State) (Zip Code)

_____
(Telephone #)

_____
(Date of Formation of Partnership) (State of Formation)

(B)_____Corporation

_____

(Name of Corporation) (Employer ID #)

_____

(Address) (City) (State) (Zip Code)

_____

(Telephone #)

_____

(Date of formation of Corporation) (State of Formation)

(C)_____Not-for-Profit Organization

_____ _____

(Name of Not-for-Profit) (Employer ID #)

_____

(Address) (City) (State) (Zip Code)

_____

(Telephone #)

_____

(Date of Formation of Not-for-Profit) (State of Formation)

2. LIST OF INDIVIDUALS IN BUSINESS ENTITY WITH A 20% OR GREATER OWNERSHIP OR VOTING INTEREST. AN INDIVIDUAL DISCLOSURE STATEMENT IS REQUIRED FOR ALL INDIVIDUALS LISTED BELOW.

Name____________________________Date of Birth________________Soc. Sec. #___________________
Home Address:__________________________________ Home Tele. #:_________________________
Business Address:_______________________________ Bus. Tele. #:__________________________
Title: (held in business entity):____
Occupation: (if other)____

Name____________________________Date of Birth________________Soc. Sec. #___________________
Home Address:__________________________________ Home Tele. #:_________________________
Business Address:_______________________________ Bus. Tele. #:__________________________
Title: (held in business entity):____
Occupation: (if other)____

Name____________________________Date of Birth________________Soc. Sec. #___________________
Home Address:__________________________________ Home Tele. #:_________________________
Business Address:_______________________________ Bus. Tele. #:__________________________
Title: (held in business entity):____
Occupation: (if other)____

Name____________________________Date of Birth________________Soc. Sec. #___________________
Home Address:__________________________________ Home Tele. #:_________________________
Business Address:_______________________________ Bus. Tele. #:__________________________
Title: (held in business entity):____
Occupation: (if other)____

Name____________________________Date of Birth________________Soc. Sec. #___________________
Home Address:__________________________________ Home Tele. #:_________________________
Business Address:_______________________________ Bus. Tele. #:__________________________
Title: (held in business entity):____
Occupation: (if other)____

3. Has the corporation owned, leased or managed any non-City owned real property (this includes residential, commercial, vacant land, etc.) in New York City within the last 5 years?

_____Yes _____No

If yes, list the borough, block, lot, address, owner of record, dates owned, managed or leased (add additional page, if necessary).

BORO BLOCK LOT(S) ADDRESS OWNER OF RECORD/ADDRESS DATES OWNED/MANAGED/LEASED

_____

_____

_____

4. Has the corporation defaulted on any obligations to pay any of the following?

Real Estate Taxes	**_____Yes**	**_____No**
Water/Sewer Rents and Charges	**_____Yes**	**_____No**
Other Legally Mandated Charges	**_____Yes**	**_____No**

If yes, please provide pertinent details of the default below or on a separate piece of paper.

_____

_____

5a. Are there any judgments currently outstanding against the corporation resulting from lawsuits brought by the City of New York or any of its Agencies?

_____Yes _____No

If yes, specify the type and amount of the judgment, the date, court, county and docket number.

_____

_____

5b. Are there any judgments currently outstanding against the corporation other than those stated above?

_____Yes _____No

If yes, specify the nature of litigation (court, county and docket number.)

_____

_____

6. Is the corporation currently a party in any lawsuit in which the Department of Citywide Administrative Services or Real Estate Services or the City of New York or any of its Agencies is also a party? If yes, specify the type and amount of the judgment, the date, court, county and docket number.

_____Yes _____No

_____

_____

7. Within the past ten (10) years, has the corporation been convicted of a crime(s)?

_____Yes _____No

If yes, identify the charges, the court(s) in which the corporation was convicted, and the disposition of each matter.

_____

_____

8. Has the corporation had a lease, license or permit for the use or possession of property from the City of New York within the last 5 years? If yes, specify the address(es) of the property and the dates of the lease, license or permit.

_____Yes _____No

_____

_____

9a. Has the corporation defaulted on any of its obligations relating to any lease, license or permit for this property? If yes, specify the reason for the default.

_____Yes _____No

_____

_____

9b. Has the corporation defaulted on any of its obligations relating to **any** lease **at any time** with the City of New York? If yes, specify the reason for the default.

