



Association of Legal Aid Attorneys UAW 2325 (AFL-CIO)



November 23, 2020

NYC Office of Civil Justice Hearing on Right to Counsel

Testimony by:

Association of Legal Aid Attorneys (UAW Local 2325)

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President

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We thank the Office of Civil Justice for holding this meeting, and for giving our union the opportunity to testify. My name is Jared Trujillo and I am president of the Association of Legal Aid Attorneys (UAW Local 2325), a union of more than 2,100 legal workers at 17 different legal organizations in New York. Together with the Legal Services Staff Association (UAW Local 2320) we represent the majority of housing legal workers funded by the city.

Our members represent low-income New Yorkers who are faced with some of the most challenging situations families will face in their lives, and we are often the only line of defense for tenants facing eviction and against landlords that force our clients to live in inhumane conditions to save a few dollars. Racial justice and elevating low-income mostly Black and brown communities is fundamental to the work that we do. Our members are tenacious and diligent in representing our clients, and since the implementation of Right to Counsel we have saved thousands of New Yorkers from becoming homeless and have helped hold landlords accountable. Not only has this led to better outcomes for community members, but it has saved the City money by reducing homelessness. In order to ensure RTC is as effective as possible, we propose the following:

1. Fund more consumer attorneys and legal advocates: Currently the program funds legal advocates for housing court. However, landlords take advantage of this and they frequently sue low-income tenants in civil and small claims court, where only approximately four percent of defendants are represented. As the pandemic plunges more New Yorkers deeper into debt, landlords will undoubtedly sue more tenants for arrears. It is imperative that the city adequately fund more consumer attorneys so that the communities most ravaged by the pandemic can have an experienced advocate with them in the courtroom.
2. Classify tenant organizers as essential workers: Tenant organizers are essential to empowering communities. They ensure tenants understand their right to an attorney, and help low-income New Yorkers navigate the complicated labyrinth of the legal system so they can assert their rights. This work became more important than ever during the pandemic. The City must recognize tenant organizers as essential workers, fully fund their work, and continue to help New Yorkers survive the pandemic.
3. Partner with organized labor in rolling out the program: UAW Local 2325 and UAW Local 2320 collectively represent the majority of universal access legal workers in New York, and many more than any individual service provider. While the service providers contract with the city, our members do a majority of the work on the frontlines representing New Yorkers and their voice should be heard when making decisions about the program. Moving forward, OCJ should also speak directly with the unions that represent housing advocates, including to discuss the rollout for the expansion of RTC.
4. Fully fund the program: RTC has radically changed legal representation in New York and it serves as a model to other cities that want to implement similar programs. To ensure the program functions effectively it is important that it is fully paid for - currently, the city only reimburses service providers for 40% to 60% of

the actual cost of providing services. Further, the City must pay the full cost of administering the program. Additionally, HRA should reimburse providers for the first phases of pay parity so that they can afford to retain talented and experienced attorneys.

Brooklyn Legal Services Corporation A Written Testimony Office of Civil Justice Right to Counsel Public Hearing November 2020

Thank you to the Office of Civil Justice for giving our office the opportunity to provide testimony. Brooklyn Legal Services Corporation A (Brooklyn A or BKA) was founded in 1967 with a focus on providing services in low-income neighborhoods where our clients live, developing programs and staff that are part of those communities, & working to advance social and economic justice in the communities we serve. For over half a century, we have utilized an array of legal and advocacy strategies—community organizing, affirmative civil rights litigation, and eviction defense to defend the rights of individuals and families. Collaboration with the city, state, and federal officials to enforce housing laws and develop legislative solutions is also an integral part of our strategy. We focus our work on advocacy that protects and develops affordable housing, combats tenant harassment and housing discrimination, strengthens families, provides access to education and health care, and safeguards subsistence income for individuals and communities throughout New York City.

