



Testimony
Public Hearings on the Executive Budget before the
Joint Fiscal Committees of the Senate and Assembly
Public Protection

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On behalf of Modern Courts, I want to thank the Committees for providing our organization with the opportunity to submit testimony today.

The Fund for Modern Courts is an independent nonpartisan statewide court reform organization committed to improving the court system for all New Yorkers. Modern Courts supports a judiciary that provides for the fair administration of justice, equal access to the courts, and that is independent, highly qualified and diverse. By research, public outreach, court monitoring, education and advocacy efforts, Modern Courts seeks to advance these goals and to ensure that the public confidence in the judiciary remains strong.

Modern Courts fully supports the budget as submitted by the Judiciary so the courts in New York will have the ability to provide full, fair and timely adjudication of matters brought to it by the people of this state who have no other recourse and deserve to have these matters resolved under the rule of law as guaranteed by our constitution, while remaining committed to fiscal responsibility.

We focus our testimony principally on that part of the Judiciary budget which deals with the request for a \$5 million supplemental appropriation for 20 new Family Court judgeships to be established effective January 1, 2015. In addition, we support the \$15 million budget request for civil legal services to ensure access to justice for New Yorkers in crisis without sufficient resources to hire a lawyer.

Additional Resources for the Family Court

We have learned, through our Court Monitoring programs in Family Courts in various parts of this state, our Task Force on Family Court and our involvement in the Family Court Volunteer Attorney Program, that the resources needed to afford full and fair justice to children

and families – those who are most vulnerable and in need of judicial intervention, require a fully funded court system. This is essential to meet New York’s longstanding commitment to justice. We, therefore, ask this Legislature to accept the Judiciary budget as proposed.

Modern Courts believes that the Judiciary’s budget request offers an appropriate balance between the needs of the public and the available fiscal resources so that the Judiciary will be able to continue to meet its constitutional duty to ensure access to justice for all New Yorkers.

Over the past five years the Judiciary has kept its budget virtually flat by cutting programs such as the children’s centers and community-based mediation programs; reducing the non-judicial work force by more than 1,900 through an early retirement program, targeted layoffs and a hiring freeze; making optimal use of limited resources; and better using time and cost-saving technology.

The “bare bones” Judiciary budgets of the past five years have already had a negative impact on the courts, especially Family Court where, as a result of crushing caseloads, children remain in foster care for far too long because their cases are not resolved in a timely fashion in court. Every time the federal government reviews how long New York’s children are in foster care compared to other states, the District of Columbia and Puerto Rico, New York routinely ranks at the bottom of the list (currently 50 out of 52 for reunification and adoption). We should be ashamed!

Other negative consequences of delay in Family Court include victims of domestic violence, who cannot get protective orders in a timely fashion and as a result their safety is threatened, and desperate families unable to afford basic necessities of life who do not receive child support payments because their cases are back-logged in overloaded court calendars.

The economic consequences of the overwhelming court calendars in Family Court are dire. Long adjournments and court delays impose unjustifiable governmental costs and unnecessary societal expenditures at every level, including repeated court appearances by county attorneys; extra months spent for children in foster care or institutional placements paid by the state and counties; the expense of homelessness for families not receiving their lawful support allowances; and missed work for litigants, which impact employers as well as their employees.

Capping judicial expenses at an arbitrary 2% growth rate, as has been suggested, will do further harm to the courts. This is especially true for the Family Court. Even with the best efforts of judges and non-judicial personnel and the dedication of advocates representing litigants in Family Court, limited judicial resources have resulted in extraordinary delays preventing proper and timely resolution of issues facing the people who need the justice system to protect them from harm. This issue cannot be ignored.

The problems of Family Court are well known: unrealistically large dockets; an insufficient number Family Court judgeships commensurate with dockets; unmanageable court calendars; frequent adjournments causing disruption in court proceedings and the effectiveness of judges' orders; and the paucity, in many courts throughout the state, of information about how the system works or the provision of support for the parties when they first enter the courtroom resulting in more work for overburdened judges and court personnel.

Modern Courts is confident that this Legislature will not do what has been done in other states – the unreasonable reduction of judicial budgets, because this Legislature has a long-standing commitment to preserve the Judiciary, our third branch of government, so that it can function as it should. Further erosion of the court system will be detrimental to the health of our State. We have already experienced closing the doors of court houses throughout the state one

half hour earlier as a result of budget restrictions. We certainly do not want to be in the position of actually having to close courts on a longer term basis or permanently because of a lack of personnel and other resources.

