

# New York Law Journal

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## Why We Must Fund Civil Legal Services

**Jonathan Lippman**  
**Chief Judge, State of New York**  
**01-24-2011**

The State Bar Association has been extremely supportive of and extensively involved in our efforts to expand access to civil legal services for low-income New Yorkers. Given our partnership in this regard, I believe State Bar week is a perfect opportunity for me both to report on the latest developments and to express my gratitude for the association's help.

This fall, I presided over four hearings on civil legal services, one in each judicial department, to assess the extent and nature of unmet civil legal services needs in the state. Presiding with me, in addition to the presiding justice in each department and Chief Administrative Judge Ann Pfau, were current state bar president Stephen P. Younger in the First and Second departments; former president Kathryn Grant Madigan in the Third Department; and president-elect Vincent E. Doyle III in the Fourth Department.

The association's participation with court leadership helped send a resounding message about the unequivocal commitment of bench and bar to provide civil legal representation to the poor. Additionally, Michael E. Getnick, immediate past president of the association, is a member of the Task Force to Expand Access to Civil Legal Services in New York, created last spring.

On Dec. 1, the task force, which is chaired by the former president of the Legal Services Corporation, Helaine M. Barnett, released a comprehensive, ground-breaking report based on the hearings and the task force's own extensive research and surveys.<sup>1</sup>

Some of the task force's findings are unsurprising. Certainly, the economic downturn has greatly increased the civil legal needs of the most vulnerable New Yorkers. But despite the growing number of access to justice programs in the courts and around the state, and the tremendous contribution of pro bono hours by the bar, the unmet need remains roughly at the same level reported in every major survey over the last two decades.

At best, only 20 percent of the civil legal needs of low-income New Yorkers are being met today. Providers have no choice but to turn away vast numbers of eligible clients, including eight out of every nine in New York City.

One result of this deepening crisis is that the courts are seeing an ever-expanding number of unrepresented litigants. We heard testimony from judges, clients, lawyers and others about what happens when litigants try to navigate the courts without counsel.

Unable to prepare or try their cases effectively, they are at a distinct disadvantage and often fail to recognize and assert valid claims and defenses. With the scales of justice so out of balance, an unfair outcome is often the end result.

In addition, adjournments are much more frequent, court appearances require more time from judges and court staff, and cases take longer to reach a disposition. That impacts not only the parties themselves but also the entire litigant population as court operations slow, dockets become clogged, and resources are shifted away from the handling of other civil cases.

A former corporate CEO now in government astutely observed that an unfavorable outcome is much less likely to be understood and accepted by an unrepresented party. That can lead to meritless motion practice and appeals that must be defended and heard.

All of this additional time, frustration and expense is ultimately borne by everyone and leaves society with a less efficient and effective legal system.

In the past, arguments for increasing the availability of civil legal services for the poor generally focused on the profound benefits to those who receive assistance, like a family that avoids homelessness, a senior citizen who receives proper medical treatment, a worker with disabilities who secures federal disability benefits, or a woman who escapes from domestic violence with her children and obtains child support.

In this both human and legal context, it has long been apparent to lawyers and judges that it is our moral and ethical obligation to work to assure access to legal representation for the indigent members of society who are least able to help themselves.

### **Other Perspectives**

At the hearings, we were fortunate to obtain the perspectives of individuals not typically involved in the debates about civil legal services for low-income New Yorkers.

Business leaders, bankers, private and public property owners, health care representatives and government and community leaders testified that increasing access to legal assistance can benefit their own institutional performance and financial bottom lines. Access to legal services can resolve many problems before they develop into court cases.

For example, both public and private property owners testified that eviction proceedings could be avoided if, at the start of financial difficulties, tenants obtain legal services to help them secure the kind of assistance (such as unemployment benefits, health insurance coverage, food stamps, housing-related public benefits, etc.) that enables them to pay the rent. That is good for both the tenant and the landlord.

Witnesses from the banking industry testified that providing legal assistance to foreclosure defendants is the right thing to do from both bottom-line and social-policy perspectives.

For example, having counsel for homeowners at legislatively mandated settlement conferences in residential foreclosure cases makes a complicated and confusing process more efficient and effective and decreases the likelihood of foreclosure.

It is generally in the interests of everyone—lenders, borrowers, servicers and investors—for homeowners to keep their homes and make payments they can afford, which leads to stable communities with safer and better maintained neighborhoods.

