

TESTIMONY

The Council of the City of New York
Committee on General Welfare
Bill de Blasio, Chair

“Child Welfare and the Increased Demands on New York City Family
Courts”

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[E]ach child must be valued as a unique human being, regardless of race, ethnicity, religion, age, social class, physical or mental disability, gender or sexual orientation. Each child is vested with certain fundamental rights, including a right to physical and emotional health and safety. In order to achieve the physical and emotional well-being of children, we must promote legal rights and remedies for children. This includes empowering children by ensuring that courts hear and consider their views in proceedings that affect their lives.

National Association of Counsel for Children, Recommendations for Representation of Children in Abuse and Neglect Cases, page 100.

Good afternoon. I am Amanda White, Attorney in Charge of the Legal Aid Society's Juvenile Rights office in Bronx County. I submit this testimony on behalf of the Legal Aid Society, and thank Chairman de Blasio and the Committee on General Welfare for inviting our thoughts on how to help solve the crisis in New York City's Family Courts. We applaud the Council for tackling this important subject, and look forward to the valuable contributions that we are sure the Committee will make in this area of vital concern to our City's children and their families.

The Legal Aid Society is the nation's largest and oldest provider of legal services to poor families and individuals. Legal Aid's Juvenile Rights Practice provides comprehensive representation as law guardians to children who appear before the New York City Family Court in abuse, neglect, juvenile delinquency, and other proceedings affecting children's rights and welfare. Last year, our staff represented some 29,000 children, of whom almost 90% were clients in child protective proceedings. Our perspective comes from our daily contacts with children and their families, and also from

our frequent interactions with the courts, social service providers, and State and City agencies. In addition to representing many thousands of children each year in trial and appellate courts, we also pursue impact litigation and other law reform initiatives on behalf of our clients.

It is beyond argument that children are the heart and soul of who we are as humans. Our treatment of them reflects everything both good and bad about us. The work we do in Family Court is complicated and nuanced, and tremendously important. All day long in Family Court, parents, judges, attorneys and child welfare workers confront the difficult and emotional task of trying to keep families together whenever possible and separating them when necessary. This is often a very fine line. And recent events have conspired to make this work even more difficult.

Our perspective is that of our young clients. Children caught up in the Family Court require high quality services, rendered by a well-trained group of professionals and paraprofessionals who are able to maintain a strong and continuous relationship with them. Additionally, the services for these children must cover a wide spectrum of needs and must not be routinized but must be developed taking into consideration the diverse needs of each individual child. Moreover, there needs to be recognition that to best serve the child the professionals involved must serve the family as well. Our clients must feel that the professionals they are dealing with respect them, care about them and empathize with them at every juncture of the case. It is the children to whom we are answerable at the end of the day.

Today the Committee is focusing on increased demands in our City's Family Courts. I will present some background and then focus on two areas which, if addressed,

would go a long way toward reducing workload in Family Court: delays in resolving cases, and the scarcity of community-based services to support families.

Background

Already facing a workload crisis, in 2006 Juvenile Rights staff, as well as all Family Court practitioners and judges, were confronted with the unanticipated increase in petitions being filed as well as the difficulties created by the new permanency legislation. The tragic deaths of several children at the end of 2005 and beginning of 2006 created a groundswell of calls into the New York State Central Registry. In addition, the deaths of these children, some under Administration for Children's Services supervision, resulted in a reevaluation of all ACS families in which a child remained with a respondent on an abuse or neglect petition. This increase in filings resulted in a critical mass of new matters before the Family Court that neither the court, ACS nor the Juvenile Rights practice had sufficient staffing to handle.

In early 2006, ACS devoted over 16 million dollars toward improving service provision, including increasing their legal staff by 32 attorneys. Likewise, the court saw the need to add an additional "temporary" judge to each large borough to assist with the burgeoning workload. The damage done to the families, courts and practitioners was all too clear. Emergency hearings were at an all time high, causing courts to adjourn previously set hearing dates. Existing cases and families were put aside until the new matters could be addressed.

Responding to the enormous increase in workload, Juvenile Rights staff worked furiously to prepare for the emergency hearings, while juggling to fit adjourned dates into their already flooded calendars. Triaging both new and old cases became necessary,

causing significant strain on an already stressed system. In an environment where the children's lawyer often holds the key to the resolution of a case, the desperate need to be prepared in each and every matter before the court reached crisis levels in the Legal Aid Juvenile Rights practice. Despite the serious problems listed above, the Juvenile Rights staff continued to remain extraordinarily committed to providing their clients with the best overall services possible, staying late into the night to ensure their clients' issues were addressed and that much needed services were put in place.