Almost five years ago in April 2009, the Fund for Modern Courts released a report by its Task Force on Family Court entitled, “A Call to Action: The Crisis in Family Court: Recommendations for Leadership and Reform.” If this report were written today, we might have changed that title from the “crisis in Family Court” to the “catastrophe in Family Court” because of the failure to add even a single additional to Family Court since our report was written. In fact, only four Family Court judgeships have been added in counties outside New York City since 1998 (the last new Family Court judgeship was created eight years ago in 2005 in Orange County) and no new judgeships have been added to New York City since 1990, more than twenty years ago. Over the past 30 years in New York State, filings in Family Court have increased by 90 percent, while the number of Family Court judgeships has been increased by only 8.8 percent.

Today, we need legislative action to deal with the many problems children and families face when seeking justice in Family Court. Simply put, Family Court needs more judges to deal with the crushing caseloads that exist. Without additional resources the doors to justice for children and families will be closed.

We are pleased to report that some recommendations in our report have been implemented by the court system and other improvements to Family Court have been made. For example, our Task Force recognized that greater access to justice for children and families required far more attorneys to represent litigants in Family Court than existed at the time of the report and we proposed that a *pro bono* initiative – the Family Court Volunteer Attorney

Program be expanded. That unique partnership between private firms and the New York City Family Court, which began in November 2006, with the strong support of then Chief Judge Kaye and continues under the current Chief Judge Jonathan Lippman now operates in all five counties in New York City and is expanding to three upstate counties, with the goal of making it a state-wide program in the coming years. This program utilizes the legal services of more than 300 *pro bono* attorneys from almost forty law firms and corporate law departments to provide advice and counsel in 30-minute sessions to unrepresented litigants in the Family Court on issues including child support, visitation, custody, guardianship and paternity.

But more attorneys to serve the unrepresented in Family Court has not and will not solve the problem of too few Family Court judges. Without additional resources, specifically an increased number of Family Court judges, the reforms Family Court have made are incomplete and the continuing problems confronting Family Court still significantly undermine the ability of Family Court to deliver quality justice in a timely fashion to all children and families seeking relief in the Family Court.

The disparity between the number of cases assigned to Family Court judges and other judges in New York State (e.g., Supreme Court, County Court, and Court of Claims) is unconscionable. The clear message to the public is that children and family matters are not as important as other legal matters. In our report we referenced the report of the Special Commission on the Future of the New York State Courts which found that in 2005 the average number of dispositions of Family Court judges (including support magistrates) was 2,120, as compared to 525 for Supreme Court justices in civil matters, 222 for Supreme Court and County Court justices and judges in felony cases, and 63 for Court of Claims judges. This disparity continued last year with the 2013 average number of dispositions of Family Court judges

(excluding support magistrates) at 2,609, as compared to 478 for Supreme Court justices in civil matters, 211 for Supreme Court and County Court justices and judges in felony cases, and 60 for Court of Claims judges.¹

Family Court judges should not be asked to handle caseloads that are, at a minimum, four times as great as other judges and at a maximum ten to thirty times greater.

As a result of the unrealistically large caseloads in Family Court because of too few Family Court judges, court calendars are often unmanageable. Crushing caseloads create varied problems. For example, there is excessive re-scheduling of cases and months pass between adjournments. As a result, many times the parties and even the judges seem to have forgotten what has occurred and issues that had been resolved are revisited. Multiple adjournments are particularly detrimental when children have been removed to foster care, according to a Voices of Women Organizing Project statement made in March 2008.

In the area of domestic violence, one disgraceful story of the consequence of multiple adjournments told by one legal services provider who was interviewed while our report was being developed is as follows:

A judge wouldn't finish a trial because other cases were waiting. The case (on an order of protection) was adjourned for six months. When we came back our client ended up, after being raped in the interim six months, dropping her case.

There has been much talk in Albany of late about the need to invest in infrastructure if New York State is to truly remain the Empire State. We have now taken on the monumental and necessary task of rebuilding the Tappan Zee Bridge, which opened for traffic in December 1955.

¹ Family Court and Court of Claims disposition rates per judge are based on the number of Statutorily Authorized Judges. Supreme Civil and Supreme and County Criminal disposition rates per judge are based on the number of full-time equivalent judges assigned to handle caseloads in 2013.

