

TESTIMONY

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

New York County Lawyers' Association

TESTIMONY BY BARBARA MOSES
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AT
THE JOINT FISCAL COMMITTEES OF THE SENATE AND ASSEMBLY
PUBLIC PROTECTION HEARING
FEBRUARY 5, 2014

The New York County Lawyers' Association (NYCLA) appreciates the opportunity to submit testimony to the Joint Fiscal Committees regarding the Judiciary budget for the upcoming fiscal year. NYCLA is a 9,000-member bar association headquartered in lower Manhattan, one block from the World Trade Center. Since its founding 106 years ago, NYCLA has had as part of its fundamental mission a commitment to promoting the administration of justice, protecting a strong and independent judiciary, and ensuring access to justice for all New Yorkers. On behalf of our members, I urge the Joint Fiscal Committee to support adequate funding for the judiciary budget and, in particular, to reject any suggestion that increases in the judiciary budget should be capped at 2%.

Our courts are a third and independent branch of government. They are not like an administrative agency. Their mission is constitutionally mandated, and they cannot turn away the cases or litigants that come before them, no matter how crowded their dockets are already. Thus, the courts do not have the same control over their budget that an administrative agency has. Nor does due process permit our courts to diminish the quality of the service provided. Second-class justice is not an option for the courts, and should not be an option for the Legislature.

We also note that the New York courts have now gone five years without a budget increase, while, on average, executive agencies and departments—those now being asked to hold this year's increase at 2%—have enjoyed a series of similar increases in their budgets during this time. Over the same period of time, the courts have absorbed enormous increases in non-discretionary costs, leaving them with \$22 million less in General Fund cash to support court operations in Fiscal Year 2013-14 than they had in Fiscal Year 2009-2010. We submit that the failure to adequately fund the courts in Fiscal Year 2014-15 would undermine the courts' ability to fulfill their constitutional duties and exacerbate already troubling court delays, closures and backlogs that strike disproportionately at the most vulnerable litigants in our society, including working families, children and the indigent.

NYCLA's Action on Judicial Budgetary Issues

NYCLA has a long history of action on judicial budgetary issues, spearheaded by its Task Force on Judicial Budget Cuts ("Task Force"). During the last two and one-half years, the Task Force has held two full-day public hearings and issued six reports on the real-world effects of budget cuts on our courts.¹ NYCLA has consistently called for an increase in the resources

¹ Preliminary Report on the Effect of Judicial Budget Cuts on New York State Courts, August 15, 2011, http://www.nycla.org/siteFiles/Publications/Publications1475_0.pdf; Preliminary Report on the Effect of Judicial

devoted to the Family Court² and the Housing Court.³ Most recently, on December 2, 2013, the Task Force held a second all-day public hearing on the continuing judicial budget crisis. Seven hours of testimony from 23 witnesses—including court administrators, judges, prosecutors, defense attorneys and bar leaders—dramatically illustrated both the breadth and depth of the problem.

The Historical Budget Context

The court budget comprises less than 1.3% of the total New York State budget, despite the fact that the courts are a co-equal branch of our government.

Although the overall New York State budget has increased 9.27%⁴ over the last five years, the courts have received *no budget increase* over that entire period. The unprecedented \$170 million reduction in the 2011 state judiciary budget resulted in layoffs of more than 400 court employees and still affects the courts' ability to deliver timely and effective justice.⁵ In addition, during the last five years, with no budget increase, the judiciary has nonetheless absorbed \$300 million in increased costs, most of which resulted from statutory mandates beyond the control of the court system, including expenditures for indigent criminal defense and contractually mandated expenses for non-judicial employees.⁶

Personnel accounts for 90% of the court budget. Thus, the combination of increased expense and flat budgets has forced the court system to reduce its staffing by 2,000 out of 17,000 employees. Many of these cuts have been effectuated through layoffs. Other cuts were accomplished through buyouts of senior staff, resulting in the loss of some of the most experienced and capable members of our court system. Overall, court staffing is below levels last seen a decade ago, despite a significant increase in workload over that period.

The Courts' Budget Is at an Irreducible Minimum

In the face of this budgetary pressure, our state courts have taken remarkable steps to improve efficiency, largely through the increased use of technology.⁷ But these steps can only

Budget Cuts on the U. S. District Court for the Southern District of New York, August 26, 2011; http://www.nycla.org/siteFiles/Publications/Publications1476_0.pdf; Electronic Survey Report, December 12, 2011, http://www.nycla.org/siteFiles/Publications/Publications1507_0.pdf; Public Hearing Report on the Effects of Judicial Budget Cuts on the New York State and Federal Courts, January 18, 2012, http://www.nycla.org/siteFiles/Publications/Publications1516_0.pdf; Report on Budget Cuts in the Federal Courts, September 4, 2013, http://www.nycla.org/siteFiles/Publications/Publications1637_0.pdf, Courts in Crisis, January 3, 2014, http://www.nycla.org/siteFiles/Publications/Publications1666_0.pdf.