Brooklyn A also works under Right to Counsel, led by the Office of Civil Justice, to provide a right to legal representation for tenants sued in eviction proceedings in Brooklyn Housing Court. It is important to highlight the successes and continuing importance of the Right to Counsel. Right to Counsel has had a transformative impact on the ability of tenants to stay in their homes and advocate for their rights. By providing tenants with a first line of defense against eviction proceedings, Right to Counsel has provided space for tenants to organize and work with our attorneys and organizers to advocate for their rights--including requiring landlords complete legally mandated repairs, stopping landlord harassment and eliminating illegal rent overcharges.

Through Right to Counsel, we have been able to fight against the pervasive racial inequality in our housing system. Even prior to the pandemic, according to Oksana Mironova and the Community Service Society's report "Race and Evictions in New York City", tenants living in majority Black zip codes were more than three times as likely to be evicted as tenants living in majority white zip codes. This gap has only been heightened by the COVID-19 pandemic. The same report found that Black, Latinx and Asian households were 3 to 4 times more likely to have little or no confidence in their ability to make their next month's rent payment this summer. In 2019, 55% of the clients that BKA served were Black and 26% were Hispanic. Right to Counsel has made it possible for us to help our clients stay in their homes and fight against the rising tide of displacement and gentrification in Brooklyn. The COVID-19 pandemic and the ensuing economic crisis has had a disparate impact on Black and Brown New Yorkers that we primarily serve, while at the same time drastically increasing the already enormous consequences of an eviction. Right to Counsel has helped us prevent many New Yorkers from being forced into dangerous shelters where social distancing is impossible or onto the streets.

Right to Counsel is currently growing to cover even more tenants throughout New York City and not just tenants in certain zip codes. At the same time the city and the country are experiencing unprecedented economic hardship due to the COVID-19 pandemic and there is a threat of a huge wave of evictions that could devastate our clients' communities and communities of people of color. It is important that we reflect on the challenges and obstacles that the program has presented to legal services organizations and tenants, as we move into a possible mass eviction crisis. There are many New Yorkers who cannot afford the high costs of a private attorney to fight against an eviction or an abuse of their housing rights, but who fall

outside of Right to Counsel's income limits. Without an attorney, tenants are much more likely to lose their home, overpay in rent or live in unsafe conditions. The income limits under Right to Counsel should be expanded to ensure that more New Yorkers and their families can stay in their homes and advocate for their rights. On a practical level the timing of the connection of tenants to counsel presents problems. In most cases there is no opportunity for tenants to meet their attorneys prior to their first court date, which results in many tenants filing pro se answers without the assistance of counsel. Housing courts, such as Kings County Housing Court where Brooklyn A works, lack sufficient confidential intake spaces and some tenants are required to conduct intake in loud, crowded court hallways. The Right to Counsel program does not cover Supreme Court ejectment proceedings, HPD termination actions, or Article 78 proceedings, which are also vital to keeping tenants in their homes. As the number of New Yorkers facing eviction immensely outweighs the number of Right to Counsel attorneys that can represent them, OCJ needs to take the primary role in coordinating the assignment of clients to Legal Service Providers. This should be done in a manner that permits a manageable caseload for each attorney so that we are able to provide full representation to each client. Finally, the overburdened court calendars in housing courts puts pressure on Right to Counsel attorneys to move cases along quickly rather than focus on all possible defenses and upholding tenants' rights.

Right to Counsel has an opportunity to efficiently provide services to much larger numbers of tenants and to uphold the rights of tenants in an expanded number of contexts. To address issues of capacity, OCJ could work with the courts to calendar cases in ways that reflect the limited numbers and the workloads of legal services attorneys. HP cases involving serious repair conditions that essentially operate as constructive evictions, and illegal lockouts need to be treated as eviction cases that require a right to counsel. A Right to Counsel means little if a tenant is not aware of their right to an attorney or does not know about their rights under housing law. We need to ensure that New Yorkers know about their right to counsel and their housing rights through outreach campaigns that meet tenants where they are and are accessible regardless of language spoken or disability. Too often tenants are forced from their homes because of illegal harassment from their landlords or because they are not aware of their full rights. An eviction proceeding should be the last line of defense for a tenant's housing rights. In order to empower tenants to stand up for their rights we need more than representation in the courtroom. Funding should be provided for community organizers to spread the word about tenant rights and empower New Yorkers to advocate for safe and fairly priced housing. BKA has organizers on staff and they have proven essential to empowering tenants to stay in their homes and fight for their rights. Through funding for community organizers we can ensure that the goals of Right to Counsel are achieved city-wide. There needs to be increased funding for rental subsidies that keep vulnerable tenants in their homes, as well as a more streamlined process for clients to apply for government rental assistance during this unprecedented economic crisis. Making these changes and expanding Right to Counsel to cover all New Yorkers can help to keep even more tenants in their homes and would allow them to live in safe, dignified living conditions.