It was clear that after more than fifty years of use the deteriorating structure, which bore far more traffic than it was designed for, required either repair or replacement. On September 26, 2008, New York state officials announced their plan to replace the Tappan Zee Bridge with a new bridge. The costs of this project are monumental and yet we have found the money to complete that task in the very near future.

But when it comes to Family Court, an institution created by a constitutional amendment more than fifty years ago to do justice for vulnerable children and families, which is at the breaking point because filings have far outpaced the state's record of creating the judgeships necessary to keep pace with that caseload, it has been suggested that it is more important to keep the growth of the Judiciary budget at 2% rather than to fix the court which handles our most sensitive and important legal matters. Surely fixing traffic jams on a bridge is not more important than the unclogging Family Court for children and families seeking justice.

Access to Justice: Civil Legal Services Funding

Modern Courts also strongly supports the inclusion of \$15 million funding for civil legal services in the Judiciary budget. The Report by the Task Force on Civil Legal Services provides a thoroughly researched and documented basis for providing civil legal services funding for the poor. Again, serving justice should be at the forefront of our perspective, and the question we all must answer is how can we provide the best justice for the people who are facing a loss of the essentials of life while also providing fiscally sound policy for the state.

For Modern Courts, the poorest citizens, who at times of economic stress have the greatest needs must rely on continued access to critical services. For Modern Courts, this is a

matter of simple justice. We ask that you support the funding for civil legal services and the providers who service every county in this state, and can provide families, children, individuals with the legal representation needed.

Conclusion

Modern Courts requests that with your leadership, the Judiciary in New York be provided with the budget that will allow it to meet its constitutional mandate and provide the public, which depends on the courts to resolve innumerable issues that can be resolved nowhere else, full access to justice. The alternative of underfunding the Judiciary has dire consequences that reach far beyond the halls of the court rooms and unravel the very fabric of the rule of law. And as to Family Court, we ask you to remember that the work of the Family Court not only improves the lives of children and families but saves taxpayers untold collateral expenses.

We ask that you note: Modern Courts is not alone in its strong support for new Family Courts judges across the State. A new coalition has formed, the NYS Coalition for More Family Court Judges 2014, to advocate for more judicial resources. The coalition has more than 40 organizations thus far and membership grows daily. The members include organizations representing children who are victims of abuse and neglect, foster care and adoption agencies, organizations representing parents who children are wrongfully taken away and whose children suffer the delay of separation, groups that advocate for an end to domestic violence, attorneys, social works unions, religious based groups, as well as those who have studied the family court and can demonstrate the catastrophic effects diminishing the quality of justice by effectively closing the court house doors because of there are too few Family Court judges to make timely

decisions that involve children and families, especially those suffering from violence in the home. (List attached)

Respectfully Submitted,

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Fund for Modern Courts

**MEMBERS OF THE NEW YORK STATE COALITION
FOR MORE FAMILY COURT JUDGES**

Bronx Defenders

Brooklyn Bar Association Volunteer Lawyers Project

Brooklyn Defender Services

Council of Family and Child Caring Agencies

Center for Family Representation

The Children's Law Center

Child Welfare Services, Westchester Institute for Human Development

The Children's Aid Society

Children's Rights

Citizens' Committee for Children

Committee for Hispanic Children and Families

The Committee for Modern Courts

Courts in Crisis

Day One

The Door

Empire Justice Center

Good Shepherd Services

Graham Windham

Her Justice

Jewish Board of Family and Children's Services

Jewish Child Care Association

Lawyers for Children

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League of Women Voters of the City of New York
League of Women Voters of New York State (LWVNYS)
Legal Information for Families Today
The Legal Project
MFY Legal Services
National Center for Access to Justice
New York Asian Women's Center
New York City Anti-Violence Project
New York Legal Assistance Group (NYLAG)
New York State Coalition Against Domestic Violence (NYSCADV)
New York State Court Officers Association
New York State Permanent Judicial Commission on Justice for Children
NYU Family Defense Clinic
Pace Women's Justice Center
Probono.net
St. Catherine's Center for Children
Schuyler Center for Analysis and Advocacy (SCAA)
Unity House of Troy, Inc.
Urban Justice Center, Domestic Violence Project
Voice of Women Organizing Project (VOW)
You Gotta Believe!
Youth Represent
Volunteer Legal Services Project of Monroe County, Inc.