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Joint Legislative Public Hearings on the 2016-17 Executive Budget Proposal

Public Protection

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**Presented by:
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President and CEO, Empire Justice Center**

Good afternoon and thank you for the opportunity to testify on this year's Executive Budget. My name is Anne Erickson and I am President and CEO of Empire Justice Center. Empire Justice is a statewide, multi-issue, multi-strategy non-profit law firm focused on changing the "systems" within which poor and low income families live. With a focus on poverty law, Empire Justice undertakes research and training, acts as an informational clearinghouse, and provides litigation assistance to local legal services programs and community based organizations. As an advocacy organization, we engage in legislative and administrative advocacy on behalf of those impacted by poverty and discrimination. As a non-profit law firm, we provide direct legal assistance to those in need and undertake impact litigation in order to protect and defend the rights of disenfranchised New Yorkers.

Our work cuts across 30 areas of substantive law and involves three inter-related statewide services:

Training, technical assistance and information sharing. As a backup center for civil legal services, our staff provide training and support to legal services and other community based organizations to keep them apprised of any change in law, rule or regulation that will impact their clients. In an effort to use our resources as efficiently as possible, we partner with the Western New York Law Center in running an online training center which puts critical training sessions at the fingertips of advocates across the state. In our role as an informational clearinghouse, we also run a cross cutting website, bringing information and legal resources right to the desktops of advocates.

Direct legal representation and impact litigation. We provide a range of legal assistance from our offices in Rochester, Albany, Westchester and Central Islip. We are one of the core legal services providers in the Greater Rochester area, representing clients in the areas of civil rights, Americans with Disability Act (ADA) claims, consumer, foreclosure, disability benefits and special education. In the Capital Region we provide representation to public assistance applicants and to certain immigrant populations. In the Hudson Valley we provide representation to under-served immigrants in need of a range of legal assistance, including help in adjusting their status and seeking employment authorizations. Our Long Island office provides a blend of individual representation, primarily for immigrants, and local policy advocacy aimed at improving programs and services for those in need.

Policy advocacy. In order to ensure that the needs of low income families are heard within the state's policy making processes, we engage in both legislative and administrative advocacy on a range of issues impacting our clients. We are a resource to the Legislature on a broad range of substantive law matters and we work closely with the state's administrative agencies to identify and help address issues that we see emerging from our work with legal services organizations across the state. We have helped lead the effort to secure funding for legal services since 1993 when the State Assembly first provided general funding for the delivery of legal services in New York.

In today's testimony, we recommend:

- Full Legislative support for the proposed Judiciary budget, including proposed funding for civil legal services and funding for the Interest on Lawyer Account (IOLA) fund; and
- Distribution of the Legal Services Assistance Fund including legal services for victims of domestic violence according to last year's schedule in order to maintain current grant levels and provide programmatic stability throughout the state.

The Continuing Need for Civil Legal Services

In the best of times, across the country and here in New York State, we have barely met 20% of the civil legal needs of the poor. In an effort to assess the ongoing unmet need for civil legal services among low income New Yorkers, in early 2010 Chief Judge Jonathan Lippmann appointed the Task Force to Expand Access to Civil Legal Services in New York. I am honored to be a member of what is now the Permanent Commission on Access to Justice.

The Commission has assisted in preparing for the public hearings held each fall in each of the four judicial departments. Leaders of the New York State Bar Association join the Chief Judge and other leaders of the Judiciary in presiding over these hearings. The results of the hearings and specific recommendations for improving access to justice are then included in an annual report to the Chief Judge.

When this work started in 2010, the Office of Court Administration (OCA) indicated that in 2009 an estimated 2.3 million New York residents went into civil courts in New York State without a lawyer. Seventy percent of these civil matters dealt with the core issues of family, consumer credit and housing. These are not simple matters. They touch on the "essentials of life" – the roof over one's head and the health, safety and economic security of one's family.

