

**TESTIMONY OF HON. ERIK S. PITCHAL
PRESIDENT, NYC FAMILY COURT JUDGES ASSOCIATION**

to the

**JOINT PUBLIC HEARING ON FAMILY COURT
NEW YORK STATE SENATE COMMITTEE ON THE JUDICIARY
NEW YORK STATE SENATE COMMITTEE ON CHILDREN AND FAMILIES**

NOVEMBER 1, 2023

Thank you, Senator Hoylman-Sigal, Senator Brisport, and the other members of the Senate Committee on the Judiciary and the Senate Committee on Children and Families, for inviting testimony today from the New York City Family Court Judges Association. We appreciate your interest in the statewide Family Court and your collective desire to use the power and resources of the New York State Senate to improve our ability to serve the children and families of our State. Thanks, too, to your respective staff, who work tirelessly behind the scenes to understand Family Court and who help you reach creative solutions.

The New York City Family Court Judges Association consists of those judges appointed to this court by the Mayor, as well as Acting Family Court judges temporarily assigned to us from other courts, and a dozen or so retired judges. I have been our association's president since January 2020 and am honored to work alongside an active and engaged board of directors who represent each of our boroughs and whose dedication and zeal motivate all who know them. The full list of our Association board appears at the end of my written testimony.

Let me frame the issue this way. I am sure many of you have had the following experience, or something similar, in the last year or so: You hear about a restaurant from a friend and it sounds like the kind of place you would enjoy. So you bundle up your family and head over to check it out. There is a line of eager patrons extending past the door – always a good sign! You wait for what seems like forever. As you get closer to the front of the line, you notice that more than half the tables are empty, which seems strange considering how many people are waiting. When you are finally seated, you hungrily open the menu and begin to salivate at the many tasty-looking choices. However, when your server comes to take your order, you learn that many of the best menu options are not available. In the end, your meal is okay, but you can't help feeling disappointed by the overall experience. You go home and write a negative Yelp review.¹

¹ Judges go to restaurants too, but to be clear, we are ethically prohibited from posting online reviews, even under a pseudonym. *See* Advisory Committee on Judicial Ethics, opinion 19-87, available at <https://www.nycourts.gov/ipjudicialethicsopinions/19-87.htm>.

The thing is, much of the negative aspect of your experience in that restaurant is not the restaurant's fault. Structural issues in the current labor market, particularly in the service sector, kept the restaurant from being able to hire enough staff to be able to serve their full table capacity.² Consequently, they kept many tables empty, and your wait time was very long. Supply chain issues, inflationary pressures, and the residual effects of COVID affect the restaurant's ability to procure the array and volume of ingredients needed for the chef's delectable concoctions, so your preferred menu items were not available.³ Perhaps the restaurant erred by marketing promises it could not keep, but unquestionably the fundamental tasks of obtaining, cooking, and serving food to the public have been extremely challenging for many establishments recently.

Family Court is like a restaurant. Litigants come to us hungry for justice, and we want to nourish them, but we do not have nearly enough staff, equipment, or ingredients to serve everyone timely and completely. Family Court sits at the center of a complex, intersecting web of other entities; our court relies on resources contributed by or located within these external sources to achieve our own goals and serve the children and families of this State. When structural forces outside of our control burden justice and limit our productivity, dissatisfied litigants leave proverbial bad Yelp reviews – and no doubt complain to their elected officials.

To change metaphors: Individual judges in each case, and supervising and administrative judges directing operations, have a limited set of tools with which to work. Fundamentally, strengthening Family Court requires enlarging our collective toolbox, *but we do not forge our own tools; we rely on others to do so*. Family Court is part of a unified court system. The Legislature provides OCA's budget and also creates and modifies the entire framework of Family Court. Your annual appropriations, your occasional revisiting of the number of authorized judgeships, and your reform of key statutes can make our work easier *or* more complicated. *Expanding the resources available to the judiciary generally is essential to elevating Family Court.*