_____Yes _____No

_____

_____

10a. Has the corporation bid upon and/or purchased property from the City of New York within the last 5 years? If yes, specify the address of the property and date you bid and/or purchased this property.

_____Yes _____No

_____

_____

10b. Does the corporation have a mortgage with the City of New York? If yes, specify the property associated with this mortgage.

_____Yes _____No

_____

_____

11. Has the corporation defaulted on any of its obligations relating to the bid/purchase and/or mortgage of this property? If yes, specify the details.

_____Yes _____No

_____

_____

12. Has the corporation ever defaulted on any local, state, or federal government contract? If yes, specify the details.

_____Yes _____No

_____

_____

13. Has the corporation ever been barred from bidding or declared not responsible by a local, state, or federal government agency, entity or authority? If yes, please explain.

_____Yes _____No

_____

_____

14. If corporate entity, is it in arrears on payments of any Federal, City or State of New York taxes, fees or charges?

_____Yes _____No

_____

_____

15. Please provide two (2) bank references:

BANK REFERENCES

Bank Name (1)_____ Bank Name (2)_____
Bank Address_____ Bank Address_____
Account #_____ Account #_____
Name on Account_____ Name on Account_____
Type of Account_____ Type of Account_____

I understand that the City of New York (the City) will rely on the truthfulness of this disclosure statement and any financial statements, representations of net worth and credit information statements submitted as part of my bid (The Statement) in determining my eligibility to lease property. The City may obtain a credit report(s) on me in connection with this application or any lease or occupancy relating thereto. If I ask, the City will tell me whether it has obtained a credit report and the name of the credit bureau.

I hereby authorize the release of information to the Deputy Commissioner or designee of the New York City Department of Citywide Administrative Services, Real Estate Services, pertaining to applicant's payment of taxes, fees, charges or other obligations to the United States government and the City and State of New York by the appropriate agents of said governmental bodies.

I understand that this lease application and bid packet may be rejected by the City of New York. I further acknowledge that the property will not be used for any illegal purposes. I agree that if anything arises which changes any of the statements I have made, I will promptly notify the Department of Citywide Administrative Services in writing.

This Statement and all documents pertaining to the bid submission are intended to be a written instrument as defined in Article 175 of the Penal Law, and I understand that any false statement may be punishable as a Class E felony. If the Department of Citywide Administrative Services discovers any material misrepresentation, omission or false statement, the Department of Citywide Administrative Services will not grant me the right to lease, and I may be prohibited from leasing City-owned property.

_____	_____
1) Individual's Name (print)	1) Individual's Name (print)
_____	_____
2) Individual's Signature	2) Individual's Signature
Sworn to and subscribed before me this _____day of _____, 20____	Sworn to and subscribed before me this _____day of _____, 20____
_____	_____
Notary Public/Commissioner of Deeds	Notary Public/Commissioner of Deeds

_____
Name of Entity (Print)

_____
Name of Officer/Title

_____
Signature of Officer

Sworn to and subscribed before me this

_____day of _____, 20____

_____	_____
Notary Public or Commissioner of Deeds	Affix Corporate Seal

THE COUNCIL
THE CITY OF NEW YORK

Appearance Card

I intend to appear and speak on Int. No. _____ Res. No. _____

☐ in favor ☐ in opposition

Date: 4/21/23

(PLEASE PRINT)

Name: Philip Kim

Address: 299 Broadway, #1003 NY, NY 10007

I represent: Assigned Counsel

Address: _____

THE COUNCIL
THE CITY OF NEW YORK

Appearance Card

I intend to appear and speak on Int. No. _____ Res. No. _____

☐ in favor ☐ in opposition

Date: _____

(PLEASE PRINT)

Name: Brian Zimmerman

Address: 44 Court Street 9L

I represent: Assigned Counsel

Address: SDA

THE COUNCIL
THE CITY OF NEW YORK

Appearance Card

I intend to appear and speak on Int. No. _____ Res. No. _____

☐ in favor ☐ in opposition

Date: 4/24/2023

(PLEASE PRINT)

Name: Justine V.S. Gill

Address: E. 24th St. Brooklyn, NY 11210

I represent: Center for Justice Innovation

Address: 520 8th Ave NY, NY 10018

Please complete this card and return to the Sergeant-at-Arms

THE COUNCIL
THE CITY OF NEW YORK

Appearance Card

I intend to appear and speak on Int. No. _____ Res. No. _____

☐ in favor ☐ in opposition

Date: 4/24/23

(PLEASE PRINT)