Indeed at that time the Task Force found that:

- 99% of tenants in New York City and 98% of those outside New York City were unrepresented in eviction proceedings.
- 97% of parents are unrepresented in child support proceedings in New York City; 95% of parents in child support proceedings throughout the rest of the state face these proceedings without representation.
- 99% of consumers facing credit problems and debt collection cases were unrepresented in New York City.

The Highest Demand for Civil Legal Services

As former Chief Judge Jonathan Lippman noted in launching the Task Force to Expand Access to Civil Legal Services, those in need are confronting issues impacting “the essentials of life” – the roof over one’s head, the ability to put food on the table, secure health care and provide for family stability.

The issues most often confronting our clients echo these essential issues:

- **Housing and Homelessness.** Issues relating to housing, shelter, homeownership and homelessness are among the legal issues generating the greatest demand.
- **Health Care.** Access to health coverage in an ever-changing industry, eligibility for Medicaid, Medicare and premium assistance through the Exchange, and access to care and services once coverage is in place.
- **Consumer Issues.** Credit and debt issues, bankruptcy, loans (other than mortgages), medical debt, rent to own issues and tax problems.
- **Domestic Violence.** An area of tremendous need that crosses both civil and criminal legal needs. It should be noted that providing legal assistance in civil matters for victims of domestic violence can have life-altering impacts: gaining child support or other economic assistance can empower a victim to leave an abusive situation; securing access to housing can provide the security needed to move from an abusive home; providing orders of protection through family court can offer the protection needed to continue going to work and maintaining employment.
- **Economic Supports, Education and Employment.** Issues relating to disability assistance and social security income, unemployment insurance, wrongful termination issues, public assistance, emergency assistance and utility shut off issues. Access to appropriate educational services and supports.
- **Immigrants and Immigration.** Assistance in securing special visa protections (for crime victims and victims of human trafficking for example) immigrant victims of domestic violence seeking legal assistance to pursue protection under the Violence Against Women Act (VAWA), families seeking unification and children in need of immigration assistance.

Income Levels: Targeting Low and Moderate Income Households

Generally, the delivery of legal services reaches those living on incomes at or below 200% of the poverty level. The new Judiciary Civil Legal Services (CLS) is targeted specifically to low and moderate income households at or below 200% of poverty. As the economy continues to

struggle, this population group has grown in recent years – 35% of all New Yorkers live on incomes at or below this level.

Annual Poverty Income Levels by Family Size (2016)

Household Size	100%	200%
1	\$11,770	\$23,540
2	\$15,930	\$31,860
3	\$20,090	\$40,180
4	\$24,250	\$48,500

The Impact of Judiciary Civil Legal Services Funding

When the work of the Commission began in 2010, the Fund for Modern Courts engaged a nationally recognized research firm to revisit the Legal Needs Study conducted by the New York State Bar Association in the late 1980s. In surveying households with incomes below 200% of poverty, Lake Research found nearly half (47 percent) said they have experienced at least one of these core problems. “Applying this percentage to all New Yorkers who live at 200 percent of the federal poverty guidelines or below, this translates into almost 3 million low-income New Yorkers who have had a legal problem. Within that number, 1.2 million low-income New Yorkers experienced three or more legal problems. The most significant legal problems are in the areas of health insurance or medical bills, followed by finances, employment, and housing.” (2010 Report of the Task Force to Expand Access to Civil Legal Services, <http://www.nycourts.gov/accesstojusticecommission/PDF/CLS-TaskForceREPORT.pdf>)

In order to begin meeting these needs, the Chief Judge recommended the first round of funding through the budget of the Unified Court System. These funds were to be distributed statewide, to be targeted to essential legal needs and to be overseen by OCA with appropriate contract and reporting systems.

The distribution of these new funds is based on the number of households in each Judicial Department living at or below 200% of poverty ensuring a fair and equitable distribution of funds throughout the state. Funding in the past year was distributed to 78 grantees statewide covering every county and reaching our urban, rural and suburban populations and balancing

The Committee on Access to Justice found that 35% of New Yorkers now live on incomes at or below 200% of the poverty level, a 12% increase over the number living below 200% of the poverty level in 2010.

