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Statement for
New York State Senate
Standing Committee on Judiciary and
Standing Committee on Children and Families
Regarding Oversight of the Family Court Throughout the State
November 1, 2023

My name is Nancy S. Erickson. I am an attorney and former law professor. I thank you for the opportunity to present my views and the views of other experts on the important issue of oversight of the Family Court throughout the State.

The Notice of Joint Public Hearing cites to findings of Special Adviser on Equal Justice in the Courts Jeh Johnson and a report by the Williams Commission confirming those findings.[1] The Notice states that the hearing on November 1 will "build upon [those reports] by conducting thorough oversight of all aspects of the Family Court, including but not limited to its resources, operations, culture, outcomes, and the appointment and supervision of judges."

With regard to the question of supervision of judges, there is no real supervision of judges or, if there is, it is not visible and therefore cannot be called upon when needed. This has real-life tragic consequences, especially for children.

One looks in vain for any description of how judges may be supervised by OCA or, indeed, by any entity.[2] The only "supervision" that can be found is not really supervision but only the "standards and goals" that exist as benchmarks for resolving cases. Apparently, for Family Court cases, standards and goals are 180 days, although it is unclear where those are published so that litigants, attorneys, and the public could be made aware of them.[3] Additionally, standards and goals have nothing to do with quality of judicial decision making, only with quantity and speed.

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[1] Locations of the Johnson Report and the Williams Commission Report were not provided in the Notice and were not easy to find. The Johnson Report is located at https://www.nycourts.gov/whatsnew/pdf/SpecialAdviserEqualJusticeReport.pdf. They were both mentioned in https://www.nycourts.gov/LegacyPDFS/publications/2021-Equal-Justice-Review.pdf, but citations or websites were not provided therein.

[2] It is true that in every judicial district there is a judge who is denominated a "Supervising Judge." However, supervising judges do not have the power to correct judicial decisions of judges over which they have supervision. "Supervising Judges are responsible for assisting Administrative Judges in the on-site management of the trial courts, including court caseloads and personnel and budget administration. Supervising Judges manage a particular type of court within a county or judicial district." https://ww2.nycourts.gov/Admin/directory.shtml#supervising

[3] The "standards and goals" are mentioned in the 2019 State of Our Judiciary Report. https://ww2.nycourts.gov/sites/default/files/document/files/2019-02/19_SOJ-Report.pdf.

If judges are getting quicker at making decisions in Family Court cases, that does not mean that they are getting better. In fact, it is more likely that being forced (or pressured) to handle cases faster, the decisions of judges are getting worse. That is certainly my impression. I have been practicing as an attorney in Family Court (and Matrimonial Court) in New York for about 30 years, primarily representing survivors of domestic abuse, and I have spoken with colleagues who have practiced in New York Family Courts for even longer representing survivors of abuse. Most of my colleagues agree that things have never been worse in New York courts for survivors of abuse. That is very counter-intuitive, because the Legislature has passed many statutes during that time for the very purpose of improving the lives of abuse victims, including their children, and their experiences in the court system.

Unfortunately, these statutes often have not been used as they were intended to be used to protect and assist abuse victims and their children.[4] So the question is how the judges are supervised in order to make sure that they understand the laws and apply them in appropriate cases. The answer seems very clear – judges receive no such supervision other than from the Appellate Divisions if the wronged party can afford to appeal, and that "supervision" is too little and too late.

It is true that judges must get training in domestic violence, but a lecture that is not followed by a test of what the judge has learned gives no incentive to pay close attention to what is taught. Further, there is hardly enough time to begin to deal with all the myths and false assumptions and biases that are rampant in our culture and therefore in the minds of judges too.

What happens in our overburdened Family Courts predictably leads to faulty decisions. Like in our overburdened criminal courts, the goal is not to have a trial. The goal is to get a settlement – the equivalent of a plea bargain -- so that the judges will be able to go on to other cases. In a settlement, the weaker party is usually the one who gives up the most, so it is predictable that an abuse victim will end up the loser in a settlement.

Abuse victims tend to be the lesser monied parent, whose counsel is often outgunned by the abuser's private counsel. Additionally, although domestic abuse organizations exist to provide free counsel, their legal divisions typically have little ability to take new cases or will take only cases to obtain orders of protection, when abuse survivors often need help with custody, child support, and spousal support cases too. Thus, abuse survivors usually are represented by attorneys who do not specialize in domestic abuse cases and do not always keep up with the statutory and case law that could be helpful for abuse survivors.

