



**THE CHILDREN’S LAW CENTER NOVEMBER 1, 2023 TESTIMONY REGARDING
OVERSIGHT OF NYS FAMILY COURT FOR THE NYS SENATE COMMITTEE ON
THE JUDICIARY AND COMMITTEE ON CHILDREN & FAMILIES**

The Children’s Law Center (“CLC”) is a 26-year-old, not-for-profit legal services organization that has represented over 130,000 children in legal proceedings in the New York City Family Courts and the New York State Supreme Court Integrated Domestic Violence Parts. We are the first organization in New York City dedicated primarily to the representation of children in custody, guardianship, and visitation matters, and we also represent children in family offense, domestic violence, paternity, and child protective cases. On each case to which CLC is assigned, we give our young clients an effective voice in the legal proceedings that have a critical impact on their lives. Thank you for giving me the opportunity to testify today.

As attorneys for children (“AFCs”) involved in emotional and important Family Court litigation, we are thankful to the members of the Senate Judiciary and Children & Families Committees, and their Chairs, for holding this important hearing today. Unfortunately, we have much to say about the issues that plague New York City’s Family Courts and hinder their efficient functioning. To begin, we could not agree more with Secretary Jeh Johnson’s findings, detailed in his *Report from the Special Adviser on Equal Justice in the New York State Courts*¹ and highlighted in the announcement publicizing this hearing, that the NYS Family Courts overwhelmingly serve the poor and people of color, and are perceived as “second class” courts in which litigants frequently have “dehumanizing” experiences.² Indeed, the majority of the children whom we represent are from low-income families and families of color. In our experience, it is the members of these marginalized communities who are denied access to justice because of the Family Court’s significant inefficiencies.

We wish to focus our remarks today on custody and visitation cases, because they make up the majority of CLC’s sizeable caseload, and because we are aware that our esteemed colleagues from the other wonderful AFC organizations that serve New York City’s children will be testifying and/or submitting testimony regarding a variety of the other types of cases heard in Family Court.

With respect to custody and visitation cases, undoubtedly the biggest court operations issue that we face is the immense and unconscionable delay in resolution of our cases. We share the

¹Report from the Special Adviser on Equal Justice, October 2020, <https://nycourts.gov/whatsnew/pdf/SpecialAdviserEqualJusticeReport.pdf>.

² *Id.* at 54.

following examples, which illustrate how great the delay is in scheduling custody/visitation appearances, and resolving these cases:

- A litigant filed a routine custody petition in Bronx Family Court in October 2021. Beyond receiving confirmation that her petition was successfully filed, she heard nothing from the court for several months, until she finally received notice, in mid-2022, that her first appearance in that case would not occur until October 2022. In other words, an entire year passed before she had the opportunity to appear before the court simply to state her position, be assigned an attorney, and begin the proceedings.
- Earlier in 2023, litigants appeared on a Brooklyn Family Court case that had been pending for several years, prepared to pick trial dates in a custody/visitation matter that they were unable to resolve. The court attorney who conferences cases for the judge presiding over that family's case informed the litigants, their counsel, and the AFC that the judge had absolutely no trial time available in 2023. Not only would trial dates have to be picked for 2024, but the court attorney was unable to do so during that conference, because she had not yet been provided with the court's official 2024 calendar.
- In 2021, the Brooklyn Family Court ordered that a forensic evaluation be conducted in a case that had been pending for approximately four years. One litigant lived in Brooklyn, and the other lived in Syracuse with the child. For 10 months, the court was unable to identify a qualified evaluator who was available to conduct the forensic evaluation, in either jurisdiction where the parties resided. Finally, the court ordered that the family members travel to meet with an evaluator in Albany, despite the significant distance of that city from both litigants' homes.
- In a pending guardianship petition in Queens Family Court, the presiding jurist had no available adjourn dates to hear the case in a timely fashion. A short adjourn date was critical in this matter, because the young person involved was applying for Special Immigrant Juvenile Status ("SIJS"), and needed a guardianship order from Family Court to proceed with that application. The jurist dismissed the petition and urged the young person to refile the petition, because doing so might result in the court's scheduling the new petition for a sooner appearance date.
- A Kings County Family Court Judge scheduled a teen CLC client's *in camera* testimony for early 2023.³ The original *in camera* testimony date was cancelled when the child's caretaker had an unforeseen emergency. Months passed before the court was able to reschedule the *in camera*, at which point the young person, who had since turned 16 and was incredibly frustrated by the protracted nature of his family's case, no longer wanted to

³ *In camera* testimony is testimony given by a child to a Judge, in chambers, in the presence of the child's attorney. It is also referred to as a *Lincoln* hearing.

participate in the *in camera* interview and made it clear that he had no intention of complying with any orders with which he disagreed.