Beyond OCA, Family Court relies on inputs from state and local agencies. Localities provide our physical courthouses, which in many instances are woefully inadequate, demeaning to court users, and even unsafe. The policies and practices of the Office of Children and Family Services, Department of Health, and Department of Corrections and Community Supervision, as well as budget allocations to those state agencies, affect the choices available to Family Court litigants and jurists in countless areas. Local agencies such as ACS, the Probation Department, and the assigned counsel plans have a direct impact on our daily work; if they have more resources and innovative programs at their disposal, then judges have more options for determining the best interests of children and families – which will also result in cases resolving

² Alexandra Jones, "The Restaurant Labor Shortage: How We Got Here and a 2023 Update," OpenTable blog, available at <https://restaurant.opentable.com/resources/restaurant-labor-shortage>.

³ Gary Occhiogrosso, "How Supply Chain issues Continue to Impact the Restaurant Industry," Forbes (Feb. 14, 2022), available at <https://www.forbes.com/sites/garyocchiogrosso/2022/02/14/continued-supply-chain-issues-in-the-restaurant-industry>.

more quickly.⁴ Non-profit organizations providing services to our litigants operate on thin margins and are particularly sensitive to labor market conditions and the regulatory environment, yet Family Court is especially dependent on their programs in order to provide justice.⁵

We commend your committees for your interest in Family Court and applaud your sincere commitment to enhancing our ability to deliver timely, compassionate, and comprehensive justice. We urge you to attend most particularly to the areas in which an increased investment in resources can help us respond effectively to the children and families who appear before us. What follows is a list of some of the major areas where the Legislature can assist us in providing additional, new, or reformed resources and support that would materially benefit Family Court and reduce the choice constraints on our bench. Many of these projects are already in progress but could be expedited and enhanced with additional resources. Some items may require enabling legislation; all would no doubt require greater financial investments, either to the judiciary, state agencies, or New York City (and other counties).

Legal Services for Children and Families

*Substantially increase **funding for institutional providers of legal services** in Family Court cases. Attorneys for children are budgeted from state funds, and the agencies who provide AFC services have struggled with extraordinarily high rates of attrition. Adjourning cases so that an AFC can be assigned, or to allow an overburdened AFC to meet with their child-client, results in countless delays.⁶

*Further **incentivize attorneys to join the 18-B and AFC panels** in their counties by 1) adding an automatic COLA provision to the reimbursement rate; and 2) creating a state-funded loan forgiveness program to mirror the federal program created by the College Cost Reduction and Access Act of 2007 (which is limited to government and non-profit employees).⁷ Even with the recent increase in the hourly rate, we do not have enough attorneys available in Family Court.

⁴ A common scenario involves the judge ordering certain services to be put into place, and adjourning the matter for an appropriate period to see if the services have helped resolve the issues that brought the family to court. Far too often, on the next court date we learn that the services were not available. The family has not been helped, and the case cannot end.

⁵ According to a recent survey of New York nonprofit organizations, more than half have more vacancies since before COVID-19, and one-third have longer waiting lists for services. Over 80 percent report that salary competition affects their ability to recruit and retain staff. National Council of Nonprofits, “Nonprofit Workforce Shortage Survey in New York” (August 2023), available at <https://www.councilofnonprofits.org/files/media/documents/2023/2023-new-york-nonprofit-workforce-shortages-report.pdf>.

⁶ Cayla Bamberger, “Staffing Crisis, Caseloads, Threaten Legal Services for Children in NYC Family Court,” N.Y. Daily News (April 3, 2023), available at <https://www.nydailynews.com/2023/04/03/staffing-crisis-caseloads-threaten-legal-services-for-children-in-nyc-family-court/>

⁷ U.S. Dep’t. of Education, “Public Service Loan Forgiveness,” available at <https://studentaid.gov/manage-loans/forgiveness-cancellation/public-service>.

The right to counsel should not be in tension with the right to a speedy hearing on a life-altering decision.

Social Services for Children and Families

*Create/expand **supervised visitation programs**, available for child protective and private custody cases, as called for in the recent Working Group report spearheaded by Office for Justice Initiatives.⁸ Each county ought to have at least one program that has evening and weekend hours available to accommodate parents who work full-time traditional business hours. Supervised visitation programs should be language accessible to non-English speakers. There are a limited number of supervised visitation programs and the current waitlists can be many months long; some programs have even closed their waiting lists. Jurists are forced to keep cases open while the families wait for supervised visitation services.

