

Family Legal Care's Testimony to the New York Senate Standing Committees on Judiciary and Children and Families on Oversight of the Family Court

Monday, Wednesday, November 1, 2023

Senators Brad Hoylman-Sigal and Jabari Brisport, Chairs

My name is Cathy Cramer and I am the Chief Executive Officer at Family Legal Care, formerly Legal Information for Families Today. Thank you to Senators Hoylman-Sigal and Brisport and members of the Judiciary and Children and Families Committees for the opportunity to testify about the issues families with cases in New York Family Court are facing.

Family Legal Care's mission is to increase access to justice in New York State Family Court. We combine legal guidance, easy-to-access technology, and compassionate support to help unrepresented parents and caregivers self-advocate on critical family law issues, while working on reform that improves the system for everyone. We reach approximately 25,000 individuals throughout the state every year through our Family Law Helpline, legal consultations with both Family Legal Care staff and pro bono attorneys, community outreach workshops, Tech Hubs and digital justice tools, and our Legal Resource Guide library. Our work focuses on the cases where there is usually no right to assigned counsel, including child support, custody and visitation, guardianship, and parentage.

Our organization was launched inside the Manhattan Family Courthouse in 1996, where we answered questions and distributed Know Your Rights pamphlets from a table in the lobby. **Today, we are the only legal services organization dedicated solely to empowering parents and caregivers to represent themselves in New York State Family Court.** Our model of providing limited scope legal services is unique: we have found that when we help pro se litigants get started on the right track, and provide additional support as needed throughout their case, they are able to achieve positive outcomes for their families without full representation. In this way, we maximize the number of clients we can serve, both broadening and deepening our impact. **Thanks to our decades of experience providing on-the-ground services, there is no organization that has a better understanding of the challenges pro se litigants face and the needs that are not being met by the Court.**

**I want to make clear that in discussing the challenges pro se litigants face, my intention is not to disparage Family Court.** We work very closely with the Courts, and know that many caring, dedicated people are doing the best that they can with the very limited resources they are given. The issues in Family Court are systemic, a result of an unnecessarily complicated Court structure and decades of underfunding, which you see in other courts across the state as well. However, the Family Courts in particular are understaffed and overburdened. 80% of litigants come to Family Court without a lawyer. These unrepresented litigants are disproportionately low-income, from communities of color, often undocumented immigrants, or speak monolingual Spanish or some other language. They are all navigating emotionally charged, extremely personal issues.

The Family Court was originally set up as a pro se court. The goal was for it to be user-friendly, and “the people’s court.” It is supposed to be a place where you can get justice for your family without a lawyer and without paying the expensive filing fees.

But the reality of this setup is a “second-class court” that is “dehumanizing,” as Jeh Johnson, Special Advisor on Equal Justice to the NY State Court system has said. This analysis has been echoed by the Chairs. As the Family Court mostly serves low-income families and people of color, fixing the Family Courts is a racial and economic justice issue.

The Family Courts have been understaffed for decades, with not nearly enough jurists to handle the half a million cases filed throughout the state every year. As a result, Family Court jurists have extremely high caseloads, which means extensive delays are common. Often, parents and caregivers end up waiting months for their hearing, and then have just ten minutes in front of a jurist to decide on their case. Jurists are shuffled in and out of Family Court, assigned there on a temporary basis. Jurist understaffing is especially pronounced now after the many retirements during covid.

Likewise, there are not enough support staff and court officers to handle the number of cases and adequately support pro se litigants. We have had many clients have their cases delayed because of inaccurate information received from inexperienced court staff. For example, recently a father from Manhattan was incorrectly told that disagreeing with an order was not grounds for an objection, so he did not file one and then missed the window to do so.

Family Legal Care recently resumed providing legal information in-person in NYC’s busiest courthouses, which we had to pause during the pandemic. The court staff are grateful for the extra help and send a steady stream of litigants to our tables. But this is a band-aid, and pro se litigants deserve a permanent fix. **More resources and staffing at all levels need to be allocated to the family courts.**

Understaffing is also an issue for 18-B panel court appointed lawyers. There are not enough attorneys on the panel, so their caseloads are unmanageable. Recent efforts to raise their pay have been limited and temporary, so attracting and attaining talent is difficult. So even if a pro se litigant qualifies for court-appointed representation, which most do not, it often takes 4-6 hearings for their 18-B attorney to be assigned to them. We increasingly have litigants who call us because they cannot reach their attorney and do not understand what happened in their case. Some clients have opted to give up their assigned counsel and call Family Legal Care instead to get the support they need to represent themselves. **Pay for 18-B panel attorneys needs to be raised across the entire state, on a permanent basis, and more lawyers need to be recruited to work on this important panel.**

