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Joint Legislative Public Hearings on the 2015-16 Executive Budget Proposal

Public Protection

Albany, NY

**Presented by:
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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 some 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:

- Expanded funding for the Office of New Americans in order to help new arrivals settle into our communities, learn English, prepare for their citizenship exams and secure the legal assistance they need to navigate the complexities of the immigration systems;
- 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 in order to maintain current grant levels; 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.

Expanded funding for the Office of New Americans: Emerging Needs

New York has a vibrant history, much of it driven by waves of new immigrants teeming to our shores and building our economy, our infrastructure and our rich cultural diversity. Today, we have over 4.3 million immigrants living in our state. According to the New York Immigration Coalition, these newcomers make up a quarter of our work force, they start a third of all new businesses and account for some \$229 billion in economic output in this state.

Among these populations are some of our most vulnerable new arrivals – children arriving alone and overwhelmed, those fleeing abuse and oppression, refugees and those seeking asylum – all with limited connections, most with limited English proficiency and virtually all potential victims of economic predators here in the states.

Last year, under the leadership of Assemblymember Marcos Crespo, Chair of the Assembly Task Force on New Americans, joined by Senator Ruben Diaz, the Legislature passed and Governor Cuomo signed into law, new provisions strengthening the state's anti-fraud measures, establishing new penalties for Immigrant Assistance Services Fraud and making the Office for New Americans a permanent office within the Department of State.

This new office has a number of critical responsibilities including undertaking efforts to increase access to English language classes, connecting immigrants with employment and workforce development programs, providing assistance in civic engagement and preparation for citizenship exams, and assisting immigrants with immigration status issues, including through the provision of legal assistance.

The Office for New Americans (ONA) currently funds a dynamic network of community-based organizations that help provide these services. There are currently 27 local Opportunity Centers across the state providing literacy and English language programs, civic exam preparation courses and legal assistance in immigration matters. ONA also funds a number of Legal Counsel Organizations to provide training, support and technical assistance to the local

centers in order to help their staff understand and work within the complexities of immigration law.

- The Executive Budget includes funding of \$6.4 million for the Office of New Americans.
 - We urge the Legislature to increase this funding to \$15 million in order to expand the capacity of the local Opportunity Centers and the Legal Counsel program to better meet the needs of these new Americans.

The 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. Add to this the increased need for legal assistance during times of recession, and the need far outstrips all available services. 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 that Task Force which 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 are then included in an annual report to the Chief Judge.

When the Task Force started its work 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 confront. They touch, as the Chief Judge notes, the “essentials of life” – the roof over one’s head and the health, safety and economic security of one’s family.

All too often, families are left to fend for themselves in critical and complex legal matters.

- 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.

Changing Legal Needs

In a survey of legal services providers across the state, it was found that the most significant changes reported in substantive law areas in which people are seeking assistance in recent years included housing and consumer debt. Ninety percent (90%) of the legal services organizations participating in the survey reported an increase in homeowners seeking assistance in foreclosure matters, 85% are seeing an increase in tenants seeking assistance with evictions, and 81% reported an increase in consumers seeking legal assistance with credit and debt issues.

- **Housing and Homelessness.** Issues relating to housing and homelessness were among the legal issues generating the greatest increase in demand. Sixty one percent (61%) of those responding reported an increase in the number of people seeking legal assistance to address housing code violations; 85% reported an increase in those needing legal assistance to assist in eviction prevention, 91% in foreclosure assistance, 77% in homelessness, 71% in tenant rights and 61% in utility shut offs.
- **Consumer Issues.** Of those reporting an increase in demand, every area of consumer law saw a reported increase in demand: credit/debt issues 81%, bankruptcy 78%, non-mortgage loans 70%, medical debt 68%, rent to own issues 54% and tax problems 64%.
- **Domestic Violence.** In the area of family law, 67% of those responding reported an increase in demand among those seeking legal assistance for issues related to domestic violence. It should be noted that providing legal assistance in civil matters can have life-altering impacts on domestic violence cases: 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.
- **Employment and Economic Support.** Almost 70% of those responding reported an increase in clients seeking assistance in employment insurance claims. More than half (54%) reported an increase in demand for legal assistance in dealing with wrongful termination issues. In the area of income supports, 63% of those responding are seeing an increase in requests for legal assistance on issues related to public assistance, 76% are seeing an increase in those dealing with emergency assistance and 60% are seeing an increase in those seeking legal assistance for issues dealing with Food Stamps/Supplemental Nutrition Assistance Program.
- **Immigrants and Immigration.** In the area of immigration law, 59% reported an increase in those seeking assistance in securing special visa protections (for crime victims and victims of human trafficking for example) and 53% reported an increase in immigrant victims of domestic violence seeking legal assistance to pursue protection under the Violence Against Women Act (VAWA).