² Task Force on the Family Court, July 2010 Preliminary Report, http://www.nycla.org/siteFiles/Publications/Publications1381_0.pdf.

³ Task Force on the Housing Court, Report on Resources, June 12, 2007, http://www.nycla.org/siteFiles/Publications/Publications1125_0.pdf

⁴ The 2009 NYS budget was \$131 billion. The 2013 NYS budget was \$141.3 billion, an increase of 9.27% over that five-year period.

⁵ Written Testimony of ABA President James R. Silkenat, <http://www.nycla.org/pdf/DEC2013-Panel6.pdf>.

⁶ Written Testimony of Hon. Lawrence Marks, First Deputy Chief Administrative Judge, New York State Office of Court Administration, and Ronald Younkens, Executive Director, New York State Office of Court Administration, <http://www.nycla.org/pdf/DEC2013-Panel1.pdf>.

⁷ See OCA Budget at i-ii. <http://www.nycourts.gov/admin/financialops/BGT14-15/2014-15-Budget.pdf>.

go so far. The budgetary constraints our courts have faced have begun to affect the public in tangible ways.

At the recent hearings conducted at NYCLA, witnesses detailed the continuing corrosive effect that budget cuts have had on the justice system over the past several years. As noted in our Task Force Hearing Report, *Courts in Crisis*, published on January 3, 2014: “Delays at every stage of every matter before the courts are now common: delays in getting into the courthouses, delays in processing documents, delays in the public’s ability to obtain archived documents, delays in trial proceedings, delays in decisions.” Indeed, the testimony presented at our hearing demonstrated that even simple tasks, such as the retrieval of archived court files, can take ten months, sometimes with the result that clients default on their cases or are otherwise unable to continue their litigation.⁸ Similarly, we heard that decreases in the number of court officers and courtroom staff have caused delays in trials and in deciding motions and those delays have occurred in cases of every size and subject matter.⁹ The testimony demonstrated that court personnel have been forced to take on multiple functions and that court security has been compromised. All of this has reduced the morale of our court staff and officers.

Without adequate budgetary relief, the situation will worsen. On top of the nearly \$300 million in expenses that the Judiciary has absorbed over the last five years, it faces nearly \$60 million in largely uncontrollable additional expense over the upcoming year. With a 2% cap on its budget, the courts would need to meet these obligations through further cutbacks or attrition in personnel, the continuation of early courthouse closings and other disruptive measures.

The Effect on the Most Vulnerable Members of Our Society

Chief Administrative Judge of the Courts, A. Gail Prudenti, noted recently, “As the Chief Judge always reminds us, the courts are the emergency room for the people of the state of New York in the most difficult times of their lives.”¹⁰ The budget restrictions placed on our courts have tended to shut the emergency room door on many of the neediest in our society, particularly those seeking relief in Family Court and Housing Court.

Family Court

A report of the New York State Senate Committee on the Judiciary described the Family Court as “perhaps the saddest place in New York.” The report concluded: “Due to limited resources...proceedings vital to the lives of children, families, domestic violence victims and other at-risk New Yorkers are either delayed or cut short,” and “matters necessary to provide children with safe and stable homes might be allowed as little as five minutes because there are simply too many cases.”¹¹

⁸ See Task Force Hearing Report at 6.

⁹ See Task Force Hearing Report at 5.

¹⁰ New York Law Journal, *Cuomo: Court’s Budget “Out of Step” with State’s Goals*, January 22, 2014, page 1.

¹¹ New York Senate Committee on the Judiciary Report, October 30, 2009. Kids and Families Still Can’t Wait: The Urgent Case for New Family Court Judgeships (citing LeDuff, “Handling Sinners and Victims of Domestic Hell; Sad Hallways and Broken Lives in an Overburdened Family Court System,” *The New York Times*, May 28, 2002, at B1).

The Family Court hears nearly 700,000 cases annually, many of which involve indigent families often undergoing emotional trauma.¹² This huge number of cases outstrips the total number of cases heard by the federal district courts in all 50 states combined. To meet the needs of this vast number of litigants, the Judiciary's budget calls for an increase in 20 Family Court judges. Over the past 30 years, while the filings have increased by 90% statewide, not a single Family Court judgeship has been created in New York City. As NYCLA's December 2 hearing revealed, the average Family Court judge, with a caseload of 1,533 cases per year, can only spend 52 minutes per case per year,¹³ despite the fact that Family Court judges are often confronted with life-changing decisions on custody, visitation and juvenile delinquency.