*Create/expand **visitation programs at state correctional facilities**, including family-friendly environments in each facility, variable depending on the security levels involved as well as the ages of the children. Transportation from central locations in each region must be provided.

*Create/expand **“night care” programs for infants and toddlers** whose parents work late-night/overnight/weekend shifts. Reunification is sometimes delayed because parents work nights but do not have overnight child care options.

*Expand **state support to counties for preventive services** in two ways. First, restore the state share to 65 percent, from the current 62 percent – and consider increasing it as high as 75 percent. Second, create and fund a flexible prevention fund that can be accessed by counties outside the standard cost-sharing to develop innovative programs. Judges often deny requests from ACS to remand children into foster care upon finding that preventive services can mitigate the risk of harm if the children remain at home. When it takes 90 days or more for a preventive services case to open, it puts the children at continued risk (and undermines judicial authority).⁹

***Stabilize the human services workforce**, which has seen unprecedented levels of turnover, by funding a substantial COLA for human services workers; ensuring that reimbursements for behavioral health care cover the costs of actually providing that care; and increasing investments in workforce development strategies such as loan forgiveness and scholarship programs. Courts are unable to move forward to permanency hearings when there is a brand new case planner who does not know the case. Families’ progress is often paused due to staff turnover at foster care,

⁸ Report From the Working Group on Supervised Visitation in New York State (July 2023).

⁹ Inexplicably, ACS utilization of preventive services declined from FY 2022 to FY 2023, the second year in a row of decreased use, with 6,657 new cases being opened. This figure falls well below the target of 9,000. See Mayor’s Management Report (Sept. 2023) at 228, available at <https://www.nyc.gov/site/operations/performance/mmr.page>. This trend bears investigation and public explanation, as advocates and the bench alike place great importance on purchased preventive services as a means to keep children safe and preserve family bonds at the same time.

mental health, and other human service agencies. Cases stay open longer and adjournments take longer.

***Increase access to child and adolescent mental/behavioral health services** by 1) easing Medicaid reimbursement rules, and increasing rates, for solo practitioner social workers and 2) creating a mandatory pro bono requirement for LMSW's and LCSW's and an associated training and referral structure to facilitate the delivery of pro bono mental health service to the neediest populations. Incentivize the development and growth of **innovative delinquency prevention and mental health programs** for the PINS population and adolescents generally. Children could remain safely in their homes, and those in foster care or juvenile detention could exit more quickly, if they had timely and appropriate mental health services in place in the community. Family Court could safely reduce its caseload if these services were more readily available.

*Substantially **increase the array of alternative-to-detention programs** in juvenile delinquency, PINS, adolescent offender, and youthful offender cases, including intensive case management; technology-enabled curfew checks; mentoring and school success interventions; and ankle monitoring.

*Create a **Young Adult Employment referral center** in each county, tasked with providing employment counseling to age-appropriate individuals in non-support cases. (DSS already operates employment programs for litigants in child support matters.)

Infrastructure Investments and Upgrades

*Enhance the experience of litigants who come to Family Court by creating a dedicated fund to **subsidize counties' courthouse infrastructure upgrades**. County-owned courthouses are frequently in disrepair, with degrading and unprofessional physical structures that undermine the credibility of the Court. Bronx Family Court has had leaking from the ceilings and flooding from below for a long time, creating truly appalling work conditions that are offensive to the litigants who need us. After one recent rainstorm, ceiling tiles above the judge's bench in one courtroom almost fell on the judge; that courtroom has been unusable, and the judge has been rotating to different locations. Other courtrooms have garbage bins and water vacuums at the ready to contain leaks. Mold and broken floor tiles are ever-present. Whether through the capital budget or a dedicated grant fund for counties, active attention from the Legislature is critical to creating physical courthouse conditions suitable for our work.