Name: RUTH SHILLINGFORD

Address: 100 Church Street, N.Y., NY. 10007

I represent: Law DEPARTMENT

Address: 100 Church Street, NY, NY. 10007

THE COUNCIL
THE CITY OF NEW YORK

Appearance Card

I intend to appear and speak on Int. No. _____ Res. No. _____

☐ in favor ☐ in opposition

Date: 4-24-2023

(PLEASE PRINT)

Name: Jennifer Gitrol Ruiz

Address: 100 Church Street

I represent: Law Department

Address: 100 Church St

THE COUNCIL
THE CITY OF NEW YORK

Appearance Card

I intend to appear and speak on Int. No. _____ Res. No. _____

☐ in favor ☐ in opposition

Date: _____

(PLEASE PRINT)

Name: Eileen Gray – Deputy Commissioner - DEP

Address: 33 Beaver Street - 23rd Floor

I represent: NYC DEP

Address: _____

Please complete this card and return to the Sergeant-at-Arms

THE COUNCIL
THE CITY OF NEW YORK

Appearance Card

I intend to appear and speak on Int. No. _____ Res. No. _____

☐ in favor ☐ in opposition

Date: _____

(PLEASE PRINT)

Name: Juanita Holmes - Commissioner

Address: 33 Beaver Street - 23rd Floor

I represent: NYC Dept. of Probation

Address: _____

THE COUNCIL
THE CITY OF NEW YORK

Appearance Card

I intend to appear and speak on Int. No. _____ Res. No. _____

☐ in favor ☐ in opposition

Date: _____

(PLEASE PRINT)

Name: Shaina Weinberg - 23rd Floor

Address: 33 Beaver Street - 21st Floor

I represent: NYC Dept. of Probation

Address: _____

THE COUNCIL
THE CITY OF NEW YORK

Appearance Card

I intend to appear and speak on Int. No. _____ Res. No. _____

☐ in favor ☐ in opposition

Date: _____

(PLEASE PRINT)

Name: Nancy Ginsburg

Address: Deputy Commissioner Division of Youth and Family Justice

I represent: Administration for Children's Services

Address: _____

Please complete this card and return to the Sergeant-at-Arms

THE COUNCIL
THE CITY OF NEW YORK

Appearance Card

I intend to appear and speak on Int. No. _____ Res. No. _____

☐ in favor ☐ in opposition

Date: _____

(PLEASE PRINT)

Name: Ray Komer

Address: Associate Commissioner

I represent: Administration for Children's Services

Address: _____

THE COUNCIL
THE CITY OF NEW YORK

Appearance Card

I intend to appear and speak on Int. No. _____ Res. No. _____

☐ in favor ☐ in opposition

Date: _____

(PLEASE PRINT)

Name: Alan Sputz

Address: Deputy Commissioner, Family Court Legal Services

I represent: Administration for Children's Services

Address: _____

THE COUNCIL
THE CITY OF NEW YORK

Appearance Card

I intend to appear and speak on Int. No. _____ Res. No. _____

☐ in favor ☐ in opposition

Date: _____

(PLEASE PRINT)

Name: Jess Dannhauser

Address: Commissioner

I represent: Administration for Children's Servs

Address: _____

Please complete this card and return to the Sergeant-at-Arms

THE COUNCIL
THE CITY OF NEW YORK

Appearance Card

I intend to appear and speak on Int. No. _____ Res. No. _____

☐ in favor ☐ in opposition

Date: 4/24/23

(PLEASE PRINT)

Name: LAURA RINGELHEIM

Address: DCAS

I represent: EXECUTIVE DEP CMR.

Address: ASSET + PROPERTY MGMT.

THE COUNCIL
THE CITY OF NEW YORK

Appearance Card

I intend to appear and speak on Int. No. _____ Res. No. _____

☐ in favor ☐ in opposition

Date: 4/24/23

(PLEASE PRINT)

Name: LANA KIM

Address: DCAS

I represent: DEPUTY CMR.

Address: FACILITIES MGMT.