As these examples demonstrate, custody and visitation cases are pending on the court's calendar for far too long, while critical issues, such as who will make a child's medical, educational, and religious decisions, where that child will live, and whether that child will visit a parent, remain undecided—sometimes for years. These delays undoubtedly are demoralizing and exasperating for litigants, and take a particularly heavy toll on the children involved in these cases. The following are comments, made by our child clients during interviews with CLC attorneys and/or social workers, that illustrate just how frustrating, painful, and traumatic protracted custody/visitation cases can be for the children whom we serve:

- Fred,⁴ a thirteen-year-old boy who has been the subject of several family court cases, including an almost four-year custody and visitation case, told his attorney that he started smoking marijuana at age eleven, in order to deal with the stress that his parents' prolonged and bitter conflict had caused him.
- Seven-year-old Ashley felt an enormous amount of pressure to “make the right choice” whenever she came to speak to her attorney, despite her attorney's assuring her repeatedly that she did not have to choose between her parents. Ashley expressed feelings of anxiety and sadness during numerous interviews. Ashley's family participated in a forensic evaluation after the case had been pending for four years. The experienced evaluator, who held a Ph.D. in psychology and had conducted hundreds of such evaluations, concluded that the custody dispute caused Ashley understandable and overwhelming stress. He believed that her stress would greatly decrease upon the conclusion of the case, which then continued for another year and a half.
- When six-year-old Jackson described his parents' long-standing custody battle to his attorney, he said, “We are like a mouth. My mom is like the top teeth, my father is like bottom, and I am like the tongue.” Then, he stuck out his tongue and bit it with his teeth, in order to illustrate his parents' conflict and how it made him feel.
- Three years into her parents' almost six-year custody dispute, then twelve-year-old Jasmine started to express suicidal ideations. Jasmine started to refuse to attend school or participate in any extracurricular activities, because her parents' courtroom debates often centered around their disagreements regarding her education and extracurricular activities.

To be clear, the unconscionable delay that has caused these children to suffer has long been a problem that has plagued the New York City Family Courts. However, the COVID-19 pandemic seriously exacerbated that delay with respect to custody and visitation cases, primarily because of the State's approach to those cases during the height of the pandemic crisis.

⁴ Clients' names have been changed to protect their confidentiality.

Specifically, at the onset of the pandemic, and for months thereafter, the Family Court heard only those cases that satisfied its extremely narrow definition of “essential,” and thus most Family Court cases—including most custody and visitation matters, which were deemed non-essential—were at a standstill. As a result, CLC’s young clients suffered a host of negative consequences, such as agonizing separations from parents who could not access the court to seek enforcement of visitation orders, delayed decisions regarding whether the court would permit a custodial parent to relocate outside of the jurisdiction, and lack of direction regarding how to conduct visitation and visitation exchanges in those cases where parents had vastly different approaches to pandemic safety precautions.

Although we are well beyond the emergency phase of the pandemic, the delays experienced by custody/visitation litigants, and the children who are the subjects of those cases, persist, with adjournments between court appearances averaging approximately three to four months, or sometimes longer, when the court must schedule sufficient amounts of time to conduct a hearing. This is, in part, due to the woefully inadequate resources that are devoted to resolving custody and visitation cases.

First, there are nowhere near enough affordable and accessible supervised visitation resources,⁵ in either New York City or State. Many families impacted by domestic violence and other child protective issues, including substance abuse and/or mental health diagnoses, rely on supervised visitation to keep children safe and rebuild fractured parent-child relationship, during and after a Family Court case has ended. However, there is a dangerous lack of these critical resources throughout the state, as 20 counties lack any supervised visitation providers, and counties in which there are supervised visitation providers, such as New York City, cannot come close to meeting the significant demand for their services. As a result, families in need of visit supervisors are forced either to attempt to identify family or community members, who may be unqualified, uncomfortable, or unavailable to regularly and adequately supervise a child’s visits, or to forgo much wanted parent-child contact. Moreover, without an actionable, sustainable plan for supervised visits, courts may be unable to effectively resolve those cases that require long-term visitation supervision. Consequently, we wholeheartedly support the recommendations, included in the July 2023 *Report from the Working Group on the Future of Supervised Visitation*, calling for dedicated state funding for supervised visitation programs.