CAMBA
Legal Services

TESTIMONY

On

**NEW YORK CITY'S
UNIVERSAL ACCESS TO LEGAL SERVICES
FOR TENANTS FACING EVICTION**

Presented before:

**THE HUMAN RESOURCE ADMINISTRATION'S
OFFICE OF CIVIL JUSTICE (OCJ)**

Presented by:

**Jeremy Bunyaner
Staff Attorney, CAMBA Legal Services**

November 23, 2020

Thank you for the opportunity to testify today. My name is Jeremy Bunyaner and I am a Staff Attorney at CAMBA Legal Services. CAMBA Legal Services is very proud to be one of the legal service providers of the Universal Access to Legal Services for Tenants Facing Eviction in Brooklyn and Staten Island. CAMBA Legal Services is also a member of Leap, a coalition of eighteen New York City civil legal services providers, many of whom are also Universal Access providers.

CAMBA Legal Services congratulates the City Council and Mayor for continuing the Universal Access to Legal Services for Tenants Facing Eviction; the Administration and the Office of Civil Justice for implementing the law; and our partners for working with us to make Right to Counsel a reality for New York City tenants. We also would like to congratulate, and thank the Right to Counsel Coalition, the Community Based Organizations, tenants, and tenant organizers across the City whose hard work, diligence and persistence made this legislation possible to function in truly strained times.

The enormity of the problems before us underscores the importance of the Universal Access to Legal Services for Tenants Facing Eviction and its need for continued funding. The overall savings the program provides to the City budget by limiting homelessness is more invaluable than ever in the midst of a public health crisis caused by the COVID-19 pandemic. Without this program, it is difficult to see how the Office of Court of Administration and its many stakeholders could have come together to implement the HMP part allowing the legal process to move forward. There has always been a need for Right to Counsel, and this need is greater

than ever. Indeed, this is the time for more expansive implementation of the program, without regard to zip code or income.

While it is important to celebrate our shared accomplishments, it is also important to learn from the growing pains and bumps in implementation so that we can continue to move forward effectively. There is still much left to be done. At the end of year two of the program, 38% of tenants were represented, which left 62% who were not. This year has only increased the challenge of implementation. As a community based legal service provider, CAMBA Legal Services, and our Leap partners, feel very strongly that a community based approach to implementation of Right to Counsel is critical. Some of the components that we believe are key to full implementation are the following:

- **Greater Stakeholder Cooperation – Representatives of the Office of Civil Justice, Tenant Community, Landlord and Tenant Bars, and the Court should begin meeting regularly as a small committee to continue developing and fine-tuning the virtual court system.** A committee would act as an intermediary between the stakeholders, and coordinate input in a rational way as the program scales up. We have a system that is not perfect, but by working together we can ensure that as virtual court expands we are able to fully implement Right to Counsel in a meaningful way.
- **Virtual Work – All stakeholders must continue to work together to develop the capacity to provide services virtually.** As the COVID-19 pandemic has required us all to adapt in unexpected ways, we have learned that we can do this

work virtually. Legal service providers have proven to be nimble in how we have adjusted to entirely new office and court practices. Through these challenges, we are continuing to increase our effectiveness as providers.

