

Testimony

of

Sharon Stern Gerstman, President

New York State Bar Association

Hearing of

New York State Assembly Judiciary Committee

December 1, 2017

Testimony
Sharon Stern Gerstman, President
New York State Bar Association
Hearing of New York State Assembly Judiciary Committee
December 1, 2017

I am Sharon Stern Gerstman, President of the New York State Bar Association, the oldest and largest voluntary state bar association in the nation. On behalf of our members, I thank you for the opportunity to submit testimony regarding the implementation of the 2017-18 state budget and its impact on the judiciary and the administration of justice in New York State.

First, let me express the Association's sincere appreciation and thank you for your support and assistance regarding the Association's 2017 Legislative Priorities. We were very pleased that the final state budget included provisions to enhance indigent criminal defense services, address wrongful convictions, raise the age of criminal responsibility, and allow sealing of records relating to certain criminal convictions.

I want to especially emphasize how important it was that you and your colleagues adopted public policy regarding the expansion of indigent criminal defense services, thereby extending terms of the settlement in *Hurrell-Harring v. State of New York*, **without** increasing the Biennial Attorney Registration Fee ("Registration Fee") to provide funds for that program, as had been originally proposed in the Executive Budget.

In 2004, then-Chief Judge Judith S. Kaye created the Commission on the Future of Indigent Defense Services to examine New York State's indigent criminal defense system. The Commission's 2006 report 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.” That finding was both alarming and disheartening.

You and your colleagues are to be congratulated for taking steps in the right direction to implement sound public policy, which allows New York to meet its **constitutional obligation** for public criminal defense services and to extend the *Hurrell-Harring* settlement statewide. However, we strongly objected to that proposed increase in the Registration Fee, because providing indigent criminal defense is a constitutional mandate. Extending *Hurrell-Harring* is a state obligation and a societal responsibility that should be paid for by the General Fund, not by a surcharge on lawyers.

Lawyers should not be required to fund public criminal defense programs via an increase of the Registration Fee. Such an increase would be an unreasonable burden on small law firms, solo practitioners, lawyers in government, lawyers working for legal services providers and non-profit entities, and newly-admitted attorneys in a difficult job market.

We are thankful to all who assisted in passing a budget that clearly reflects the Association’s priorities during the budget process. We appreciate that the Executive has projected a multi-billion dollar budget gap next year. Nevertheless, we urge you to again keep these concerns in mind as we enter the process for enactment of the 2018-19 budget.

Operation of the Courts

In the 2010-11 state budget, the Judiciary sustained a devastating cut of \$170 million from its budget, which resulted in the cutting of courthouse staff to the detriment of court operations. We continue to emphasize that the Judiciary is the co-equal third branch of government. While we do not expect that funding for the courts will be equal to that of the other branches, court funding must be adequate, in order to efficiently and fairly provide access to justice throughout New York State.

In assessing the impact of that cut, the Association's Executive Committee reviewed court operations throughout the state. Among its findings, the EC report on this matter found that

Cases can take longer to resolve, court calendars have become more clogged, and trials are taking longer to complete. Judges no longer have time during luncheon recesses and at the end of court days to meet with attorneys about litigation issues and settlements because the courthouses must be vacated. These delays are a "hardship" to attorneys, litigants, jurors, and witnesses. Moreover, the increased time to handle matters has a negative impact upon the public's perception of the courts. It results in less accessibility, loss of respect, and diminished power.

Based on observations of our practitioners across New York State, we are concerned that some negative impacts persist and that, even without factoring for inflation over the period, court operations have not recovered to the pre-cut levels of 2010.

While it is clear that judicial leaders are working hard to keep courthouse doors open, we will continue to urge that the courts be adequately funded so as to serve the public fairly, efficiently, and effectively.

Court Reorganization

We are pleased to see that Chief Judge Janet DiFiore has convened the Judicial Task Force on the NYS Constitution to recommend constitutional reforms to make the state's court system more efficient and accessible. The Chief Judge's action is an important step, which we believe will renew the debate over reorganization of the State's court system.

The court system in New York is a mixture of various types of courts, each with its own particular jurisdiction (although sometimes overlapping the jurisdiction of other courts), practices and policies. Many of these courts have their own rules, structure, judicial terms of office, and levels of judicial compensation. Significantly, New York has 11 different courts at the trial level alone, which is far more than the typical court structure in other states.

For over 35 years, the Association has supported reorganization of these trial-level courts in order to reduce or eliminate the unnecessary costs, undue inefficiencies and even confusion that this complex structure engenders. We have consistently supported efforts to simplify the structure of the Unified Court System. It is the Association's belief that reorganization would:

- a) make the State's courts more accessible to litigants;
- b) reduce the cost and burden to clients and their counsel involved in navigating the State's multi-faceted court structure;
- c) remove

obstacles to effective case management that are associated with the current trial court structure, and d) result in more cost-effective and efficient courts.

The Association has endorsed reorganizing the State's courts using a two-tier trial court system; this remains State Bar policy today. Under this reorganization proposal, the present Supreme Court, Court of Claims, County Court, Family Court, and Surrogate's Court would be merged into a single Supreme Court with Judicial Districts around the State. The New York City Civil Court, New York City Criminal Court, and City Courts and District Courts outside New York City would be merged into a statewide District Court.

While reorganization of the Unified Court System would require an initial expense, there would be substantial long-term savings for the courts, litigants and counsel resulting from the increased efficiencies of a simplified court structure. The potential to simplify the State's court system, promote access to justice and reduce unnecessary costs and inefficiency, makes the issue of court reorganization one that deserves the Legislature's serious consideration.

Funding Civil Legal Services

Finally, I turn to an issue that has been among the State Bar's highest priorities for many years: funding for civil legal services.

Unfortunately, the need for civil legal services continues to be a significant concern.

Lawyers are committed to doing their share. Pro bono efforts by the bar have been extensive. The bar contributes an estimated two and one-half million hours each year in voluntary pro bono legal services to the indigent. However, these voluntary efforts alone are insufficient to meet current needs. Ultimately, society as a whole, acting through its government, must provide adequate public funding.

In an era when some members of Congress continue to call for the elimination of the Legal Services Corporation, the need for responsible action in New York State is all the more critical. New York must provide a steady source of funding targeted to ensuring legal representation to protect the “essentials of life” – housing, preventing or escaping from domestic violence, access to health care – reliably and quickly. The New York State Bar Association strongly supports continuation of the Judiciary’s \$100 million request for civil legal services.

Conclusion

In conclusion, and in furtherance of the Association’s long-standing position, we submit that the court system should be adequately funded to ensure access to justice for all New Yorkers. Moreover, we urge you to remain committed to protecting access to justice and to enacting public policy that will ensure the public’s trust and confidence in our justice system.