Notably, this lack of adequate supervised visitation resources exists in New York City, despite the New York City Family Courts’ reliance on Observed & Evaluated (“O&E”) visits, as O&Es, too, are woefully underfunded. O&E visits are a limited number of supervised visits, ordered by the court, in custody/visitation cases where there are concerns and/or allegations that a parent is behaving in a manner that is inappropriate or harmful to a child, or in which the parent-child relationship is strained or unfamiliar. O&E visits are a critical tool to the court, because O&E visit supervisors, who are licensed social workers, provide detailed written reports that help

⁵ It is important to distinguish between supervised visitation orders in custody/visitation cases, and those in child protective cases that have been filed by ACS against a parent who is alleged to have committed an act of abuse or neglect. With respect to the latter, parents are guaranteed supervised visitation, except if the court directs otherwise, and ACS or the foster care agency provides that supervision.

the court to better understand the relationship and interactions between the parent and child, and whether visits present any risk to the child. Unfortunately, the number of organizations and individual social workers who provide O&E services is extremely limited, and there are waitlists for these services. As a result, several court appearances may be adjourned without any action taken on a case, and during which time parents and children may be unable to visit one another, because the court lacks the vital information contained in reports from the providers.

In addition to the dearth of supervised visitation providers, there also is a scarcity of other qualified professionals whose services are necessary to resolve custody/visitation cases. For example, we have experienced significant delays on cases in which the court cannot identify a qualified evaluator who is available to conduct a forensic evaluation. Forensic evaluations are comprehensive reports, usually conducted by a PhD in psychology, issued after that professional has interviewed the parties, children, and collateral contacts, and has observed the parent-child interactions. These reports provide insight and recommendations that help the court and counsel to understand which custody and/or visitation arrangement will best serve the interests of a child, and thus may help resolve a case. When no evaluator is available, a case may be repeatedly delayed.⁶

Moreover, there simply are not enough resources available to AFC organizations like CLC, to effectively and efficiently serve the children involved in these cases. Lack of adequate state funding for AFC organizations has led to the low wages and high caseloads that unfortunately have become the hallmark of AFC work, and that have made recruiting and retaining qualified and interested candidates for these important positions nearly impossible. Put bluntly, AFC organizations need more funding to pay attorneys, social workers, and other staff wages that meet industry standards, and that acknowledge their experience and expertise.

Further, with respect to caseloads, although state statute limits the number of clients each AFC is supposed to represent to 150—an amount that already is far too high and should be reexamined—the number of clients that our individual attorneys are assigned to represent often exceeds that number. While we endeavor to provide the highest quality representation to each child whom we serve, there is no escaping the truth that an AFC who has more than 150 clients, some of whom are in acute crisis, simply does not have the time to develop meaningful and trusting attorney-client relationships, to meet with each client before every court appearance, and to adequately prepare for court appearances and trials. Consequently, we may need to ask for adjournments of court appearances, rather than proceed without proper preparation, and this, too, will cause greater delay.

Finally, it is not just the professionals who work in the Family Courts whose work is insufficiently funded, but also the Family Court system itself. There simply are not enough judges

⁶ Similarly, we frequently have had cases adjourned because there are no available members of the 18-b panel available for assignment to low-income litigants whom the court has deemed eligible for free counsel. We are hopeful that the recent increase in the rates paid to 18-b attorneys will incentivize more attorneys to join the 18-b panel, which in turn will alleviate this problem.

and court attorney referees⁷ to handle the overwhelming number of custody/visitation cases that are filed in the Family Court. One solution implemented to address this problem was the short-term assignment to Family Court of “acting” judges, primarily from the Civil Court, to hear custody/visitation cases. While we appreciate the direction of any resources towards the Family Court, the “lending” of judges was not a sustainable solution to what was an entrenched problem.⁸ Not only were a number of these judges unfamiliar with family law and practice, but they usually concluded their Family Court tenures shortly after they had fully familiarized themselves with this practice area. Moreover, the departure of these jurists, usually after a two-year period, but sometimes sooner, resulted in further delays as their caseloads had to be transferred to other jurists. This system was unsustainable, and should not be repeated. Rather, there should be increased, dedicated funding, specifically for Family Court judges, and those appointed to positions in Family Court should have demonstrated experience and commitment to family law.⁹