- **Tenant Awareness, Outreach and Education – Legal service providers, with support from the Office of Civil Justice and the Court, must continue to do the hard work of connecting to tenants in need, giving them the information and tools they need to preserve their housing.** Meaningful connection to tenants in need is critical to the long term success of Right to Counsel. Many tenants still do not know about the program, never make it before a judge and give up their apartments through intimidation. With so much public confusion and uncertainty regarding the housing court process, we already see landlords resorting to improper means to compel tenants to give up their apartments. Tenants must be able to rely on neighborhood based groups who have a history of tenant organizing and community service to get good reliable information out to them on Right to Counsel and other housing issues like inadequate services and landlord harassment.

We have accomplished so much in this first 3 years of implementation, even as the world has changed dramatically. We are serving our clients in the virtual courtroom every day. Since the beginning of the pandemic, we have been on the phone with our clients helping them work through diverse problems such as issues with the Access HRA app,

connecting them with food pantries and other critical services, and understanding how each new change in the legal landscape over the course of the pandemic affects their cases.

Even in the midst of this pandemic, the program has help tenants in particularly precarious positions. One such client is Ms. Jones (not her real name). In her case, the landlord tried to evict her by claiming the apartment was not subject to rent regulation. Ms. Jones' case was set to go to trial right when the COVID-19 lock-downs swept through New York City and was subsequently delayed. Once the court system opened up and insisted on moving forward with trials, our office quickly prepared to do something it never did before: a virtual trial. The preparation took place even though Ms. Jones lost cell phone service due to pandemic related loss of income and despite our due process concerns. Our office was able to overcome these issues, and represent Ms. Jones in a fully virtual trial. In that virtual trial, we demonstrated that the landlord had illegally collected rent increases, and that the apartment was in fact subject to rent stabilization. Based on the record we created, through our virtual trial, the court dismissed the landlord's case. It is hard to imagine what would have happened to Ms. Jones if she were forced to have a trial without an attorney during these times. To our collective benefit, Ms. Jones was not evicted in the middle of this pandemic thanks to Right to Counsel.

Thank you again for giving us the opportunity to testify. Despite our shared challenges, there is so very much to be proud of, to celebrate, and to be thankful for. We look forward to working together to ensure that all tenants have a Right to Counsel to preserve their housing.



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Communities Resist is a community-based legal services organization in North Brooklyn founded on the understanding that housing justice is racial justice and that legal services must be in support of community based tenant organizing. Our work and model of legal advocacy is entirely focused on group representation. This means that we almost exclusively represent tenant associations in affirmative cases for improved conditions and to combat tenant harassment and discrimination. We envision a New York City where the communities most vulnerable to displacement hold the power to defend their homes and to define the future of their neighborhoods.

We submit testimony in solidarity with the Right to Counsel Coalition, of which we are a proud member, and in enthusiastic support of the immediate implementation of the right to counsel in New York City. We also write in support of the immediate, statewide expansion of the right to counsel. As Covid-19 continues to devastate communities across the city and state, further exacerbating glaring racial and economic disparities, the need becomes even more urgent for immediate citywide implementation and statewide expansion of the right to counsel.

It is clear that the right to counsel works to prevent evictions in New York City. In 2018 and 2019, 84% of tenants who had a Right to Counsel lawyer were able to continue living in their homes. Evictions have dropped 29% in Right to Counsel zip codes since the law took effect-- which is nearly double the rate of comparable zip codes. As a result, thousands of tenants across the city have been able to remain in their homes and communities.

Yet the law still does not adequately cover all tenants who are at risk of eviction. For instance, the City has failed to recognize and address newer eviction tactics. In addition, many tenants who cannot afford lawyers are still excluded from the right to counsel based on the existing income limitations. And tenants with disabilities face access barriers that have only gotten worse during the pandemic.

The immediate citywide implementation of the right to counsel is a step toward addressing these problems. The right to counsel should also apply to NYCHA administrative hearings and Supreme Court actions. Tenants who cannot afford lawyers need more realistic income guidelines so that they can qualify for the right to counsel and stay in their homes. And, in the absence of a universal eviction moratorium and rent cancelation, we believe only cases with the right to counsel should move forward.