Civil legal services providers also save state and local governments many millions of dollars annually by preventing unwarranted evictions and homelessness, avoiding foster care placements, and obtaining federal benefits. Further, the federal monies they bring into the state have a multiplier effect when the monies are spent by their clients and flow through the economy.

The full economic benefit to the state, including taxpayer savings, totaled close to \$900 million in 2009.<sup>2</sup> The task force measured that benefit against the \$208 million in civil legal services funding from all sources (federal, state, local and private), and concluded that the state receives nearly \$5 for every \$1 spent to support civil legal services organizations in New York.<sup>3</sup>

### **Task Force Recommendation**

While the task force noted that a permanent and stable source of state funding is essential for vulnerable, low-income New Yorkers, they did not recommend providing counsel to every low-income individual in each and every civil matter.

In light of today's fiscal realities, the task force recommended that the state begin to reduce the unmet civil legal services needs in those matters that concern the "essentials of life": a roof over one's head, family stability, personal safety free from domestic violence, access to health care and education, or subsistence income and benefits.

Specifically, the task force proposed reducing the unmet needs by at least half in the next four years, with the judiciary seeking \$25 million in the coming fiscal year, followed by annual increases leading to \$100 million in funding in four years.

Obviously, funding is critical but it cannot be the only solution. The task force emphasized the continuing need for a comprehensive, multi-faceted approach to the problem, including promoting more pro bono services and self-help programs for unrepresented litigants.

### **Judiciary Budget Inclusion**

The judiciary recognizes that it has a responsibility to achieve cost savings at a time when the state faces a large, looming budget deficit. At the same time, no issue is more fundamental to the

courts' constitutional mandate of providing equal justice under law than ensuring adequate legal representation for our citizens.

Fortunately, we found that we could include the \$25 million for civil legal services in the judiciary operating budget and still submit a negative-growth budget (.02 percent lower than the current budget) because of aggressive cost cutting in other areas and many new efficiencies.<sup>4</sup>

Our society's commitment to access to justice must not be allowed to fluctuate with the ups and downs of the economy. It is just as much a priority, for the well being of our citizens, as are schools or hospitals, by any standard mandatory, not discretionary, areas of societal and governmental funding.

Moreover, in severe economic times, the most vulnerable New Yorkers need more access to civil legal services, not less, if we are to avoid catastrophic consequences to the individuals involved as well as to the future of communities, towns and cities throughout the state.

Implementation of the task force recommendations, beginning with passage of the judiciary's budget, will be a major step toward achieving the ideal of equal justice for all. I am energized and excited by the work we are doing together with the New York State Bar Association and so many others in furtherance of this critical goal, so fundamental to meeting our mission as members of our noble profession.

I extend a heartfelt thank you to all of you for your dedication to providing civil legal services for those New Yorkers most in need. Nothing could be more important to lawyers and judges in these challenging fiscal times we now face.

*Jonathan Lippman is Chief Judge of the State of New York.*

Endnotes:

1. The Report is available at [www.nycourts.gov/ip/access-civil-legal-services](http://www.nycourts.gov/ip/access-civil-legal-services).
2. The task force's calculation relied on data provided by the IOLA Fund of the State of New York, the independent entity that provides funding to the network of core civil legal services providers throughout New York.
3. The detailed calculation is available in the Task Force Report at page 22.
4. Additionally, as the task force recommended, the judiciary budget continues its \$15 million rescue funding for IOLA to partially offset the dramatic declines in IOLA revenue caused by historically low interest rates.

March 13, 2011

## **Listen to Judge Lippman**

Acknowledging New York's deep fiscal crisis, Judge Jonathan Lippman, the state's chief judge, has reluctantly agreed to make cuts in his \$2.7 billion budget request, including a reduction in the number of people working for the court system. But he is refusing to back down on his call for a \$25 million increase, to \$40 million, in support for civil legal service programs that help low-income New Yorkers faced with foreclosures, evictions, domestic violence and other serious legal problems.

His commitment comes at a time when Republicans in Washington are determined to slash the federal contributions to these essential programs.

Judge Lippman knows what he is up against politically but is undaunted. In a recent talk at Benjamin N. Cardozo School of Law in Manhattan, he described the shocking need for help out there — and the cost to justice and the judicial system if it continues to go unmet.

He told of state courtrooms that are “standing room only, filled with frightened, unrepresented litigants — many of them newly indigent — who are fighting to keep a roof over their heads, fighting to keep their children, fighting to keep their sources of income and health care.” And he cited the astonishing fact that in New York City 99 percent of tenants in eviction cases and 99 percent of borrowers in consumer credit cases have no lawyers.