Unfortunately, now that the Family Courts have returned to full functioning, we anticipate the delay in case resolution will worsen, as litigants who previously were unable to file new petitions and motions are returning to the Family Courts to do so. The proverbial floodgates have opened, and we are experiencing a significant increase in filings and assignment of cases. As of October 2023, CLC already had been assigned to represent approximately 5400 children—which is approximately the same number of clients to whom CLC was assigned to represent for the entirety of 2022. Certainly, our organization is not the only entity experiencing this overwhelming number of custody and visitation filings, as earlier this year, the Chief Administrative Judge of the Bronx Family Court, Hon. Sarah Cooper, referred to the number of filings in that courthouse as a “tsunami” of cases.

Although the situation is dire, I do wish to highlight one positive development, borne of necessity in recent years: the use of technology for virtual appearances. CLC attorneys consistently have stated that the virtual appearances for return of service and pre-trial conferences in custody, visitation, and guardianship cases are efficient and effective for litigants, the court, and counsel. In-person appearances for these purposes, which are usually brief and narrow in scope, require many litigants to miss a day of work, secure childcare, and spend money on travel, and

⁷ In New York State Family Courts, court attorney referees hear and decide custody, visitation, and family offense cases, among others. They are permitted to enter temporary and final orders in those cases, upon the consent of the parties.

⁸ For more on this issue, see *The Family Court Judicial Appointment and Assignment Process*, a December 2020 report from The New York City Bar Family Court Judicial Appointment & Assignment Process Work Group, available at <https://s3.amazonaws.com/documents.nycbar.org/files/2020790-FamilyCourtJudicialAppointmentProcess.pdf>.

⁹ Recently, the court faced difficulty securing interpreter services for virtual and in-person cases. The resulting delays from this interpreter shortage occurred on many CLC cases, regardless of the particular language needed. However, Bengali interpreters were in extremely short supply in the Bronx Family Court, and that shortage resulted in significant delay on a number of our cases, which were repeatedly adjourned. We were informed that, recently, a number of new interpreters were awaiting certification. We are hopeful that the addition of these new interpreters to the court system will help to alleviate this problem, but raise it here as a priority to be monitored, given the impact that interpreter shortage has had on court efficiency.

thus virtual appearances are significantly more convenient for them. Further, it has been CLC's experience that virtual return of service and conference appearances tend to occur on-time far more often than in-person appearances, improve safety in contentious cases involving disruptive litigants,¹⁰ and allow attorneys to move more easily from one appearance to another, and to appear on time far more often. Given the substantial caseloads that AFCs and other family court practitioners carry, the value of such efficiencies cannot be overstated.

Given these benefits, we are appreciative that most of the jurists in the Family Courts have continued to conduct virtual proceedings for initial and pre-trial appearances. We hope that they will continue to do so, as in our experience they have enhanced effective and efficient Family Court functioning.

In sum, despite the positive addition of virtual appearances, the functioning of the New York City Family Courts with respect to custody and visitation litigation is truly at a crisis point. The significant delays in resolution of these cases, caused by a historical and continuing underinvestment of resources, and exacerbated by the pandemic, has denied families access to justice and left critical rights and familial relationships suspended—for months and years—in states of uncertainty. Children are perhaps the greatest victims of this inequity, as they pass significant portions of their childhood waiting for resolution of custody/visitation cases that are central to their stability and identity. For the safety and well-being of these children, we hope the State will:

- Increase funding for AFC institutional provider offices across New York State. Last year's request, made by a coalition of AFC organizations across New York State, was \$15M.
- Dedicate funding and amend the Social Services Law to support a statewide supervised visitation initiative, and increase funding for individual service providers currently providing these critical services to New Yorkers.
- Increase funding for adequately credentialed forensic evaluators.
- Increase the number of Family Court Judges, with a plan to assign newly-appointed judges to custody/visitation cases, and to ensure that those judges are not only appropriately trained, but also have some prior-existing knowledge of family law.

¹⁰ This is particularly true in family offense cases, where virtual appearances obviate the need to keep the protected party in a separate location and then have that party escorted to the courtroom by court security, which is a stressful process that sometimes causes delay.

Thank you again for this opportunity to share our recommendations, and our young clients' stories and experiences in the Family Court system, which is so desperately in need of greater support.

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