Based upon this updated data, the Committee estimated that 1.35 million low-income New Yorkers confront three or more civil legal matters each year (up from 1.2 million in 2010).

the needs of households throughout the state.

The new funding made available through the Judiciary has had a significant impact on access to justice in our state. Two key indicators of the impact were cited by the Commission on Access to Justice in this year's report:

- Civil legal services organizations receiving funding through the Judiciary Civil Legal Service (JCLS) handled 423,676 cases, an increase of over 38,000 cases from 2014.
- Overall efforts have increased the percentage of civil legal needs being met, from 20% in 2010 to 31% in 2015.

While the impact is impressive, there is still a long way to go: almost 70% of the civil legal needs of New York's low and moderate income households are going unmet.

Economic Impact of Providing Legal Assistance

Each year, the Task Force, now Commission on Access to Justice, engages pro bono assistance from leading researchers and economists to review and analyze economic data related to the provision of civil legal services. For example, outside researchers have looked at the economic impact of providing eviction prevention legal assistance, thereby reducing emergency shelter costs; they have analyzed the economic benefits of providing legal assistance to victims of domestic violence and to those seeking disability benefits, looking not only at the financial security driven by these services for clients, but also at the benefit to the overall state economy.

The following are the findings taken from the 2015 Report to the Chief Judge which can be found at: http://www.nycourts.gov/accesstojusticecommission/PDF/2015_Access_to_Justice-Report-V5.pdf

- **The Long-Term Financial Impact of Increased Access to Federal and State Benefits on Recipients and their Families is Estimated to Be \$2.96 Billion**
 - The \$2.96 billion amount for 2014 includes retroactive awards, monthly payments, and likely future payments received as a result of both extended and limited representation cases for Supplemental Security Income (SSI), Social Security Disability Insurance (SSDI), Medicaid, Earned Income Tax Credit, other federal benefits, and State unemployment benefits.
- **The Economic Benefit from Child and Spousal Support Payments to Recipients of Those Benefits and Their Families is Estimated to be \$46.6 Million**
 - For 2014, the IOLA data indicates retroactive awards of Child and Spousal Support at approximately \$1.5 million and monthly payment awards at just over \$600,000. The net present value of the monthly payments, based on a payment

stream of nine years, is approximately \$69.1 million. Thus, the total value of the Child and Spousal Support awards for 2014 is approximately \$70.6 million. After deducting the estimated value of support payments not actually received, the estimated value of actual Child and Spousal Support payments is approximately \$46.6 million.

➤ **Total Estimated Cost Savings from the Avoidance of Emergency Shelter Have Increased to \$260.6 Million**

- In 2013, using 2012 State and local data on the cost of providing shelter in New York State and IOLA data on eviction prevention cases, Cornerstone Consulting concluded that anti-eviction legal services programs that receive IOLA funding saved the government approximately \$116 million annually in averted shelter costs. In the 2014 Task Force Report, updated analysis of eviction prevention data provided by IOLA demonstrated annual savings of more than \$220 million. The data presented last year also showed statewide average cost savings of \$20,300. This year, because shelter costs have increased to approximately \$24,000 per household, (the researchers) estimated that the cost savings to government have increased to \$260.6 million. Approximately 26,490 individuals have benefited as a result of these eviction prevention services.

➤ **The Present Value of the Wage Impact of Work Authorization Assistance for Immigrant Victims of Domestic Violence, Trafficking and Other Crimes is Estimated to Be \$59.1 Million**

- With the assistance of legal services, immigrant clients successfully applying for U Visas and T Visas have received work authorization that confers additional benefits. Work authorization provides a significant wage differential to immigrants, amounting to an average of approximately \$1,357 annually for each of the 1,924 individuals awarded a U Visa or T Visa. Based on average work duration of 23.5 years, the total wage benefit is approximately \$30,700 per individual for a total present value of \$59.1 million in benefits of work authorization for immigrants.

