



NEW YORK STATE BAR ASSOCIATION

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Testimony

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Proposed 2013-14 Public Protection Budget

I am Seymour W. James, Jr., President of the New York State Bar Association, the oldest and largest voluntary state bar association in the nation. On behalf of our 76,000 members, I thank you for the opportunity to submit testimony regarding the Unified Court System's budget proposal and to address some related issues of importance to both the public and the legal profession.

The New York State Bar Association, with members skilled in all disciplines of the law, is the statewide voice of the profession and an advocate for the public. Our members are involved in every aspect of the legal system, enabling us to speak from a broad and balanced perspective. We hope you will find our comments constructive as you face the challenges of this budget cycle.

BUDGET OF THE UNIFIED COURT SYSTEM

New York's courts adjudicate millions of disputes, both great and small, and guarantee a "day in court" to all people, including the weak, the poor and the unpopular, as well as those who rely on our courts to resolve their business and commercial disputes, which is important to the state's economy and to insuring that New York continues to be the business, financial and legal center of the world. The effective operation of the court system is crucial to maintaining an orderly society.

The Judiciary is one of the three, co-equal branches of our state's government. And, the Judiciary is comprised of relatively few judges, given the

caseloads that confront them. Nevertheless, New York's judges resolve a substantial number of cases equitably and efficiently. Similarly, our court administrators face significant challenges, given the size of the court system and the number of courts they oversee. Chief Judge Jonathan Lippman and Chief Administrative Judge Gail Prudenti are outstanding leaders who continue to address the issues facing our court system, while recognizing the need for fiscal restraint.

2013-14 JUDICIARY BUDGET REQUEST

New York's Unified Court System is recognized as one of the largest and busiest court systems, not only in the United States, but in the world.

The Judiciary's budget request reflects a balancing between the constitutional duty to ensure access to justice for all New Yorkers and the obligation to reduce costs wherever possible.

Despite high workloads, the Judiciary has implemented an aggressive cost-control program. Consequently, the Judiciary's General Fund State Operations and Aid to Localities request for fiscal year 2013-14 is \$1.76 billion, a decrease of \$212,013 or .012%. The All Funds budget request, excluding General State Charges, totals \$1.97 billion, an increase of \$1.2 million or .06%. As expressed in his Commentary on the proposal, the Governor stated: "The budget submitted by the Chief Judge recognizes the ongoing budgetary pressures the State faces,

especially as the State recovers from Superstorm Sandy. This budget holds the line on spending, yet ensures the courts have the resources necessary to uphold their constitutional duty. I commend the Judiciary for their continuing efforts to meet the State's fiscal goals by rethinking how the courts do business, and for their continuing partnership with the Executive Branch.”

We endorse the Governor’s statement and request that the Legislature approve the proposed Judiciary Budget. While it is clear that judicial leaders are working hard to keep courthouse doors open, we will continue to urge that the courts be adequately funded so as to serve the public fairly, efficiently, and effectively.

FUNDING CIVIL LEGAL SERVICES

I turn now to an issue that has been among the State Bar’s highest priorities for many years: funding for civil legal services. Unfortunately, the need for civil legal services continues to outpace the available resources.

It has long been the position of this Association that it is the obligation of the State to provide a stable funding mechanism for civil legal services. To that end, it is important to reiterate our view that New York State should: 1) create a permanent Access to Justice Fund in the State budget; 2) provide for administration and oversight of this Fund by an appropriate office, such as one within the Judiciary; and 3) work with the legal community to ensure that access to

justice receives sufficient support, attention and priority.

THE CRISIS AT IOLA

As you know, the State Bar was one of the original advocates for the formation of the Interest on Lawyer Account (“IOLA”) Fund. The IOLA Fund, which was created by the Legislature in 1983, is funded by the interest earned on moneys held by attorneys for clients and deposited in interest-bearing accounts at the discretion of attorneys and law firms. The accumulated interest is transferred to the IOLA Fund, where it is used to provide grants to legal service providers around the state. Naturally, we have a great concern over the impact that the weak economy has had on the Fund.