THE COUNCIL
THE CITY OF NEW YORK

Appearance Card

I intend to appear and speak on Int. No. _____ Res. No. _____

☐ in favor ☐ in opposition

Date: 4/24/23

(PLEASE PRINT)

Name: JOSEPH WAGNER

Address: DCAS

I represent: ASST. CMR.

Address: CONSTRUCTION + TECHNICAL SVCS.

Please complete this card and return to the Sergeant-at-Arms

THE COUNCIL
THE CITY OF NEW YORK

Appearance Card

I intend to appear and speak on Int. No. _____ Res. No. _____

☐ in favor ☐ in opposition

Date: 4-24-2023

(PLEASE PRINT)

Name: Karen Simmons

Address: 44 Court St. Brooklyn NY

I represent: The Childrens LAW Center

Address: _____

THE COUNCIL
THE CITY OF NEW YORK

Appearance Card

I intend to appear and speak on Int. No. _____ Res. No. _____

☐ in favor ☐ in opposition

Date: _____

(PLEASE PRINT)

Name: Sandeep Kandhari

Address: 40 Worth St

I represent: Center for Family Representation

Address: 40 Worth St 10

THE COUNCIL
THE CITY OF NEW YORK

Appearance Card

I intend to appear and speak on Int. No. _____ Res. No. _____

☐ in favor ☐ in opposition

Date: 4/2

(PLEASE PRINT)

Name: Stacy Schecter, Esq.

Address: _____

I represent: Safe Horizon

Address: 2 Lafayette St.

Please complete this card and return to the Sergeant-at-Arms

THE COUNCIL
THE CITY OF NEW YORK

Appearance Card

I intend to appear and speak on Int. No. _____ Res. No. _____

☐ in favor ☐ in opposition

Date: 4-24-2023

(PLEASE PRINT)

Name: Rachel Braunstein

Address: _____

I represent: Her Justice

Address: _____

THE COUNCIL
THE CITY OF NEW YORK

Appearance Card

I intend to appear and speak on Int. No. _____ Res. No. _____

☐ in favor ☐ in opposition

Date: 4/24/2023

(PLEASE PRINT)

Name: Miriam Mack

Address: 360 E. 161st St, Bronx, NY 10451

I represent: The Bronx Defenders

Address: Same as above

THE COUNCIL
THE CITY OF NEW YORK

Appearance Card

I intend to appear and speak on Int. No. _____ Res. No. _____

☐ in favor ☐ in opposition

Date: _____

(PLEASE PRINT)

Name: ZAINAB AKBAR

Address: 317 LENOX AVE #N4, NY 10027

I represent: NEIGHBORHOOD DEFENDER SERVICE OF HARLEM

Address: SAME AS ABOVE

Please complete this card and return to the Sergeant-at-Arms

THE COUNCIL
THE CITY OF NEW YORK

Appearance Card

I intend to appear and speak on Int. No. _____ Res. No. _____

☐ in favor ☐ in opposition

Date: _____

(PLEASE PRINT)

Name: Ronald E. Richter

Address: 120 Wall St. 20th Fl. NY, NY 10005

I represent: JCCA

Address: _____

THE COUNCIL
THE CITY OF NEW YORK

Appearance Card

I intend to appear and speak on Int. No. _____ Res. No. _____

☐ in favor ☐ in opposition

Date: 4/24/23

(PLEASE PRINT)

Name: Nita Nalayajan

Address: 177 Livingston Street 7th Fl. Bklyn NY 11201

I represent: Brooklyn Defender Services

Address: 177 Livingston Street 7th Fl. Bklyn NY 11201

THE COUNCIL
THE CITY OF NEW YORK

Appearance Card

I intend to appear and speak on Int. No. _____ Res. No. _____

☐ in favor ☐ in opposition

Date: 4/24/23

(PLEASE PRINT)

Name: Jennifer Feinberg

Address: 40 Worth St., Suite 605

I represent: Center for Family Representation

Address: _____

Please complete this card and return to the Sergeant-at-Arms

THE COUNCIL
THE CITY OF NEW YORK

Appearance Card

I intend to appear and speak on Int. No. _____ Res. No. _____

☐ in favor ☐ in opposition

Date: _____

(PLEASE PRINT)

Name: Joyce McMillan

Address: Front unrelated

I represent: JMAC Corporation

Address: _____

Please complete this card and return to the Sergeant-at-Arms