Lastly, we recognize that the fight for housing justice must advance racial, gender, and economic justice as well. Evictions negatively affect tenants' physical and mental health, employment, and ability to secure future housing. As such, we ask that the right to counsel extend to cover services that intersect with housing for a more holistic approach to the issues affecting tenants. This expansion should work with and support community based organizations as well as with tenant organizing. It has been our experience working with tenant organizers in community based organizations that they fill a crucial need in outreach (as most tenants are still unaware of Right to Counsel's existence) but also as front line advocates coordinating access to social services.

Attachment to NYC Office of Civil Justice Annual Hearing Testimony
Provided by The Legal Aid Society
November 23, 2020

September 4, 2020

The Honorable Andrew M. Cuomo
Governor of New York State
New York State Capital Building
Albany, New York 12224

Dear Governor Cuomo:

New York continues to teeter on the edge of an unprecedented housing crisis as a result of the COVID-19 pandemic. A staggering number of New Yorkers have lost their jobs, some permanently, and over 1.4 million households currently face housing instability or rent shortfalls. Statewide, unemployment was 14.5% in June 2020 and the federally enhanced unemployment insurance, which has helped many to stabilize their finances during this period, expired on July 31, 2020. A recent analysis prepared at the request of the Housing Working Group¹ estimates that over 1.1 million households in New York State cannot pay rent and these rent shortfalls, which began in mid-March, are projected to aggregate at a rate of over \$875 million per month.² Unaddressed, this will lead to an astounding number of eviction proceedings, dislocation and potential homelessness. The impact will adversely affect all New Yorkers, but the consequences will fall most heavily on low-income people of color who constitute the vast majority of respondents in eviction cases and who are the most critically affected by the COVID-19 pandemic.

The Housing Working Group met throughout May, June and July to evaluate the current state of housing courts in New York State and to assess the ability of such courts to respond to this unparalleled crisis. The Housing Working Group released a report on July 9, 2020 (the “Report”) noting that while there is no perfect or singular solution, there are a number of initiatives that the courts and private bar can undertake to make housing relief more accessible across the state. In the Report, which is enclosed, the Housing Work Group made recommendations to expand the availability of assigned legal counsel to qualified tenants in cases in housing courts throughout the state (the “Housing Courts”) and made recommendations with respect to certain court procedures that would relieve the burden on the court system and help curtail evictions.

We recognize and acknowledge the Tenant Safe Harbor Act (“Safe Harbor Act”) which you signed into law on June 30, 2020. That law relieves an impending surge in eviction cases that would have been sought at the expiration of the moratorium and has the immediate effect of ameliorating the risk of homelessness in the near term for those that have COVID-19 related

¹ The COVID-19 Recovery Task Force, convened and sponsored by the New York State Bar Association (“NYSBA”) at the request of Chief Judge Janet DiFiore, is led by former Chief Judge Jonathan Lippman, Of Counsel at Latham & Watkins LLP. The COVID-19 Recovery Task Force’s Housing Working Group, which consists of experts from the tenant, landlord and judicial communities, is led by Alan Levine, Senior Counsel at Cooley LLP.

² Analysis prepared by Stout Risius Ross, LLC based on household data by income level rent burden based on U.S. Census Bureau table B25074 for New York State and rent payment confidence data based on the U.S. Census Bureau Household Pulse data for June 25-June 30.

financial losses. However, it is not a panacea to the overall problem. There are still 200,000 pending eviction cases not covered by the Safe Harbor Act and thousands more that will be commenced based on arrears accruing after the COVID-19 covered period ends. Indeed, the Safe Harbor Act does not prevent petitions from being brought altogether, rather it removes the threat of eviction for non-payment cases during the limited COVID-19 covered period if the tenant demonstrates a COVID-19-related financial burden to the court. Landlords can still file petitions seeking unpaid rent against tenants. Because those petitions result in money judgments against tenants, low income working people will be subject to wage garnishments and will struggle even more to pay rent. For some tenants, proving financial hardship related to COVID-19 will be challenging. The Safe Harbor Act does not provide a mechanism to help with rent arrears or ongoing rent nor does it reduce rent arrears through public assistance support provided by New York State and City.

