

Testimony

Stephen P. Younger
President

New York State Bar Association

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Proposed 2011-12 Public Protection Budget

I am Stephen P. Younger, President of the New York State Bar Association, the oldest and largest voluntary state bar association in the nation. On behalf of our 77,000 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

Year in and year out, 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. New York's courts are crucial to maintaining an orderly society.

The Judiciary is the third, co-equal branch of our state's government. And, the Judiciary is comprised of relatively few judges, given the caseloads that confront them. Yet, on a daily basis, 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. They are able to address the issues facing our court system, and do so admirably, utilizing the limited resources available to them.

Chief Judge Jonathan Lippman and Chief Administrative Judge Ann Pfau are outstanding leaders, overseeing a system of justice responsive to the needs of the people of this state during the current economic crisis.

2011-12 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.

We agree with the assessment that "in the current economic recession, as never before, the New York State courts have become an emergency room for New Yorkers in crisis." 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 record 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 2011-12 is \$1.8 billion, .02 percent less than the current year appropriation. The All Funds budget request totals \$2.7 billion.

The challenges faced by the courts due to increased caseloads are remarkable:

- The total caseload of the courts statewide has risen sharply, growing by 12 percent since 2001;
- Foreclosure filings continue to increase, with 50,000 filings in 2010, more than double the number in 2005. In accordance with a statute intended to address the mortgage foreclosure crisis (Chapter 472 of the Laws of 2008), the courts have held more than 90,000 settlement conferences in foreclosure cases in 2010;
- Family offense cases are up 32 percent over 2006 levels;
- The caseload in the New York City Civil Court has increased 92 percent since 2001, and the civil caseload of city courts outside New York City has increased by 99 percent during the same period. Much of this growth is due to consumer debt cases; and,
- New York City arrest cases are up, with filings up 19 percent over 2005 levels.

We submit that the Legislature should provide adequate funding to sustain the essential functions of the courts. Despite a record-level workload and a number of mandatory cost increases (including \$20.2 million for salary adjustments required by law for non-judicial personnel), the Judiciary's proposed

negative-growth budget meets that description. Given the nature and function of the courts, and the fact that they have little control over the number of new cases filed, the proposed budget is an appropriate request, and we urge the Legislature to approve it as submitted.

FUNDING CIVIL LEGAL SERVICES

I turn now to an issue that has been the State Bar's high priority for many years: funding for civil legal services. Unfortunately, the need for civil legal services has far outpaced 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.

Based on hearings conducted by the Senate and the Assembly in 2009 and 2010, the record is clear regarding the emergency that the IOLA Fund faces due to the economic recession and low interest rates. Funds from IOLA for civil legal services have fallen from approximately \$32 million annually to less than \$8 million.

Last year 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 strongly urge that you and your colleagues in the Legislature continue to support that appropriation.

Task Force to Expand Access to Civil Legal Services

As you know, last year 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, 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 New York City. The hearings assessed the extent and nature of unmet civil legal services needs 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.

In 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. Clearly, it is the most vulnerable, low-income New Yorkers who suffer the consequences. As the report documents, failure to provide these New Yorkers with a lawyer to advocate on their behalf results in increased homelessness, domestic violence, and poverty – something we can ill afford during this time of fiscal uncertainty.

Each year, more than 2 million New Yorkers seek access to our civil justice system without a lawyer. The report sets forth the current “staggering” statistics:

- 99 percent of tenants are unrepresented in eviction cases in New York City, and 98 percent are unrepresented outside New York City;
- 99 percent of borrowers are unrepresented in hundreds of thousands of consumer credit cases filed each year in New York City;
- 97 percent of parents are unrepresented in child support matters in New York City, and 95 percent are unrepresented in the rest of the State; and,
- 44 percent of homeowners are unrepresented in foreclosure cases throughout the State.

Furthermore, the Task Force found that:

- The number of unrepresented litigants in civil legal matters adversely impacts the quality of justice for all parties, increases the amount of litigation, and undermines the rule of law;
- Providing civil legal assistance increases federal benefit payments for low-income New Yorkers, and reduces the need for State and local government assistance programs;

- The unmet need for civil legal assistance in New York State is profoundly impacting vulnerable New Yorkers and costing taxpayers millions of dollars by increasing homelessness, failing to prevent domestic violence, and increasing poverty;
- In these difficult economic times, current funding is inadequate to meet the critical need for civil legal services in our State of nearly 20 million people.

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. Several years ago, the State Bar Association's Empire State Counsel Program was instituted by Past President, Mark H. Alcott to honor our members who donate a minimum of 50 hours of direct legal services each year to low income New Yorkers. With nearly 1500 NYSBA participants, this program alone accounts for two-hundred ninety-one thousand hours of pro bono services 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, domestic violence, access to health care – reliably and quickly. Accordingly, the Judiciary’s proposed budget includes \$25 million to begin implementation of the Task Force’s recommendations to address the crisis in civil legal services.

At a time when some members of Congress are calling 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 \$25-million request.

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.

Last year the state public protection budget created an Office of Indigent Legal Services. The State Bar views the creation of this 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.

We commend the Governor for maintaining in the proposed Executive Budget \$3 million for operation of the Office during the 2011-2012 fiscal year, and we recommend approval of this appropriation by the Legislature.

With the new Office as a starting point, we look forward to working with the Governor, the Assembly and the Senate to further the cause of making the constitutional guarantee of effective assistance of counsel a reality for all.

PRISONERS LEGAL SERVICES (PLS)

Also, I want to highlight for you the status of 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 an unpopular individual should be able to invoke the power of the world’s most advanced legal system to protect his or her rights. That concept is, and should continue to be, a source of great pride and great strength for all New Yorkers.

We believe that PLS helps inmates resolve problems and reduce tension 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.

The proposed Executive Budget does not include funding for PLS. Therefore, we respectfully urge that you work with the Governor to include adequate funding for PLS in the 2011-12 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.