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Hearings on the Impact of the State Budget on Access to Justice

Before the

**Assembly Standing Committee on Codes
Assembly Standing Committee on Judiciary
Assembly Standing Committee on Governmental Operations
and Assembly Standing Committee on Correction**

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On behalf of the Committee for Modern Courts, I want to thank the Committees for providing Modern Courts with the opportunity to present testimony today on this critically important issue of funding for civil legal services. Modern Courts also wants to thank the members of the Assembly for their many years of strong and consistent support for civil legal services funding.

Modern Courts is an independent nonpartisan statewide court reform organization committed to improving the court system for all New Yorkers. Modern Courts supports a judiciary that provides for the fair administration of justice, equal access to the courts, and that is independent, highly qualified and diverse. By research, public outreach, education and lobbying efforts, Modern Courts seeks to advance these goals.

Modern Courts joins with the other members of this panel to advocate for continued funding for civil legal services.

Low income New Yorkers have the best chance to achieve access to equal and fair justice when they are provided with legal representation and counsel. Without such representation, the resources of our court system are in danger of becoming overwhelmed, potential federal benefits

are lost, and the State and local government have to incur expenses that could have been prevented.

Over the past six months the Fund for Modern Courts has reviewed the Family Court system in New York. Modern Courts interviewed more than 35 active and formerly active participants in the Family Court. As part of the interview process, Modern Courts also convened two discussion forums, one in Albany, the other in New York City. The interviewees currently work, or have worked, in different parts of New York State—from as far west as Chautauqua to as far north as Warren County, and from all five boroughs of New York City. Collectively, the interviewees are intimately familiar with Family Courts in rural, suburban and urban areas of the State.

Everyone agreed that Family Court is in a state of crisis. The caseload is overwhelming. And, the large outstanding number of pro se litigants, which may possibly equal in excess of 80% of the entire caseload is one of the major reasons for the continuing crisis in the Family Court system.

The lack of free or affordable legal representation creates a serious additional pressure on Family Court judges who already have excessive caseload to manage. The disparity between the number of cases assigned to Family Court judges and other judges in New York State (e.g., Supreme Court, County Court, and Court of Claims) is unconscionable. Recent reports found that in 2005 the average number of dispositions of Family Court judges (including support

magistrates) was 2,120, as compared to 525 for Supreme Court justices in civil matters, 222 for Supreme Court and County Court justices and judges in felony cases, and 63 for Court of Claims judges. Family Court Judges are required to spend an inordinate amount of time explaining applicable rights and responsibilities to unrepresented litigants yet given the overcrowded dockets, judges and magistrates are not in a position to devote sufficient time to every individual cases or advise litigants adequately of their responsibilities. As a result, the people we interviewed for our report, believe that many unrepresented litigants feel that they are not being heard, do not understand why the judges “do what they do” and, consequently, lack confidence in the Family Court. Typically *pro se* litigants have little understanding of the law, do not understand what to say in court, what to bring to the next court proceeding, what relief is available and what the ramifications are of such relief. Many do not believe that the judge is listening. Although there are a variety of reasons that court orders are not heeded, this lack of confidence in the system raises the additional concern that unrepresented litigants will take justice into their own hands (e.g., non-custodial parents who decide not to pay court-ordered child support or victims of domestic violence so overwhelmed by the system that they cannot initiate proceedings to begin the legal process of stopping the violence).

Our justice system cannot function efficiently and effectively when there is a lack of representation in Family Court or in other courts. By providing legal representation to low income New Yorkers, civil legal service providers benefit their clients, the justice system, and also help prevent costly “crisis” services. Adequate representation offsets state costs by helping

stabilize families and thus avoid foster care costs, help increase economic security by maximizing child support benefits for low income parents and children, secures for families and individuals federally funded benefits such as Supplemental Security Income, Veteran's Benefits and Food Stamps, reduces emergency and homeless shelter stays, and secures unemployment benefits for those who are wrongly denied benefits. These services impact families and many also leverage private and federal funds that bring dollars and jobs to every region of the state where a legal services program is located.

The economic crisis will increase the dockets of many courts across the state, as well, especially those courts whose jurisdiction covers cases where families inability to meet monthly bills creates a legal crisis. In eviction proceedings, for example, where civil legal services plays an invaluable role in protecting residents of this state, as it becomes more difficult to pay rent, more cases will be brought to Civil Court in New York City, City Courts throughout the State and Town and Village Justice Courts. Without representation people will lose their homes or apartments without having received complete access to justice – it is a problem we already face but will get worse without funding for civil legal services.

Modern Courts citizen court monitoring program began in 1975. It is a statewide program that recruits non-lawyer, local volunteers to observe court proceedings in their communities. The volunteers identify problems that affect our State's courts and offers information and recommendations about how to make the courts more effective, fair and accessible to all residents of the state. Recently, Modern Courts has monitored Town and Village Justice courts in

a number of counties. In the majority of landlord tenant cases, judgments of eviction are entered without counsel present. As our monitors observed, a good judge will take the time to explain to a tenant the terms of the settlement and judgment of eviction. Although Modern Courts was pleased to find that judges explain an eviction order to a tenant, it is the consequences of that order - that was entered into without representation – that affects the court system and the local, county and state government and denies a tenant their full rights.

Modern Courts is well aware of the difficult budget negotiations you face this year, but we also know that Legal Services funding goes a long way to ensure fair and equal access to our court system and justice for low income New Yorkers. Civil legal services programs play a critical role in our state’s justice system by helping to ensure that access to justice is not based on one’s ability to afford an attorney. The value of legal representation extends beyond the immediate beneficial impact on the individual fortunate enough to qualify for assistance; it helps our courts, prevents family difficulties and reduces government expense.

For the above reasons, and those stated by our colleagues on this panel, Modern Courts respectfully and strongly requests that civil legal services funding continue.