For the past three years the State Bar applauded the Legislature’s approval of the Judiciary's \$15-million allocation for the IOLA Fund, to help offset declining IOLA revenue due to low interest rates and the decline in the number of real estate transactions. We again applaud the Judiciary for including this item in its current proposal and we thank you and your colleagues in the Legislature for your recognition of the importance of this funding. We strongly urge you to continue your support for this appropriation.

TASK FORCE TO EXPAND ACCESS TO CIVIL LEGAL SERVICES

Chief Judge Jonathan Lippman established the Task Force to Expand Access to Civil Legal Services in New York as part of his efforts to ensure that the courts can meet their constitutional mission of ensuring equal justice for all citizens. The Task Force included judges, lawyers, business executives, and labor leaders from all parts of the state. During the fall, for the third consecutive year, the Chief Judge presided over a set of public hearings in each of the state's four Judicial Departments. Members of the State Bar Association assisted in presiding over these hearings. I was privileged to participate in the hearings held in Albany and New York City. The hearings assessed the extent and nature of unmet need for civil legal services throughout the State in order to help formulate recommendations to the Governor and the Legislature on the appropriate level and source of public resources to meet those needs.

Last November the Task Force released its comprehensive report, which provides a roadmap with common sense recommendations to address the critical need to provide counsel to low-income New Yorkers in civil cases. The findings of the Task Force are overwhelming. The quality of justice in New York's courts is diminished and the rule of law undermined when so many New Yorkers go without legal representation in matters that involve day-to-day life. More than

2.3 million litigants still attempt to navigate the complex civil justice system without a lawyer each year. Representation by counsel is still unavailable for all but a very small fraction of tenants in eviction cases in all four Judicial Departments, borrowers in thousands of consumer credit cases filed in New York City, and parents in child support matters in rural, suburban, and urban areas.

Among the findings of the 2012 Report of Chief Judge's Task Force are the following:

- a. A continuing unmet need exists for civil legal services for low-income families and individuals in all areas of the state.
- b. The continuing unmet need for civil legal assistance in all areas of the state has a negative impact on the functioning of the courts, businesses and government, and a profound impact on vulnerable families and individuals.
- c. Analyses demonstrate that civil legal services in New York State can save money. The Task Force commissioned two independent studies from leading financial analysis firms, which found that civil legal services can generate some \$200 million in annual savings:
 - i. -\$85 million by providing legal assistance to avert the immediate expenses resulting from domestic violence (Firm: Navigant Consulting); and,
 - ii. -\$116.1 million by preventing evictions and resulting shelter costs (Firm: Cornerstone).
- d. New initiatives can streamline and enhance client service delivery, help limit the costs of providing civil legal services, and reduce court expenditures and litigation costs for represented parties.

- e. This year, NERA Economic Consulting expanded this inquiry into new areas and found that, as a result of the efforts of the civil legal services providers:
- In 2011 alone, direct recipients and their families received at least \$378 million from several specific federal programs (the federal Supplemental Security Income and the federal Social Security Disability programs);
 - Over the past five years, low-income New Yorkers have become eligible for as much as \$682 million from federal programs;
 - The positive financial effect in 2011 and long-term future effects together could be as high as \$1.06 billion; and,
 - These economic benefits effectively reduce by approximately 2 percent per year the current net outflow of taxes paid by New Yorkers to the federal government of approximately \$20 billion per year.

The State Bar applauds Chief Judge Lippman and the Task Force for providing a sensible roadmap that will help address the crisis faced by our court system because of the unmet civil legal needs of New Yorkers.

Lawyers are committed to doing their share. The bar contributes many hours a year in voluntary pro bono legal services to the indigent. Pro bono efforts by the bar have been conservatively calculated to be more than 2 million hours annually. However, these voluntary efforts alone are insufficient to meet the needs of the indigent. Ultimately, society as a whole, acting through its elected leaders, must provide adequate public funding to do so.

