by Peggy Farber
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Ade Fasanya's law office is two flights up a narrow staircase in a small Queens building on 89th Avenue. It is from this spot, amid folders stacked up on every horizontal surface, that Fasanya launches his daily assault on injustice in the child welfare system on behalf of indigent Queens parents who have been charged with child abuse and neglect.

Fasanya is one of about thirty attorneys who represent parents in Queens child welfare cases. Children in the city's family courts are represented by the Legal Aid Society's Juvenile Rights Division, which puts Legal Aid attorneys off-limits to impoverished adults. So the courts provide private attorneys to parents, drawing from a panel of lawyers who have signed on to serve.

In the last three months, judges in family courts throughout the city have found it nearly impossible to find lawyers willing to take new cases. That's because panel attorneys, a shrinking pool, have staged an informal work slowdown. Since late last year, Fasanya and others have declined new cases to protest the state's billing rates, which stand at $25 an hour for out-of-court work and $40 an hour for court appearances, with an $800 cap on each case. A n industry-wide survey of billing rates for associates across New York State shows the average to be between $180 and $260 an hour

The state has raised the billing rates just twice since the panels were created in 1965; the last time was in 1986. Court-appointed lawyers in New York now rank 49th in the country in pay, despite repeated pleas to the governor from the state's top judge, Judith Kaye, and other prominent members of the state judiciary..

Fasanya has come to his office for a lunch break between marathon sessions at Queens Family Court where on a typical day he argues eight or nine cases, running back and forth among courtrooms on three floors. Such is the caseload in the city's five family courts that attorneys for both children and adults routinely handle over a hundred open cases at a time and judges preside over fifty to sixty cases a day. Often Fasanya doesn't get to his office at all during the day -- and neither does anyone else. Like all of the attorneys on the appointed-counsel panels, Fasanya is unable to afford a secretary or a part-time paralegal assistant.

So he repairs to his office at night and on weekends to do the work Legal Aid attorneys and most solo practitioners turn over to assistants. His office is functional, containing a desk, a couple of chairs, boxes of files on the floor, a stuffed filing cabinet and, adorning the wall behind his desk, the legal robe and powdered wig he wore years ago -- mementos of his days as an attorney in Nigeria.

At least Fasanya has an office. Several panel attorneys gathered at a lunchtime strategy session in Queens in late February said they don't. Their base of operations is the Assigned Counsel room, Room 129D, in the Queens Family Courthouse, a 17' by 14' room sporting one desk and one phone.

Fasanya, a man with a fined-tuned sensitivity to unchecked government power, said he had to have at least the semblance of an office. "I do not want to interview clients under pressure in the courthouse, with court officers looking all over for you up and down the halls because a judge needs you in the courtroom."

Sitting at his desk on 89th Avenue, he said the reality of defending parents against the inevitable mistakes the city makes in identifying abusive and neglectful adults could be very grim.

"I have practiced under a dictatorship and I have seen people get a fairer shake," he said.

A case on Fasanya's docket earlier in the week seems to illustrate the point. His client, Karen Gibson, had lost custody of her four children on October 22nd, 1998, two days after her mother died. A caseworker to whom Gibson had turned during her mother's illness with the hopes of obtaining homemaking services, suspected that Gibson was using and selling drugs and initiated the removal of the children. As it turned out, the city never turned up evidence to support the charge. Still, agency officials found it difficult to return the children once the agency had taken them -- what if something went horribly wrong and the public learned that the children had been released from city custody? Instead, caseworkers drew up a list of tasks Gibson had to complete including "getting better insight into parenting by attending a parenting skills class" and attending therapy.

Now, two and a half years later, Gibson had completed all of the agency's tasks. She went to

court hoping to begin the process of reunifying her family. But the city arrived with a petition to terminate her parental rights. This would irrevocably end all ties between Gibson and her children and trigger a search for adoptive families for them. When the judge hearing the case, Robert F. Clark, asked why, the city's attorney rose and explained, "The children have been in care for 28 months. The mother doesn't have appropriate housing."

A new federal law, the Adoption and Safe Families Act, requires the city to seek terminations of parental rights whenever children have been in foster care for 15 of 22 months. The law is creating a new kind of havoc in New York City cases because massive delays and repeated adjournments are common in the city's family courts.

Fasanya jumped in, furious: "Here we have my client complying with everything in the agency plan, the agency and the mother are working together, and someone in the agency is filing a petition to terminate her parental rights!"

Back in his office, Fasanya was still irate. "Do you know how rare it is to get a case dismissed in Family Court?"

One reason it may be so rare is that for attorneys like Fasanya, finding the time to prepare and file motions is painfully difficult. "Your time is so intense. There are days when I've been here as late as two in the morning. I come in on Sundays," he said.

Yet, panel attorneys must file many more motions than others if they are to do the most basic legal work. Legal Aid lawyers and the legal team at the Administration for Children's Services have social workers and investigators on staff to assist them in preparing cases, but parents' attorneys must file orders with the court requesting approval for every expenditure, including for investigators and social workers who might interview parents, relatives, witnesses.

And these things take time.

"You have to justify the need for an investigator or a social worker," Fasanya said. "You have to sit here and bang it out, tailor it to the specific request you're making."

A 1997 study of the city's family courts by the Vera Institute of Justice found that 90 percent of parents' attorneys did not file a single written motion.

Last February, the New York County Lawyers' Association filed a suit in State Supreme Court charging that the state's billing rates effectively deprive clients of their constitutional right to counsel.

On January 12th of this year, Governor George Pataki, Senate Majority Leader Joseph Bruno and Assembly Speaker Sheldon Silver announced an agreement to create a task force to study the compensation rates. But none of the panel lawyers in family court are holding their breath. Sitting in the cramped, barely-furnished room set aside for panel attorneys in the Manhattan Family Court, Sam Ackerman, an attorney who has been on the assigned-counsel panel for 28 years, said, "If you want to get nothing done appoint a committee. If you really want to get nothing done appoint a task force."

A JUDGE'S CASE

On March 12, the Mayor's Committee on the Judiciary rejected a second 10-year term for Brooklyn Family Court Judge Philip C. Segal. The second term was due to start April 1. The New York Law Journal, which reported the termination of Judge Segal's service, said the judge has a reputation for being bolder than most in challenging city officials in child abuse and neglect cases. Lawyers described Segal to the law journal as "exceptionally willing to press city officials to provide services to help reunite families."

A Brooklyn court-appointed attorney, Robert J. Greenfield, told the law journal that Segal was "'not afraid to toss a case'" if the elements of abuse or neglect are not proven."

Peggy J. Farber is freelance journalist specializing in children's issues. Her reporting on conditions of NYC children has appeared in City Limits Magazine as well as on National Public Radio.