➤ **Civil Legal Services Funding Provides a Positive Economic Impact on the New York State Economy**

- Civil legal services for low income New Yorkers provide substantial economic value to needy families, as well as State and local economies and governments. The economic value to clients and their families of benefits secured as a result of legal representation in 2014 is estimated to be approximately \$1.3 billion. These benefits also provide a significant stimulus to the New York State economy overall and create thousands of jobs.

- Considering the multiplier effect of federal funds brought into New York State in 2014, the positive impact on the economy amounts to an additional \$1.45 billion and the creation of approximately 8,140 jobs. Considering only the specific sources of value covered by (the researcher's) analysis, the economic impact of civil legal services provided to low income New Yorkers in 2014 was conservatively estimated to total approximately \$2.4 billion - a return of 8.2 times on the \$296 million total civil legal services funding in 2014.

A reasonable estimate of the full economic impact results in a return of \$10 in economic benefit to clients, their communities and the State for each dollar of funding for civil legal services.

New York's Approach to Ensuring Access to Justice: Three Core Funding Streams

New York now has basically three pillars of funding to support the general delivery of civil legal services: the Interest on Lawyer Account Fund (IOLA), targeted funding allocated by the Legislature and the Judiciary's funding for civil legal services.

Judiciary Funding for Civil Legal Services

As noted earlier, in 2010, Chief Judge Jonathan Lippman embraced the need to support civil legal services as a component of the state's justice system. Noting that access to justice is core to our fundamental principles, just as the Department of Education meets the educational needs of our citizens, or as the Department of Health oversees and manages access to health services, the Unified Court System is the logical "home" for efforts aimed at meeting the civil legal needs of those in need of legal assistance.

- In this year's budget the Office of Court Administration requests \$85 million in funding for civil legal services to continue the investment in these critical services.
 - We urge the Legislature to support this recommendation in order to help stabilize the legal services delivery system statewide and meet as much of the unrelenting need for legal assistance as we can.

The Interest on Lawyer Account (IOLA) Fund

In 1983, New York created the Interest on Lawyer Account (IOLA) fund based on a national model to generate funding for the provision of legal assistance. Driven by the interest rates paid on lawyers' escrow accounts, IOLA funding has seen its revenue plummet as the recession

hit in 2008, dropping from \$32 million on an annualized basis to approximately \$7 million in recent years, an annualized reduction of \$25 million in grant-making capacity.

- This loss of funding due to historically low interest rates has been offset over the past few years by an infusion of \$15 million in the OCA budget, which is again recommended in this year's Judiciary budget request.
 - We urge the Legislature to again support this critical funding.

State Funding Allocated by the Legislature

The state Legislature, driven primarily by the Assembly Majority, began funding civil legal services in 1993 when the IOLA fund saw its revenues drop due to the interest rate declines of the early 1990's. In recent budgets, this general fund support has been shifted to the Legal Services Assistance Fund (LSAF), which was created in 2003 and is supported by a designated revenue stream from payments for criminal records searches. These funds have been used on an annual basis to support civil legal services (including legal assistance to victims of domestic violence), aid to prosecution, aid to defense and a loan forgiveness program for new lawyers who are carrying incredible law school debt and working in the public or public interest sectors.

- In this year's budget, the Executive proposes an allocation of \$14.2 million from the Legal Services Assistance Fund. This year's Executive Budget allocates most of these funds to Aid to Prosecution, Aid to Defense, Prisoners Legal Services and a loan forgiveness program. It leaves unallocated \$4.38 million in the LSAF for civil and criminal legal services, including legal services for victims of domestic violence.
 - We urge the Legislature to support this funding and to again line out both the legal services and domestic violence legal services funding in order to provide clarity and stability for the local programs across the state.

Thank you for your time and we look forward to working with you as the budget process continues to unfold.

For more information:

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