New York must be able to provide a steady source of funding targeted to the “essentials of life” – housing, preventing or escaping from domestic violence, access to health care – reliably and quickly. Accordingly, the Judiciary’s proposed budget includes \$40 million to implement the Task Force’s recommendations to address the crisis in civil legal services.

In an era when some members of Congress continue to call for the elimination of the Legal Services Corporation, the need for responsible action in New York State is all the more critical. The New York State Bar Association strongly supports the Judiciary’s \$40 million request for civil legal services.

PROPOSED EXECUTIVE BUDGET

INDIGENT CRIMINAL DEFENSE

At the request of then-Chief Judge Judith S. Kaye, the Commission on the Future of Indigent Defense Services examined New York State’s county-based indigent criminal defense system. The Commission concluded that there is “a crisis in the delivery of defense services to the indigent throughout New York State and that the right to the effective assistance of counsel, guaranteed by both the federal and state constitutions, is not being provided to a large portion of those who are entitled to it.” This is an alarming and disheartening finding in a state once lauded for its progressive policies to ensure that people of lesser means are not

marginalized.

In 2010, the Office of Indigent Legal Services (Office) was created. The State Bar views the Office as a step in the right direction toward establishment of an independent indigent defense commission with broad powers to adopt standards, evaluate existing programs and service providers, and generally supervise the operation of New York's public defense system.

Given the important function of the Office – to provide support and relief to localities in fulfilling the mandate of the U.S. and New York constitutions – the Legislature should appropriate the funds necessary to expand the operation of the Office and maximize the funds appropriated from the Indigent Legal Services Fund (ILSF) to county governments.

It is our belief that, in order to fulfill the responsibilities of the Office, the Executive Budget should appropriate \$3 million for the operation of the Office and \$91 million for distribution via the aid-to-localities budget. We look forward to working with the Governor, the Assembly and the Senate to ensure that the Executive Budget appropriates sufficient funds to further the cause of making the constitutional guarantee of effective assistance of counsel a reality for all.

PRISONERS LEGAL SERVICES (PLS)

I want to commend the Governor for including in the proposed Executive Budget funding for an important program that we helped initiate after the Attica

riot -- Prisoners Legal Services ("PLS").

Based on the concern that prisoners in New York State lacked access to lawyers in order to deal with civil legal matters, in 1976 the State Bar Association helped establish PLS. One year later, the United States Supreme Court ruled that the states have an affirmative obligation to ensure that convicted felons have adequate, effective and meaningful access to courts, *Bounds v. Smith*, 430 U.S. 817 (1977). In 1978, the State of New York began to fund PLS as a state program.

PLS helps to provide equal access to our system of justice for those who are incarcerated and would otherwise be deprived of such access. The program reflects one of the State Bar's highest priorities -- the concept that the impoverished or unpopular individual should be able to invoke the power of the world's most advanced legal system to protect his or her rights.

We believe that PLS helps inmates resolve problems and reduce tensions associated with incarceration. Also, we submit that PLS helps to foster a sense of fairness and to enhance the positive attitudes and behavior of prisoners. It also helps in the development of sound correctional policy. One of the greatest values of PLS is that it works to avoid conditions of confinement that resulted in the devastating Attica riot.

PLS is -- and should remain -- a vital, integral part of the state's criminal justice system and a critical component of public safety.

We respectfully urge that you work with the Governor to ensure adequate funding for PLS in the 2013-14 Executive Budget.

CONCLUSION

Access to justice has been the primary focus of my remarks, and it is the centerpiece of the Association's legislative priorities. We submit that the court system should be adequately funded to ensure access to justice for the poor, the weak, and the vulnerable. The ability of an impoverished or unpopular individual to invoke the power of the world's most prestigious legal system to protect his or her rights is, and should continue to be, a source of great pride and great strength for all New Yorkers. We urge you to remain committed to protecting access to justice and to ensuring the public's trust and confidence in our justice system.