*Invest in court technology. The judiciary's Division of Technology has done incredible work with modest appropriations, enabling Family Court to provide remote access, virtual courtrooms, and streamlined case processing far beyond any other court in this State. Family Court is the judiciary's top priority when it comes to court modernization. With additional appropriations to the judiciary, meaningful conversations could take place among judges and our technologists about pursuing some of these innovations:

***Significantly upgrade the features of Microsoft Teams as a virtual Family Court platform, or identify a new virtual court platform better suited to Family Court's needs.**

***Upgrade the camera, microphones, and video monitors in every courtroom** so that parties and witnesses appearing remotely can participate equally with those appearing in person.

***Create interactive electronic information kiosks** in each courthouse, allowing litigants to learn basic information about their cases and the court.

***Expand the Virtual Court Access Network**, creating partnerships with local libraries, community centers, and public housing authorities to build and staff access points to our court for remote filing support and virtual appearances.

Staffing Resources and Enhancements

New York City Family Court has seen a recent and significant increase in staffing. Specific staffing decisions can and should be left to our judicial leaders, in consultation with the bench, but the Legislature needs to significantly increase appropriations to the judiciary to enable critical Family Court staffing enhancements. Any number of additional lines and/or the creation of new types of positions would be helpful. Here are some of the ideas we would discuss with our judicial leaders in the event the Legislature increases appropriations to the judicial branch:

***Expedite the handling of child support cases** by substantially increasing the number of support magistrates. The judiciary has already started this project with a dozen or so positions about to be filled, but the data from our child support division suggests that the need for more magistrates continues. When caseloads are too high, adjournments are too long, and staff attrition rates are too high. This leads to ever-increasing caseloads for the jurists left behind, which leads to more attrition and still-longer adjournments in the child support division.

***Reduce delays by creating various other new staff positions**, such as:

*a second court attorney for every Family Court judge. Supreme Court justices are entitled to two personal staff positions, and the Legislature should amend Judiciary Law § 36 to guarantee Family Court judges the same staffing level.

*document support managers (for child support cases) and case coordinators (for child protective cases);

*pool court attorneys (to be assigned to referees and support magistrates to assist in writing decisions in support and custody cases);

- *resource coordinators (to maintain a database of available services in the community of the type frequently needed by Family Court litigants);
- *Family Treatment Court counselors (to provide on-site drug testing); and
- *Help Center attorneys (to reduce filing errors and cut down on delays inside the courtrooms). Too much time is spent each day by judges and other jurists doing non-judicial work.

There is no shortage of ideas for how to most efficiently staff our court and leverage human resources into shorter case timeframes; the rate-limiting factor is the available budget.

*Amend the state constitution to **raise the mandatory retirement age for Family Court judges** to 76, and/or make Family Court judges eligible for certification past the current mandatory age of 70. There is no reason why our litigants should not benefit from the experience of a seasoned judge who is well enough to work past the age of 70, when Supreme Court justices are eligible to continue for up to six more years. Regardless, the Legislature should eliminate the “death gamble” present in the Retirement and Social Security Law, an issue which has previously been resolved for other state employees.

*Enhance court security and reduce delays by **staffing every referee and magistrate part with at least one court officer, and every judge part with two officers**. Some of our Family Courts in New York City have been 30% short in court officer staffing. Even with the large new class of Academy graduates, our security staffing levels remain significantly below their pre-COVID numbers.¹⁰

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Once again, on behalf of my fellow judges in New York City Family Court, we thank you for your interest in our work and your commitment to helping us achieve our mission of providing timely, compassionate, and comprehensive justice to children and families. I look forward to answering any questions you may have.

New York City Family Court Judges Association Board of Directors

President:	Erik Pitchal
Vice President:	Karen Cortes

¹⁰ Speaking of judicial security, we implore the Legislature to take action to protect state court judges and our families. If a reminder were needed about the stakes involved, the recent example of a matrimonial judge in Maryland being allegedly murdered by a disgruntled litigant should impel immediate legislation. See <https://www.washingtonpost.com/dc-md-va/2023/10/20/maryland-judge-killed-andrew-wilkinson/>. We urge you to adopt state-level legislation equivalent to the federal Daniel Anderl Judicial Security and Privacy Act of 2021.

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