Often their attorneys are court appointed. While such attorneys are often well-intentioned, their hourly rates are still so ludicrous when compared to the hourly rates of

[4] See Erickson, Nancy (2020). Why Are New York State Courts Failing to Keep Our Children Safe?, 13(2) FAM. & INTIMATE PARTNER VIOLENCE Q. 9-28, which contains my Testimony on October 24, 2019 to three New York State Assembly Standing Committees on "The Rights of Children in Court," and which is attached hereto as Appendix A.

private counsel, that court appointed attorneys are simply forced to cut more corners on their cases than private counsel, and they often have no support staff and operate out of their briefcases rather than offices. It is no surprise that there is a constant need for additional attorneys to do this important work.

Judges then often assign custody evaluators. The problems with custody evaluators have been investigated and discussed for years, with virtually no progress being made.[5] The Matrimonial Commission Report of 2006 included many pages on custody evaluations but made no significant recommendations. The majority of the members of the recent Blue Ribbon Commission on Forensic Custody Evaluations actually recommended doing away with custody evaluations, and they discussed many lesser reforms that could be made. However, what ultimately resulted was one anemic statute to simply provide some domestic abuse training for custody evaluators. This hardly begins to address the fact that the custody evaluation process is lacking in due process and has many other significant built-in problems.

The conversion of Law Guardians into Attorneys for Children was an improvement, and Rule 7.02 of the Chief Judge was intended to limit the ability of the AFCs to substitute their own judgment of the child's best interests for the judgment of their child clients, but the exceptions have swallowed up the rules. In case after case, we see the AFCs urging their own views instead of the child's views unless the child is an older teenager who is strong and persistent in pushing for what s/he wants. And, again, the culture in which the AFCs operate has not been changed, so the AFCs often feel that they have to show exaggerated deference to the judge in order to get appointed to new cases. Litigants who have complaints against AFCs now have only two places to which they can turn: the judges, who rarely -- if ever -- will remove an AFC from a case, and the Attorney Disciplinary/Grievance Committee, which has a similar record of failing to find reason to discipline attorneys.

The culture of each Family Court is somewhat unique, but in general the culture encourages all attorneys – not just AFCs-- to be too obsequious to the judges, because they appear in front of those judges regularly.

We come back full circle to the fact that when one party is more powerful and/or well funded than the other, it is not surprising that the less powerful, less well funded party – by definition the abuse victim not the perpetrator – is more deserving of the court's concern in order to maintain the court as a fair and neutral playing field. This dynamic should be as obvious in the case of domestic abuse cases as it is in landlord-tenant cases, where New York's attempt to provide counsel to all tenants has caused a revolution in landlord-tenant court, with tenant successes becoming significantly elevated since that change was instituted.

For Family Court, we need, at a minimum:

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[5] See my Testimony to the Blue Ribbon Commission on Forensic Custody Evaluations, attached as hereto as Appendix B.

1. More court-appointed counsel, paid at higher, more appropriate rates;
2. Amendments to the statutes regarding for court-appointed counsel in order to provide for such counsel to be appointed in more categories of cases;[6]
3. Abolition of custody evaluators or at least very significant reforms in the procedures followed in custody cases in which they are appointed and the procedures to hold them accountable;
4. More oversight of AFCs, both by the judges and by outside oversight entities;
5. Higher status and pay for all judicial officers in Family Court, along with additional clerks for the judicial officers so that they can provide decisions of more quality;
6. Ombudsman agency to handle complaints, with information regarding this agency publicly available;
7. Tracking of outcomes rather than simply of numbers of cases and time in which they are resolved.

Thank you for the opportunity to comment.

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October 16, 2023

[6] E.g., indigent child support and spousal support petitioners should be appointed counsel in Family Court. FCA Section 262 does not currently provide counsel to such litigants. Nor is there authorization for appointed counsel in divorce cases for issues other than those cited in FCA Section 262. This means that an attorney could be appointed in a divorce for the custody issues but not for the equitable distribution, spousal support, or child support issues (unless a spouse is seeking to hold the other in contempt for non-payment of spousal or child support).