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**The Chief Judge's 2022 Hearing
on Civil Legal Services in New York**

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Good afternoon. My name is Kristin Brown and I am President and CEO of Empire Justice Center. We are a statewide, nonprofit law firm and advocacy organization with six offices across outside of New York City: in Albany, Rochester, Yonkers, Central Islip, and White Plains.

We are an organization that seeks to focus on areas of law where we can have the most impact, with the goal of addressing the root causes of injustice through a blend of direct services, targeted training, and systems change advocacy.

Thank you, Acting Chief Judge Cannataro; Justices Renwick, LaSalle, Garry and Whalen; Chief Administrative Judge Marks, and New York State Bar President Wallach. We are grateful for your ongoing commitment to civil legal services. The Judiciary Civil Legal Services funding is a critical revenue source for Empire Justice Center and our peers. I want to express particular gratitude for the multi-year compounded cost of living adjustment of 12.6% that we received last year; as we all know, the cost of doing business rises every year, and we are grateful for your ongoing recognition of this.

I deeply appreciate Jenna McCormack sharing her story with us today. Ms. McCormack was, in many ways, an ideal candidate for the Fair Hearing process – she was and remains motivated, accomplished, and highly capable. However, as the first decision showed, that was not enough. In order to get the medical care she needed, Ms. McCormack had to meet a burden of proof that she did not know existed. To succeed in this process, one must have an understanding of how to apply evidence to meet a legal standard. Identifying and meeting a legal standard is not a patient's role, nor a doctor's responsibility; that is a lawyer's work.

After her first appeal was unsuccessful, Ms. McCormack was referred to us through the Community Service Society's Community Health Advocates Program. Our lawyers worked with Ms. McCormack to build a case. Her doctors were, of course, advocating for the treatment plan she was fighting to access, but doctors' orders were not enough. Ms. McCormack needed a lawyer.

And Ms. McCormack is not alone. According to OTDA, in 2021, 150,000 Fair Hearings were requested¹. Data about the percentage of appellants who have representation is not published, however, advocates' analysis consistently reveals that the vast majority are unrepresented at these hearings.

Many state administrative agencies – including the Departments of Health, Labor, and Education – have fair hearing processes similar to OTDA. The Due Process Clause of the Constitution, as well as federal and NYS Law require that a person be afforded an opportunity for a hearing before public benefits can be denied, reduced, or discontinued².

These Executive agencies are not part of the judiciary branch, yet their decisions impact hundreds of thousands of New Yorkers' ability to access justice in the essentials of life, potentially in matters of life and death. Administrative hearings are intended to be navigable by individuals without attorney, but, as Ms. McCormack's story illustrates, all too often they are not. There is little value to rights if pro se

¹ New York State Office of Temporary and Disability Assistance (OTDA) Annual Report (2021), available online at <https://otda.ny.gov/resources/reports/OTDA-Annual-Report-2021.pdf>.

² An applicant or recipient has the right to challenge certain determinations or actions of a social services agency or such agency's failure to act with reasonable promptness or within the time periods required by other provisions of this Title, by requesting that the department provide a fair hearing. The right to request a fair hearing cannot be limited or interfered with in any way. 18 NYCRR 358-3.1.

appellants cannot effectively exercise them. Ultimately too many New Yorkers, like Ms. McCormack, are doomed to fail -- to be failed -- by this process because they don't have representation.

Additionally, Ms. McCormack participated in the participated in the Fair Hearing process in the early, chaotic days of the pandemic. However, many temporary measures have been in place now for over two years and continue to present challenges. To address this, a coalition of legal services providers submitted a list of recommendations to improve the Fair Hearing process to the Office of Temporary and Disability Assistance (OTDA) and the Department of Health (DOH), including: increased clarity of communications with appellants; transparency in data collection; and improving access for appellants whose primary language is not English³. Clearly our legal system is not confined to the Judiciary and must be examined for accessibility and fairness throughout.

It is critical for New York to continue to its progress in closing the justice gap. Every client of a civil legal services provider is one more New Yorker with a fair shot at accessing justice. Increased Judiciary Civil Legal Services funding, including an annual cost of living adjustment to cover the rising cost of doing business, will provide thousands more New Yorkers that fair shot, and allow us to all work together toward a more fair, equitable state for everyone. Thank you.

³ Center for Elder Law & Justice, New York Legal Assistance Group, Neighborhood Legal Services, Legal Aid Society of New York City, Empire Justice Center & Bronx Legal Services, Letter to Commissioner Daniel W. Tietz at 2-4 (June 14, 2022), available online at https://empirejustice.org/resources_post/letter-to-otda-commissioner-re-recommendations-to-improve-fair-hearing-demonstration-project-june-2022/.