

Testimony Submitted by
The Committee For
Modern Courts

Public Hearing
before the

NEW YORK STATE SENATE
STANDING COMMITTEE ON JUDICIARY
STANDING COMMITTEE ON CHILDREN & FAMILIES



November 1, 2023

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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 essential and nonessential 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.

We urge the Legislature to provide sufficient funds to the court system so that the recommendations detailed in our report can be implemented. The 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; and
- enact uniform procedural rules.