Cuts in the state court budget have worsened the situation in the Family Court in at least four ways.

First, cuts have forced an end to the use of Judicial Hearing Officers (mostly retired judges) who previously played an important role in clearing the Family Court docket.

Second, Family Courts now open at 9:30 a.m. instead of 9:00 a.m. and close at 4:30 p.m. instead of 5:00 p.m. The reduction in operating hours results in a reduction of overtime costs; however, the decrease in hours has increased the number of cases that must be continued from session to session because they cannot be concluded within the reduced operating hours of the courts.¹⁴

Third, budget cuts have also forced reduction or elimination of effective mediation programs that helped reduce court dockets and provided the opportunity for a consensual resolution of Family Court cases.

Fourth, budget cuts have forced the closure of some child care centers at courthouses that previously provided child care to working families with cases in Family Court. In some cases a litigant defaults simply for lack of child care.

The impact of the continuing Family Court crisis, compounded by the budget cuts, on children and families is dramatic—delays in the resolution of juvenile delinquency cases, longer adjournments in support, custody and visitation cases, and longer stays for children in foster care as fewer permanency hearings are conducted. Notably, and sadly, New York ranks 50th out of 52 jurisdictions in the length of time children spend in foster care.

Housing Court

The situation in Housing Court is nearly as bleak. New York's Housing Court is truly the people's court, hearing 350,000 cases a year involving landlords and tenants. And in Housing Court, up to 95% of the tenant litigants are unrepresented.¹⁵

¹² Written Statement of Susan B. Lindenauer, Co-Chair, New York State Bar Association Task Force on the Family Court, at 3, <http://www.nycla.org/pdf/DEC2013-Panel2.pdf>.

¹³ See Task Force Report at 6.

¹⁴ See Written Statement of Susan B. Lindenauer at 3, <http://www.nycla.org/pdf/DEC2013-Panel2.pdf>.

¹⁵ Written testimony of Janet Ray Kalson, Associate, Himmelstein, McConnell, Gribben, Donoghue & Joseph at 1, <http://www.nycla.org/pdf/DEC2013-Panel2.pdf>.

Housing Court has been forced to cut the number of court attorneys, impeding the resolution of cases and the provision of information to unrepresented tenants. The lack of court attorneys has contributed to delays, there are discontinuous trials as result of the reduced time the courts are open, and trials are further prolonged as the trial parts do not have full-time clerks and enough court officers. With 20% fewer translators, they are often unavailable, requiring tenants and their attorneys to return to court several times. As one witness at our hearings testified: “These staff cuts matter. They result in endless delays, inefficiencies and hardships for tenants in Housing Court. The Housing Court is in crisis, and it is pro se tenants who are suffering the most.”¹⁶

The Potential Loss of Confidence in Our Courts

New York’s courts are justly known as among the world’s finest. For that reason, commercial parties often stipulate New York as the venue in which litigations and arbitrations should be heard. The fact that New York is the forum of choice for contracting parties benefits the New York economy, but continued cuts in court personnel, resulting in further delays in court administration, will undermine New York’s advantage.¹⁷ Thus, a drop in the status of New York courts will have a tangible effect on our economy, our tax base and our reputation as an international commercial and dispute resolution center.

Those who appear in our New York State Courts, lawyers and litigants alike, are also losing confidence that our vaunted “access to justice” and “due process” really exist. As our Hearing Report concluded, “...our courts must be adequately funded in order to meet their constitutional obligations and indeed, for the integrity of our system to survive.”¹⁸

Conclusion

While the budgets of the other branches of New York State government have increased over the past five years, the Judiciary budget has remained flat, despite non-discretionary increases in operating expenses. Staffing levels in the state court system are lower than they were a decade ago, even though the caseload is significantly higher in many courts. As a result, services to the public have been necessarily reduced but the price for access to justice by the public has increased.

As noted above, the Judiciary budget now represents less than 1.3% of the State’s budget. Yet, the courts have constitutionally mandated duties and obligations that cannot be reduced. At virtually every stage of litigation in every court, especially those serving New York’s neediest, justice has been delayed and due process and the administration of justice have suffered as a result of the Judiciary’s inadequate budget over the past several years.

We call upon the legislature to approve in its entirety the budget submitted by the Judiciary.

¹⁶ Id. at 3.

¹⁷ Testimony of David M. Shraver, President, New York State Bar Association at 3, <http://www.nycla.org/pdf/DEC2013-Panel6.pdf>.

¹⁸ http://www.nycla.org/siteFiles/Publications/Publications1666_0.pdf.