**Implementing uniform standards and rules and communicating them to litigants when they first begin their cases would help reduce delays in Family Court.** There is little to no communication about court procedures when litigants are beginning their cases in Family

Court. Procedures around service and introducing evidence vary across the state, in each of New York City's borough courthouses, and even from jurist to jurist within the same county. Every jurist is given discretion about the process in their court, but since litigants are not told at the outset what the expectations are, and since pro se litigants are held to the same standards of an attorney without the benefit of a legal education or training, many cases get dismissed on technicalities. We had one client whose visitation case was dismissed two years after she started it because she initially filed it under her own name instead of "on behalf of" the children.

Additionally, many litigants struggle to understand how to serve the other party in the case. These technical errors cause significant delays or make litigants start their case over from the beginning, which can often have devastating consequences such as missing out on months of child support. And when jurists leave, either because they were only assigned to Family Court temporarily or because they retire, or because they transfer to another court, their caseloads are reassigned to another jurist. For a litigant, this usually means delays, and the rules and process they had used earlier no longer apply.

Furthermore, many families come to Court to address multiple issues. For example, someone may need to establish paternity for their child, so they can establish a custody arrangement, which will make it possible for them to obtain child support. Each of these issues are handled as separate cases, decided by different jurists, with different procedures for each of them, even though all these cases are tied so closely together.

The Courts do not make child support a priority, but it is extremely important to families, and is 40% of the cases the Family Court handles. With child support, a custodial parent can meet the basic needs of their child – to pay for food, housing, childcare, health insurance, and clothing. Having child support can be life-changing for a family. **We strongly believe that child support is a powerful but underutilized poverty prevention tool**, and that adequate child support can help prevent other issues before they need to be handled in Family Court, including domestic violence and abuse and neglect cases. In fact, many times the withholding of child support is another tactic that abusers use to maintain control in their relationship. Even so, child support is continually put on the back burner in Family Court. Many of our clients have filed emergency Orders to Show Cause in their cases, asking for sooner court dates, or for temporary remedies to be put in place or suspended, but these are often denied because they are seen as "nonessential."

In most child support cases, after an Order of Support is entered, they are administrated through the Office of Child Support Services. OCSS also handles administrative enforcements for nonpayment of orders. An issue many of our clients are having now are a result of the delays caused by the pandemic. OCSS was enforcing child support orders even though the courts were not hearing child support cases, so litigants could not file for relief. Many clients now have high arrears and are struggling to deal with the consequences, including having their driver's license suspended or bank accounts frozen as they wait for the Court to catch up with all of the cases that were delayed. Family Legal Care in many ways acts as a bridge between

Family Court and OCSS. We meet with the agency bimonthly and help facilitate and fast-track cases, but of course a small organization like ours cannot meet the overwhelming demand for relief.

Organizations like Family Legal Care and others have worked closely with the Court to close the serious justice gaps, but significant issues remain. Because we provide legal advice and guidance but do not appear in Court with the litigant or on their behalf, the Court does not give us access to the Universal Case Management System (UCMS). This lack of access limits our ability to gain a clear understanding of a litigant's case history, which in turn limits the level of advice and assistance we can provide unrepresented litigants. Our staff attorneys spend a significant amount of time in each consultation just trying to understand the facts of the case and explain it to the clients before we even get to providing legal advice and guidance. In addition to giving us valuable information about the details of our clients' cases, **increasing access to UCMS would lead to more efficiency for all involved, and most importantly, increase access to justice for pro se litigants.** It would also reduce the number of unnecessary or incorrect filings, ultimately speeding up proceedings, which would benefit litigants and jurists alike.

Another common barrier to justice for pro se litigants is outdated technology, particularly the Family Court website. **The Family Court needs to build an effective, user-friendly website that comprehensively informs the public of current court operations and provides guidance to unrepresented litigants.** The website should be available in multiple languages and on mobile devices. The Family Court sections of the current Unified Court System website provides limited, unclear, outdated, and inaccurate information. It is extremely difficult to navigate from the homepage to the Family Court section and even more difficult to find forms litigants need.

