



**SENATE STANDING COMMITTEE ON JUDICIARY
SENATE STANDING COMMITTEE ON CHILDREN & FAMILIES
JOINT PUBLIC HEARING ON NEW YORK STATE FAMILY COURT
NOVEMBER 1, 2023**

Testimony of the New York Legal Assistance Group (NYLAG)

NYLAG is grateful to submit this testimony in response to the NYS Senate Standing Committee on the Judiciary's and Standing Committee on Children and Families' November 1, 2023, public hearing on the NYS Family Court.

NYLAG uses the power of the law to help New Yorkers in need combat social, racial, and economic injustice. We address emerging and urgent legal needs with comprehensive, free civil legal services, impact litigation, policy advocacy, and community education. Our Domestic Violence Law Unit (DVLU) provides free representation to domestic violence survivors in the five boroughs of New York City. DVLU attorneys represent survivors of intimate partner and gender-based violence in proceedings in Family Court, including in Family Offense, Custody, Visitation, Child Support, Spousal Support, as well as non-respondent parents in Article 10 abuse and neglect proceedings.

NYLAG is thankful that the Committees are examining the critical issue of the state of the New York Family Courts. NYLAG is grateful to be able to submit this testimony on behalf of the survivors it serves. The Family Court system, while it may operate with the best of intentions, in practice, often causes irreparable harm to families – often low-income families of color, many of whom are survivors of domestic violence.

The Family Court is often disparagingly referred to as the poor people's court. As a court system that is most often used by low-income New Yorkers, and people of color, it is one of the most under-resourced, heavily burdened, and under-funded court in the State. The lack of funding means that in practice, the Family Court does not have the resources to hear and determine the cases filed in Family Court and resolve them in a timely or meaningful way. The lack of political power and financial capital of the "users" of Family Court, has resulted in a substandard of justice that is acceptable only when applied to the poor and disenfranchised. The Family Court has evolved into a system that consistently fails in its obligation to afford due process of law. These constitutional failings warrant immediate redress by the Legislature.

The Fifth and Fourteenth Amendment to the U.S. Constitution provides, in part, that no person shall be "deprived of life, liberty or property without due process of law." These clauses prevent the government from depriving any person of life, liberty or property without due process of law. Due process of law involves both the substantive – the right to family autonomy – and the procedural – the right to an unbiased tribunal, to present evidence and call witnesses, and to be represented by counsel, and the right to notice about how all of this is going to happen,

essentially the rules by which the process of trial will happen – rules applied equitably to all litigants.

Family Court, by design, is a court with limited procedural rules. Initially intended to allow for swift resolution¹ of actions, the lack of rules has come to mean that litigants lack any sense of what the family court process should or could look like. Litigants, and often those representing them, have no understanding or expectation of how their case will be handled, how long it will proceed, how, if at all, evidence will be exchanged, or how their case will be decided. How a case is heard or what relief can be granted is more often based on “luck of the draw” than on principles of equity and fairness. Rules and procedure have a purpose, they hold us accountable to equity and fairness. In the absence of rules, what is unfair? What is the recourse or redress? As we have seen repeatedly, there is none.

Every other system in which the wealthy or privileged access the courts have rules and procedures in place outlining how the proceeding will take place; each side has the ability to hold the other – and the Court itself – accountable to those rules. The Family Court has been incredibly resistant to putting any procedures in place, repeatedly pushing back resting on the need for judicial discretion and independence. The result being that each individual courtroom operates as an individual fiefdom; decisions about whether the appearance will be in person or remote, whether evidence must be exchanged, the timing and access to a trial to be heard before major decisions are made, are all left to the individual jurist on each individual case.

By way of example, a NYLAG client, who was seeking an order of protection against her former partner who had continued to harass and stalk her post separation, requested an adjournment of a trial date as she was having emergency open heart surgery. That adjournment request was denied. Without recourse and having to choose between her life and her right to be safe from harm, she chose to withdraw her request for an order of protection.

Due process also requires that litigants be afforded counsel. The issues heard in Family Court are some of the most sensitive issues heard by any court in this State and they concern some of our most fundamental constitutional rights. And yet, as is well documented, in practice, litigants are rarely afforded adequate counsel. The 18-b panel is broken; assigned counsel attorneys are severely over-burdened. There is such a crisis of counsel that cases may be adjourned multiple times (representing many months) before an attorney can be found for assignment. We often hear from litigants that they have an appointed lawyer but do not know who they are, that they cannot reach them outside of court, that they do not have the time to hear about their case or listen to their concerns.

