

Honorable Chester Harhut, Senior Judge  
Common Pleas Court of Lackawanna County  
200 Adams Avenue  
Scranton, PA 18503  
Telephone: (570)-963-6306  
Fax: (570)-496-1734

**COMMENTS OF CHESTER HARHUT  
SENIOR JUDGE, LACKAWANNA COUNTY**

I am pleased to appear before the Senate Judiciary Committee on the important topic of the availability of civil legal services in Pennsylvania. I wear two hats in commenting on this. I have been a Court of Common Pleas Judge in Lackawanna County for 26 years. Seventeen of those years as a family court judge and ten years as President Judge. I am currently President of the Board of the Pennsylvania Legal Aid Network, the umbrella program that administers state funding sources to legal aid programs across the state and that offers training and other services to legal aid programs. I have been a member of the Board since 2008.

The network of legal aid programs provides essential services to low income clients across the state. Historically, the network has provided representation to over 100,000 clients annually. However, due to cuts and funding freezes, some program offices have been closed, staffing of programs has been reduced, and the number of cases handled has declined to about 85,000 during the current fiscal year.

The Pennsylvania Legal Aid Network represents clients in a variety of civil legal problems. The case types are mostly in the areas of family law, making up one third of the cases, especially protection from abuse cases and emergency custody cases. This is closely followed by housing cases, which mostly involve foreclosures and evictions. These are extremely important

areas of representation, having to do with personal safety, wellbeing of children, and housing for families.

Because you are also hearing from Sam Milkes today, Executive Director of the Pennsylvania Legal Aid Network, I want to direct my comments primarily to the functioning of the courts, and access to fair and equal justice, when legal services are and are not available to individuals involved in civil cases in the courts.

I have presided over many types of cases during my tenure as a Common Pleas Judge. However for the last 17 years the cases before me were primarily in the family law area, especially involving protection from abuse, custody, and child neglect and abuse cases. Here are my observations.

At least 50% of the individuals appearing before me in these cases were unrepresented. Often both sides were unrepresented, but sometimes, one side was represented and the other side was not. The overwhelming reason this occurred was that people with low incomes were not able to afford counsel and the legal aid program serving our area was not able to represent all who qualified. In fact, statistics show that for each person represented by legal aid in Pennsylvania, another person who qualified for services and requested help had to be turned away due to lack of sufficient resources.

Individuals who represent themselves at the Common Pleas level are at a great disadvantage. Common Pleas Courts are formal courts. Judges and litigants must follow The Rules of Civil Procedure. If a judge chose, for example, to pass over a hearsay rule and allow or disallow testimony because the rule was simply too difficult for the self-represented person to understand, this could become a basis for reversing the outcome of the case. So instead, Judges

must enforce this and other formal rules. Many people are unfamiliar with how even to present a case in court, by questioning witnesses, as opposed to just wanting to tell the story themselves. Again, imagine how difficult this can be for a self-represented litigant who is up against a party who is represented. How does the individual counter the hearsay objection made by an attorney, or correct the manner of presenting evidence when an objection is made?

Judges now receive training on how to effectively deal with self-represented litigants, but the challenges to the litigants and to the court are tremendous.

Imagine the difficulty for a victim of domestic violence who is seeking a protection from abuse order. Whether the opposing side is represented or not, the fact is that the victim will be placed in the position of being in a courtroom and having to question the abuser on the witness stand and sometimes of having to be subjected to cross examination by the abuser.

Self representation in cases such as this is very problematic in two ways. First, it puts the parties directly against each other, instead of having trained lawyers fulfill the role of reasonably presenting the evidence and witnesses, so that a decision can be calmly made according to the principles of law, and so the parties are not directly confronting each other.

Second, a frequent benefit of having lawyers involved is that disputes can get worked out. Lawyers know how the law will apply to a particular situation and they know how judges are likely to rule. While not all cases settle, many do, especially because of the skill of lawyers, who know how to settle cases.

When cases cannot settle, the court system itself gets bogged down. Disputes go to trial when they shouldn't. Cases get delayed and justice slows down when an agreement should have and could have been reached. When the parties are left to try to settle their case themselves, there

are great risks and the attempt is usually unsuccessful. When there is unequal power, such as when one party is physically intimidated by the other party, but even when the parties are of different intelligence or skill level, an agreement is hard to reach.

I could go on, but the point is, in my experience the court system itself does not work as well when parties in need of representation are not represented. And the resolution of disputes between the parties is often less satisfactory and can be unnecessarily contentious or even dangerous for the parties who represent themselves. Even the outcome of the case may be wrong, simply because a self-represented party was unable to properly put on his or her case.

As a judge, there are times when I find it so important for a person to be represented in a case that I will send a member of my staff into the halls of the courthouse to find a lawyer who will handle the case on a pro bono basis. Of course, this is not always successful. There are times when I have to continue cases in order to find a way to get an attorney involved. These situations especially involve custody cases, where I must decide what is in the best interests of the child, not necessarily the parents, and I am concerned that I am not getting a full or accurate description of the facts. There is a crisis in our legal system when judges are concerned they do not have the information before them that is needed to make a fair decision.

My observation is that when legal aid is involved in representing clients in civil cases in court, there are good results, both for the court and for the client. This does not mean that they win every case, but it does mean that the court system itself works well and that the parties in the case understand the process and results, and that they get a fair shake in the outcome, within the rules of court proceedings.

I find legal aid lawyers to be knowledgeable of the law and effective at negotiating cases and representing clients. I also find they are effective at screening cases. Given their limited resources, they do not have an interest in bringing cases where there is not merit to their side of the case.

Thank you for the opportunity to present these comments.

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**Judge Chester Harhut** was first appointed to the bench of the Court of Common Pleas of Lackawanna County in April 1987 and served as President Judge of that Court from October 2000 through December 2010. He retired at the end of 2012, after 26 years on the bench and now continues to hear cases as a Senior Judge. He graduated from the University of Pittsburgh, School of Law in 1972 and received a Master's degree from the University of Nevada National Judicial College in 1995. Judge Harhut became Administrative Judge of Family Court in 1996. At that time, he also integrated human services into the legal system to alleviate conflict while helping families achieve a permanent solution to family issues. Judge Harhut has also instituted major reforms in family practice in Lackawanna County, including establishing Kids First, Co-Operative Parenting, Mediation, and programs to help parents understand the effects on their children of separation and divorce. Since the introduction of coordination between the court and social services, recidivism dropped considerably. Judge Harhut is a strong proponent of resolving conflict through support services and alternative dispute resolution and a strong advocate of mediation as an alternative to litigation. He also spearheaded an anti-truancy program which focuses on reducing criminal activity while strengthening the importance of education. Since its inception, it has been expanded countywide. Judge Harhut currently serves as President of the Board of Directors, Pennsylvania Legal Aid Network; he serves on the Pennsylvania Bar Association Youth Court Advisory Board; and as Past-President of the Pennsylvania Conference of State Trial Judges.

Judge Harhut also serves on the Board of Trustees of the National Council of Juvenile and Family Court Judges; he is a member of the National Judicial-Child Support Task Force, Pennsylvania Early Learning Investment Commission and Chair of the Pennsylvania Dependency Bench Book Committee until December, 2013.