Some of the forms on the website are incredibly outdated – one of our clients recently had a jurist comment that a form they submitted from the website was from the “last century.” The forms use legal jargon that is difficult for litigants to understand, causing errors and unnecessary delays. Further, the forms are hard to fill out without a computer or PDF-editing software, but many pro se litigants only have access to a mobile device. Family Legal Care has created digital justice tools to help fill the gaps in the Court's online resources. Our Family Law Navigator helps litigants understand which forms they need for their specific situation, and our Guided Court Forms make it easy to fill out this paperwork from a mobile device.

While we applaud the efforts to begin utilizing electronic filing in some jurisdictions, **adoption of NYSCEF in Family Court needs to be sped up, rolled out uniformly, and appropriate support for unrepresented litigants must be provided.**

Another area of concern with the Court's use of technology is virtual hearings. For the litigants who have access to technology, this is a positive change. They no longer have to take a full day off work, secure childcare, and spend hours traveling to and waiting in a courthouse to start their case. But what about the many parents and caregivers who don't have access to smartphones, Wi-Fi, or unlimited data? We've had clients who needed to stand on the street

and use public Wi-Fi kiosks to access their virtual hearings. Not only does being forced to discuss intensely private matters in such a public space strip pro se litigants of their dignity, it doesn't work: there are distractions, traffic, and loud noises.

Even when litigants can access a virtual hearing, there are often logistical issues. Many are put on hold with no indication if they're still holding or if they've called the right part. If they are mere minutes late to their hearing, sometimes due to technical issues, cases can be delayed or adjourned, setting them back months.

Family Legal Care developed our Tech Hub Program to help these parents and caregivers. At our Brooklyn, Queens, and Bronx Tech Hubs, we have all the computer equipment and tech support an unrepresented litigant will need to attend their virtual hearing or submit documents related to their cases. By providing a safe, quiet space with computer equipment and a stable internet connection, we are able to increase access to the Courts for litigants who have nowhere else to turn.

**Thousands of pro se litigants are impacted by the digital divide, and the Court must do more to make virtual hearings accessible to all litigants, and to ensure that technical difficulties do not impact the outcome of their cases.**

Our recommendations to fix the systemic issues in Family Court are as follows:

1. End the “two-tiered system” and provide a sense of dignity, fairness, and partnership by enacting uniform procedural rules and standardized procedures across the Family Court system.
2. Provide more funding to hire additional jurists, translators, clerks and other personnel.
3. Increase 18-B attorney pay across the entire state, permanently.
4. Address court delays by requiring an initial hearing related to custody and visitation and child support to be held within a reasonable deadline from the date that a petition is filed.
5. Provide UCMS access to Family Legal Care and others providing legal assistance for pro-se litigants.
6. Improve the pro-se litigant experience:
  - Better communication and education about court procedures.
  - A more effective and user-friendly website.
  - Clear and simple forms, in multiple languages.
  - Clear explanations of how to prepare for their case.
  - Create a welcoming and safe environment with jurist training, particularly in cultural competency and interacting with pro-se litigants.

The communities with the fewest resources, a disproportionate number of whom identify as people of color, are bearing the brunt of the Court's systemic failures. The Court's decisions

touch the lives of thousands of children and families with profound, long-lasting effects on their safety, economic security, health, and well-being.

I would like to leave you with the story of one our clients to better illustrate the extent of Family Legal Care's impact. Lidia is a monolingual Spanish-speaker and undocumented immigrant. She has four children with her estranged husband, the non-custodial father. There was abuse throughout the relationship, and a temporary order of protection was in place when she called us. The father had not been providing any financial support for the children, leaving Lidia to pay all the back rent and other expenses, even though she works part-time while he has two steady jobs and earns much more money. She reached out to Family Legal Care for help with filing for child support. Our Staff Attorney explained how child support was calculated, what documents to submit, procedure related to the Office of Child Support Services works, and how to serve the father the required documents. We also helped draft the petitions, provided step-by-step instructions for finalizing and filing, them, and provided some of our Spanish Legal Resource Guides. We also referred her to the City Bar Justice Center to help her get legal representation in housing court for an issue with her landlord. She said that before she called us, she had no idea what the process would be, and was very nervous since the forms were in English only. With our help, Lidia will be able to initiate her case and self-advocate to get the financial support her children deserve.

Strong families are essential to the welfare of our great state, but every year thousands of pro se litigants like Lidia struggle to seek justice for her family through the court system. Fixing these operational challenges in Family Court is vital to increasing access to justice.

Thank you for your time and support.