Last year, after much effort by a broad coalition, the State Legislature passed a long-needed law recognizing that lawyers representing children need reasonable workloads in order to do their crucial jobs effectively, and mandating that OCA set workload standards, including a cap, by April 1, 2008, on the number of clients who can be represented at a given time by law guardians for children. We are participating in the process that will lead to that cap being set, and look forward to the resources necessary to provide excellent services to our city's most vulnerable children.

The Courts' Workload Causes Unconscionable Delays in Achieving Permanency

The permanency law requires significant resources to all players in the Family Courts that have not been provided. The increase in petitions filed by ACS has added tremendously to the workload as well, and new cases cause pending cases to be bumped to later dates for resolution. When children have been removed from their parents, the need for speedy adjudication is all the more urgent, yet delays and the harm that comes with those delays persist.

Waiting months or even years to know the outcome of a neglect petition is traumatic for every family. Especially in cases in which children have been removed

from their parents or caregivers and placed in foster care, anything but a speedy and thorough determination of the charges and what a court will order is simply unacceptable. For children especially, given their developmental stage, a period of months of uncertainty and upheaval can seem like a year, and a year or more can seem an eternity. A year in the life of a child includes so many changes and so much growth that its significance cannot be understated.

Across the City, lengthy delays in the adjudication of child protective cases are the norm. It is quite common for cases at every stage – including fact finding, disposition, and post-dispositional/ permanency hearings – to be adjourned for 3 – 6 months between court dates. All the while, including in cases in which children have been removed from their families, children and families suffer the trauma and uncertainty of not knowing when they will have permanency or what that will look like.

The Committee members have surely read the *New York Times*' December 12, 2007 article about the abysmal state of the Bronx Family Court elevators and how the elevators' failure prevents people from getting to their hearings on time. A four-year project to repair the four elevators, ongoing since October 2006, is not yet complete. The elevator situation remains untenable in Bronx Family Court and is a clear illustration of how these most important cases, involving the most basic rights of children and families, are not considered important enough to ensure that litigants are able physically to get to the courtrooms. The *Times* describes a situation in which a mother, whose daughter had been in foster care for 10 months, could not get to the courtroom in time for her hearing because of the broken elevators. The article reports: "So the judge, who had something

like 70 other cases to try that day, rescheduled the no-shows for the next available date.

For this mother, the next chance to plead her case and get her child back was in January.”

For many families who have child protective cases pending in New York City’s Family Courts, the workload crisis has resulted in adjournments that are far longer. For example, Legal Aid lawyers represent children in each of these cases:

- ACS filed a neglect petition in Manhattan Family Court in October 2006. The fact finding began June 2007 and has now been adjourned to February 2008 -- 16 months after the filing of the petition.
- ACS filed a sexual abuse petition in Queens Family Court in July 2003. The case was transferred to new judge in December 2006 and is now adjourned to continue the fact finding until January 25, 2008 – three and one-half years after the petition was filed.
- In Brooklyn Family Court, ACS filed a neglect petition on December 21, 2007. Our clients are children aged 6, 7, and 9. The fact finding is scheduled for August 14, 2008 – eight months after the petition was filed.
- ACS filed a sexual abuse petition in Queens Family Court in March 2005. Following “administrative adjournments” for an entire year, the fact finding hearing resumed in 2007.
- ACS filed a neglect petition in Brooklyn Family Court on May 26, 2006. The fact finding began January 18, 2007 and the court adjourned the case to January 30, 2007. Because there was no time on the court’s calendar, the judge subsequently adjourned the case to June 19, June 22, July 5 and July 17, 2007. The case was next adjourned to September 17 and November 29, 2007, but these dates were again adjourned because the Court did not have time to hear the case. The case was settled on December 11, 2007 – a year and one-half after it was filed -- with an adjournment in contemplation of dismissal for 6 months because all services were completed.
- A termination of parental rights petition was filed in Manhattan Family Court in April 2002 and the court completed fact finding in October 2004. By December 2005, disposition was completed, freeing the children for adoption. The case was appealed and the appellate court affirmed the termination in April 2007 (Court of Appeals denied leave to appeal in July 2007). *There is still no date set to finalize the adoptions of the 13 and 17-year-old children who have been in foster care for twelve years, since May 1996.*

The workload crisis in the New York City Family Courts has led to practices like these which our lawyers have experienced. The result is unconscionable delays for children and their families:

- A Brooklyn Family Court judge has to routinely adjourn cases from one permanency hearing date to the next permanency hearing date, even cases that are pre-fact finding or pre-disposition. If an attorney pleads with the judge, the judge will sometimes find a half hour, or he will put two cases on for the same time slot.
- A Queens Family Court judge has to routinely set conference dates and the fact finding date when issue is joined. In this judge's part the earliest fact finding dates available now are in September 2008 – *eight months away*.
- In Brooklyn Family Court, a termination of parental rights/custody case was filed in 2003 and has not yet concluded. In order to find more trial time before July 2008, the judge has scheduled three hearing dates on which testimony will be heard from 5:00 pm - 6:30 pm.
- On November 1, 2007, in Brooklyn Family Court, Legal Aid Society attorneys were assigned cases on intake that were immediately adjourned for pre-fact finding conferences in April 2008 and fact findings in July 2008 – *eight months away*.

Overall, while judges and referees are better able to schedule permanency hearings within the statutory time frames, other parts of proceedings in child protective cases have enormous delays. Based on our current experience around the City: in Brooklyn, with eight judges hearing child protective cases, some cases are adjourned for six months at every stage of the case; in Queens, fact finding hearings have the longest delays, with adjourned dates five to six months out; in the Bronx six-month delays are common; in Staten Island, both judges routinely state on the record that there are only two judges for half a million people, and that this is the reason for long delays, including adjournments of three to four months for every stage of a case that lacks a statutorily-mandated shorter time frame; and in Manhattan, some of the judges are able to minimize delays while others often have to adjourn cases for two or three months.

Preventive and Community-Based Services Will Reduce Case Numbers in Family Court

Although ACS has begun to increase its community-based preventive services to families, the City needs to commit more resources and to focus ever more on how to support children and families so that they do not end up in crisis. That focus, and funding, must be in schools, outpatient mental health services, permanent and emergency housing, and other supports in the communities where families live. Early identification of problems, and the availability of resources to address them, could prevent some of the neglect cases that flood our Family Court system from ever escalating to this point.

- Legal Aid represents a girl, now age 15, who has cancer and is HIV positive. ACS filed a neglect petition against her mother when our client became ill after not taking her medication regularly. Our client was separated from her mother and remanded to foster care for almost 18 months because no one was able to locate a visiting nurse service that would go to her neighborhood. Had such nursing been available to ACS as a preventive service, this neglect case would have likely never have been filed. We were able eventually to get our client home with nurses. Tragically, her mother died less than a year after the family's reunification, while the neglect case was still pending in Family Court.

Similarly, an increased availability of community-based services and supports will result in children who have been removed from their families via the Family Court process who should return home, being able to do so much more quickly. To keep a family separated when a parent or child is on a waiting list for outpatient mental health services or subsidized housing is an entirely avoidable tragedy if our City has the will to support and expand community-based services.

Recommendations

To address the workload crisis and to ensure that children and families are truly served by family court, the Legal Aid Society asks the City Council to consider the following recommendations:

1. The new permanency legislation significantly increased workload pressure in Family Court and for all practitioners; permanency hearings every six months doubled court time for attorneys and judges as well as necessitated increased case preparation and motion practice for attorneys. We ask the City Council to urge the State Legislature to provide additional funding to fully implement the permanency law so it will function as originally intended and truly serve families.
2. The City Council can also urge the State Legislature to provide funding to increase the number of Family Court judges so that families seen in Family Court are given the time and attention they so desperately need. Temporary judicial assignments only serve to add to the confusion of the courthouse, increase attorney court time and result in the bifurcation of matters, ignoring the one judge/one family model.
3. The National Association of Counsel for Children, along with the ABA and New York State Bar Association, all recommend caseload standards in child protective cases. These three agree on a standard of 100 clients per attorney. Currently many Juvenile Rights attorneys represent between 200 and 300 clients at any given time. The new State caseload cap statute mandates OCA to set standards. We ask that the City Council support necessary State funding to implement caseload limitations.

4. The City must commit more resources to preventive services to families in their communities, so that families in need of support do not go without it and end up in Family Court.

The introduction to Child Welfare Watch’s recent report on Family Court states: “Ultimately, the court is responsible for having the best, most well-informed possible judgment in every case that appears within its walls. Anything less is an injustice.” We want to work with the City Council to fight to ensure that New York City’s Family Courts have the necessary resources to do justice and do it in a timely manner. Then, our children and families will truly be served.

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