



## **TESTIMONY OF LEGAL SERVICES NYC REGARDING THE REOPENING AND OPERATION OF NEW YORK'S COURTS DURING THE COVID-19 PANDEMIC**

**New York State Senate  
Senate Standing Committee on the Judiciary  
Senate Standing Committee on Codes  
Senate Standing Committee on Housing, Construction and Community Development**

**August 21, 2020**

Legal Services NYC welcomes the opportunity to offer this testimony to the above New York State Senate Standing Committees regarding OCA's operation of the Family Courts in New York City during the COVID-19 pandemic. We applaud the Committees' inquiry into this vital issue that has wide ranging implications for the health and economic well-being of the State and its residents.

Legal Services NYC is one of the largest law firms for low-income people in New York City. With 18 community-based offices and numerous outreach sites located throughout each of the city's five boroughs, Legal Services NYC's mission is to fight poverty and seek racial, social and economic justice on behalf of low-income New Yorkers. Legal Services NYC annually provides legal assistance to thousands of low-income clients throughout New York City. Historically, Legal Services NYC's priority areas have included family law, housing, and government benefits; in recent years, Legal Services NYC has vastly expanded services in areas of need critical to our client base, including immigration, consumer issues and foreclosure prevention, unemployment, language access, disability, education, and bankruptcy.

When the COVID-19 pandemic hit New York City in March, the Family Court system scrambled to find a way to continue to address the most urgent family law cases. In just a few weeks, the court set up an unprecedented centralized virtual court wherein families in all five boroughs were heard by phone or skype on certain designated emergency matters. This allowed domestic violence victims to petition for orders of protection, the state to initiate abuse/neglect proceedings, and the initiation of a limited number of other emergency applications. However, since mid-March, families have been unable to file new custody, visitation, or child support cases. This means that many families have suffered without access to appropriate remedy from the courts.

For domestic violence survivors, whether they be custodial or non-custodial parents, this has had dire consequences. We spoke to one domestic violence survivor, for example,

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whose abusive partner moved out of their shared home in April, taking their young child with him. For months he exerted power and control over his former partner by refusing to allow mother and child to visit or even communicate. For domestic violence victims like this one, the ability to file for an order of protection does not equate to access to justice. The ability to file for custody and/or visitation is essential for the protection of survivors and families. Domestic violence survivors who are custodial parents, too, have had to make impossible choices. If they allow visitation between the child and their abuser, they run the risk that their abuser harms or refuses to return the child and they are left without recourse. If the survivor withholds visitation, she runs the risk of being accused of parental alienation when the courts reopen. Even for families without domestic violence, non-custodial parents and their children have also gone months without visits or contact, as visitation has been withheld due to the pandemic or for other reasons, and there is no way to enforce orders or adjudicate visitation disputes.

Family Courts have also been unable to accept new petitions for child support since March. During a time of economic turmoil, many parents are struggling to feed their children. Single parents who had once been able to provide for children on their own, have found themselves jobless in the wake of the pandemic, and have been unable to bring the child's other parent to court to request support. For other families, existing child support orders have become unduly burdensome after COVID-related income losses, but they cannot yet get a downward modification of these orders, because the Family Courts have not been prepared to hear such cases virtually. Although the Family Court has set up an email address and document delivery system that permits the submission of child support modification cases, we have been advised that such submission is not considered a "filing" and it remains unclear as to whether the submission date would be used to establish retroactive support awards. The Family Court is still not accepting any petitions to establish an initial child support order, nor is it calendaring any new modification cases.

Because this has been the status quo for five months, the Family Court system will face a flood of new filings when it does begin to accept a broader range of petitions. Five months' worth of families will be racing to file new cases for custody, visitation and child support. This backlog only gets larger and more urgent the longer the courts delay accepting such petitions.

It is our hope, therefore, that many Family Court matters could continue to take place virtually and that the virtual court would continue to expand its capacity. This, too, is not without its challenges. The courts will need to establish best practices and apply them consistently across the board. Processes for sharing and authenticating evidence must be established and standardized. Litigants must be able to confer privately with their attorneys during virtual court proceedings. Long wait times, which plagued Family Courts before the pandemic began, remain even in the virtual landscape. Litigants wait hours in the virtual waiting room, calling back time and time again after being disconnected every fifteen minutes of waiting. Just last week, one of our cases had a return of process call scheduled for 9:15 a.m. which was put on for a second call and the attorney and litigant waited until after 5:30pm for the case to be recalled and adjourned. New York's poorest families often have limited cell phone call minutes, and literally cannot afford long waits on hold. Certainly,

they cannot arrange for childcare for interminable periods of time. OCA also still struggles with language access. As the landscape of the court system changes – new ways to file, changing restrictions on what can be filed, virtual court – the court must make sure that messaging is available not only in English but in the many languages spoken by New Yorkers. Signage in court houses, websites, and mailed notices must be consistently and appropriately translated into languages litigants can understand.

Families litigating divorces in Supreme Court face similar challenges. The ability to move forward in cases has also been limited, with many preliminary conferences remaining unscheduled or severely delayed. The transition to e-filing has also been rife with confusion and unnecessary complication. There is no clear system in place for document exchange, particularly for voluminous discovery that may exceed the limits of email. There also seems to be no reliable way for the matrimonial parts to get timely access to documents that have been e-filed, and many attorneys are being asked to both e-file and mail in documents. For cases that began before the pandemic, parties must consent to transition to e-filing, which has proven difficult in cases where a party is unrepresented. Meanwhile, courthouses and clerks' offices have been inconsistent regarding who may be permitted to enter, file, or retrieve documents in person. These hybrid systems are confusing, duplicative, and difficult to account, creating uncertainty, frustration and delay.

Even with such policies in place, we worry about how access or lack of access to resources may advantage one litigant over another. We are deeply concerned, for example, that things like access to video conferencing instead of audio only will have an unconscious impact on credibility determinations both in Family and Supreme Court. Resource imbalances are exacerbated when one party has access to video conferencing and the other doesn't, or one parent's ability to speak freely is limited by the presence of children in the home. Already, we are seeing litigants living in tight quarters with their children who are unable to fully discuss domestic violence and other sensitive issues pertinent in a custody case because they would be easily, and inappropriately, overheard by their children. Before COVID-19 such children would be in school or could be cared for at court childcare centers, but such options are not available in a time of distance learning and virtual court.

We ask therefore, that Family and Supreme Courts move quickly to expand virtual operations to allow litigants to move forward on petitions for custody, visitation and child support. We ask for clear communication regarding rules and changes as they are implemented, and consistent implementation across offices, courts and parts. We further ask that OCA work closely with provider agencies, including Legal Services NYC, to identify and address anticipated and experienced challenges as we move forward together through this challenging time. Such collaboration can also help to address the resource imbalances and other challenges inherent in a virtual court model, as discussed above.

We thank the Committees for addressing these important issues and hope to work with you in the future to craft the most effective response to this unprecedented challenge.

Respectfully submitted,

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