The view of Family Court as a “lesser” court, has many other ramifications that directly impact the quality of justice that litigants experience. The overall lack of appropriate funding, and limitation on judges, practically means that each jurist is wildly overburdened, having mere minutes for each case, and often making decisions impacting a family’s physical, emotional, and psychological well-being with little information or inquiry. And while there are some amazing

¹ Family Court actions are special proceedings, originally intended to be heard and resolved swiftly due to the nature of the proceedings and the need for speedy resolution. However, it is beyond dispute that Family Court matters are extremely protracted, and delays are rife.

jurists in Family Court who have dedicated their careers to improving the lives of children and families, that does not change the fact that many others are placed there for short stints, with little training or buy-in, or, more shockingly, as a punishment for poor behavior in other courts. Many jurists display a shocking lack of understanding of the basic principles of childhood development and trauma.

Compounding the lack of due process in Family Court is the lack of effective appellate review. Without rules of process, there is little way to show a deprivation of one's procedural rights. Without clear guidelines, everything is a matter of discretion. We repeatedly see the appellate division refuse to act even in the face of gross negligence, inaction, or affirmative harm committed by the Family Court, finding pervasive Constitutional violations to be "harmless error" and a gross ignorance of trauma and domestic violence upheld as a "credibility determination."

Furthermore, appellate review often takes *years* to resolve, making any decision in the context of a family almost meaningless – and many times moot – as the circumstances and needs of the parties and children have changed. Appellate "wins," particularly in the context of decisions concerning children, are hardly ever a "win," most often it means a return to court for yet another trial with little more guarantee of justice.

Report after report has shown how deep and pervasive the problems in Family Court have become and remain.² Tweaks and good intentions are not enough. Legislative changes are

² See Franklin H. Williams Judicial Commission of the New York State Courts, Report on New York City Family Courts, Dec. 19, 2022, <https://www.nycourts.gov/LegacyPDFS/IP/ethnic-fairness/pdfs/FHW%20-%20Report%20on%20the%20NYC%20Family%20Courts%20-%20Final%20Report.pdf>; Report from the Special Adviser on Equal Justice in New York State Courts, Oct. 2020, <https://www.nycourts.gov/whatsnew/pdf/SpecialAdviserEqualJusticeReport.pdf>; New York State Bar Association Committee on Families and the Law, Report and Recommendations on Racial Justice and Child Welfare, Mar. 2022, <https://nysba.org/app/uploads/2022/03/Committee-on-Families-and-the-Law-April-2022-approved.pdf>; Report of the Blue-Ribbon Commission on Forensic Custody Evaluations, Dec. 2021, <https://opdv.ny.gov/blue-ribbon-commission-forensic-custody-evaluations>; April 9, 2021, Report from Domestic Violence Committee: 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, <https://www.nycbar.org/member-and-career-services/committees/reports-listing/reports/detail/the-family-court-judicial-appointment-and-assignment-process>; A Call to Action: The Crisis in Family Court, The Fund for Modern Courts, Family Court Task Force, February 2009, https://moderncourts.org/wp-content/uploads/2013/10/a_call_to_action.pdf; Report, OCA Report of the New York Task Force on Women in the Courts, March 1986, <http://www.nycourts.gov/ip/womeninthecourts/pdfs/ny-task-force-on-women-in-the-courts-summary.pdf>.

necessary to ensure that all litigants can fairly access the courts. The legislature can and should examine the process by which *all* New Yorkers access the Court system and ensure that everyone has access to the same system of justice.

Family Court should not be treated and viewed as the poor people's court. It is charged with deciding cases which implicate our most fundamental constitutional rights. The decisions made in Family Court today not only immediately impact a family but resonate for generations. Family unity and autonomy, freedom from fear and trauma – these decisions fundamentally shape the lives of the families and children impacted. Funding and resources for the Family Court should match the importance of the issues before it and rules, process, and procedures should be designed to ensure fidelity to the principles of due process.

The legislature can and should use its authority to establish rules of procedure to ensure procedural due process and fairness. The legislature should ensure that jurists receive the training and support needed and that they are held accountable to adjudicating matters in accordance with due process. The legislature should ensure that resources and support for litigants are adequately invested in and funded, including civil legal services, assigned counsel panels, quality supervised visitation and abusive partner intervention programming, and other resources to ensure the safety of children and families.

I thank the Senate Standing Committee on Social Services and Senate Standing Committee on Women's Issues for the opportunity to submit these comments.

Respectfully,



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