“What is at stake,” he said, “is nothing less than the legitimacy of our justice system,” adding that the rule of law “loses its meaning when the protection of our laws is available only to those who can afford it.”

Judge Lippman offered a final practical reason for increasing spending on civil legal services: preventing unwarranted evictions, avoiding foster care placements, helping clients get access to federal benefits and easing court delays will carry real economic benefits for the state. He is right on all counts. The Legislature should approve the increase.

## Budget Puts at Risk Lippman's Initiative to Increase Legal Aid

ALBANY - Despite state budget cuts, Chief Judge Jonathan Lippman said yesterday that some money may be available to increase legal assistance for indigent New Yorkers in civil cases.



Chief Judge Lippman  
NYLJ Photo/Rick Kopstein

Judge Lippman has aggressively sought an additional \$25 million for civil legal services in the fiscal year beginning tomorrow, the first installment in a four-year \$100 million increase. But that was thrown into doubt by a budget agreement Sunday that slashed another \$70 million on top of an earlier \$100 million Judge Lippman had offered in the Judiciary's proposed budget.

"I will do everything I can possibly do to support civil legal services in the state, subject to the resources when balanced with our responsibility to keep our courtrooms and courthouses open to all," Judge Lippman said yesterday.

A final Judiciary budget bill for consideration by the Senate and Assembly had yet to appear as of yesterday evening.

Judge Lippman, who had said Monday that the budget cuts could mean "hundreds" of nonjudicial layoffs, declined to discuss specific cost-saving measures under consideration by court administrators. However, it is unlikely that the full \$25 million would be available for civil legal services.

The added legal services funding was a centerpiece of the courts' \$2.7 billion spending plan. The money was to help beef up representation for low- and moderate-income New Yorkers facing foreclosure, public assistance and health care issues and other legal problems.

While the state is not legally obligated to guarantee representation in such civil proceedings, Judge Lippman said there is a "moral and ethical" duty to do so ([NYLJ, Feb. 16](#)). He presided over four public hearings around the state last year to highlight the need for improved civil legal services.

A task force appointed by Judge Lippman last year found that civil legal services for the poor now receive about \$208 million in funding from all sources: federal, state, local and private. It estimated that only about one in five people seeking such services receive them and that 2 million litigants a year now appear in New York courts without legal representation ([NYLJ, Oct. 13, 2010](#)).

Steven Banks, attorney-in-chief at the Legal Aid Society of New York City, was a member of the Lippman task force.

"I know how important the civil legal services initiative is to the chief judge, and with everything else he is dealing with, I know he will do everything possible to make it viable because civil legal assistance is so crucial," Mr. Banks said yesterday.

# The Legal Intelligencer Blog

Monday, June 27, 2011

## New York's Chief Judge Advocates for Civil Legal Aid

By [Amaris Elliott-Engel](#)

*Of the Legal Staff*

Civil legal aid for the poor is in crisis, Jonathan Lippman, chief judge of the state of New York, told the attendees of the Philadelphia Bar Association quarterly luncheon today.

Eight of 10 people looking to be represented by the civil legal services are turned away for the lack of attorneys in New York and Pennsylvania, Lippman said.

Lippman said that civil legal services should no longer be mostly funded by interest earned on attorney trust accounts or court fees. He said those revenue streams are sensitive to the economy. While it may be "going directly into the eye of a hurricane" to argue for funding civil legal services through state general funds in a time of state budget deficits, he said that "access to justice is one of the fundamental obligations we owe our citizenry."

"I have become convinced that the totality of what we are doing in New York and as far as I can see around the county is simply not enough," Lippman said. "It's simply not enough to rely on the wonderful good works of the bar and a patchwork of unreliable revenue streams that fluctuate up and down."

Attorneys should be provided as a matter of course in cases involving the "essentials of life," Lippman said, such as family court cases or domestic violence cases.

With Pennsylvania Chief Justice Ronald D. Castille looking on while Lippman gave his speech, Lippman said that Pennsylvania and New York are facing similar problems of reduced budgets for the state courts and reduced funding for civil legal aid.

New York's courts were cut \$70 million above what Lippman said he had volunteered to cut, "the result being 430 layoffs of court personnel in the last two months. I know the situation here is equally difficult with Pennsylvania facing a \$4 billion deficit."

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