Economic Impact of Providing Legal Assistance

The Chief Judge's Task Force has worked over the past four years to quantify the impact of providing legal services to those in need. With the help of several nationally recognized consulting firms, which undertook these analyses on a *pro bono* basis, the Task Force has found that investing in civil legal services is not only the right thing to do in terms of access to justice, it also drives significant economic benefits for the state.

- Cornerstone Consulting concluded that providing anti-eviction legal services saved the government approximately \$116 million annually in averted emergency shelter costs. Updated analysis of eviction prevention data provided by IOLA demonstrates significantly increased savings of more than \$220 million annually. According to the most recent data, the average cost savings per successful eviction prevented averages \$20,300 statewide.
- Navigant Consulting found that investing in civil legal services for victims of domestic violence could achieve annual savings of \$85 million in New York State in the costs associated with assistance for survivors of domestic violence.
- NERA Economic Consulting estimated that the total value of federal benefits received by low income New Yorkers who received legal assistance in these matters was \$518.5 million in 2013, a \$140.5 million increase since 2011. The total economic impact of these federal resources was pegged at \$769 million in 2013.

In total, the Task Force found a return of more than six dollars for every one dollar of funding invested to provide civil legal services.

The Need for Continued Investments

The recent increased investment in civil legal services is starting to be felt. New staff are being hired across the state, cases handled by programs are increasing and the number of New Yorkers in need of civil legal services being served is on the upswing.

The Office of Court Administration reported to the Task Force that the number of unrepresented litigants in civil courts now stands at 1.8 million, down from more than 2.3 million reported in 2010.

In its 2014 report, the Task Force notes that the "increased Judiciary Civil Legal Services (JCLS) funding has helped countless families and individuals to remain in their homes, to escape from domestic violence, to stabilize their families, to maintain or obtain subsistence income, or to secure access to health care or an education - truly the most basic essentials of life. Last year, civil legal services providers handled a remarkable 384,974 cases."

Much work remains. We still have in New York almost 2 million people entering our court seeking resolution in civil matters without representation. As the Task Force notes, the lack of legal assistance impacts individuals and families, the courts and its judges, and the very fabric of our state's economy:

"The unrepresented, faced with the loss of a home, a job or even a child, were losing valid claims because they did not understand the law or how to present evidence. Because of their lack of knowledge of substantive law and procedure, their cases took much longer than needed. With judges and court staff spending tens of thousands of additional hours handling cases involving unrepresented litigants, the quality of justice had suffered for all New Yorkers, including represented parties. In addition, the State's economy was losing many hundreds of millions of dollars, because unrepresented New Yorkers were not able to obtain federal funds, from disability payments to veterans' benefits, thereby requiring the State and local governments (and, ultimately, taxpayers) to spend even more on problems like fighting homelessness and domestic violence and meeting other social services needs arising from poverty."

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.

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 \$8 million, an annualized reduction of \$23 million.

- 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 \$14.1 million from the Legal Services Assistance Fund. Unlike last year, this year's Executive Budget makes a \$5.5 million allocation from these funds 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.

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, Chief Judge Lippman has been tireless in his efforts to determine the level of unmet civil legal need, and to generate support for critical new investments in the budget of the Unified Court System to meet more of those needs.

Chief Judge Lippman has again woven into the Unified Court System's budget a balanced approach to addressing the need for stable, on-going funding for legal services so that we can relieve some of the pressure on the courts and better ensure access to justice in this state.

- In this year's budget Chief Judge Lippman requests \$70 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.

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

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