The Report emphasizes the need for access to legal counsel and modifying court procedures but even if they are implemented, they are not sufficient to ameliorate the surge in eviction cases. If a right to counsel is established, tenants still need housing assistance. Ensuring that such financial assistance is available to tenants in distress, including those who have never needed it before, is essential. Currently available assistance is inadequate to meet this demand and there are New Yorkers whose needs are not met by any currently available program. Accordingly, the recommendations in this letter center on ensuring that New Yorkers have access to the financial assistance needed to prevent evictions and homelessness across New York State due to the impact of COVID-19. The current shortfall in available assistance is a critical issue that must be addressed.

RECOMMENDATIONS TO ENSURE ACCESS TO FINANCIAL ASSISTANCE NEEDED TO PREVENT EVICTIONS AND HOMELESSNESS

Fundamental to ameliorating the dire financial consequences of the COVID-19 crisis is to make housing assistance more accessible to those in need and better tailored to the unique circumstances presented. Each of the following recommendations will help stakeholders address the housing needs of tenants and landlords in financial distress and, combined with the right to counsel recommended in the Report, will prevent evictions and homelessness. Some of the recommendations involve changing the existing forms of rental assistance to match the available funds with the COVID-19 related financial need. Some of the recommendations involve funding new forms of rental assistance, and other increased associated costs, for vulnerable tenants, including those who do not qualify for current forms of financial assistance and require financial aid to remain stable in their home (mostly adults without a child in the home). No matter which category of rental assistance, the savings realized by preventing evictions and homelessness are substantial. An independent study commissioned by the New York City Bar Association found that preventing the evictions of 5,000 households alone could save New York City \$251 million dollars.³

³ See THE ASSOCIATION OF THE BAR OF THE CITY OF NEW YORK, REPORT ON LEGISLATION BY THE SOCIAL WELFARE LAW COMMITTEE AND THE HOUSING AND URBAN DEVELOPMENT COMMITTEE (2019), <https://s3.amazonaws.com/documents.nycbar.org/files/2017168-HomeStabilitySupport.pdf>.

In forming these recommendations, the Housing Work Group examined current assistance programs including (i) programs administered by the Office of Temporary and Disability Assistance (“OTDA”) and local social services districts, including NYC’s Human Resources Administration (“HRA”) which include (a) ongoing cash assistance (“Family Assistance” or “Safety Net Assistance”) including a regular amount for rent needs (called the “shelter allowance”); (b) “one-shot” deal programs (the emergency assistance programs for adults (“EAA”), for families with children (“EAF”) and emergency safety net assistance programs (“ESNA”)); and (c) ongoing rent supplements available to qualifying New York City residents who are eligible for ongoing cash assistance, including the State Family Homelessness Eviction Prevention Supplement (“FHEPS”) and CityFHEPS programs, and (ii) federal housing programs (a) including New York City’s Housing Authority program, which provides subsidized housing, and (b) other federal housing assistance programs, such as Section 8 vouchers and project-based Section 8.

We found that, while the existing aid programs remain critical, the housing crisis in New York existing prior to the COVID-19 pandemic was due, in part, to the imbalance between current local, state and federal financial assistance and housing costs which are increasing at a much faster rate than the median income, a dynamic which is only being exacerbated by the economic impact of the pandemic.⁴ The New York State Comptroller found that almost half of the renter households in New York State are rent burdened and one in four renter households are considered severely rent burdened.⁵ As a result, New York State has the highest per capita rate of homeless people.⁶ Statewide, there are over 250,000 homeless people including 150,000 homeless children per year. Every night, over 20,000 children and over 60,000 homeless adults sleep in New York City shelters.⁷ The collateral consequences of homelessness are well documented and include, among others, compromised health and mental health and increased obstacles to maintaining education and employment. Amidst the pandemic, homelessness is also

⁴ For example, the shelter allowance for rent available to recipients of cash assistance is far below the Fair Market Rent (“FMR”) levels. A one-adult household in New York City only receives \$215 towards rent; a couple receives \$250, and a family of four receives only \$450. In contrast, the FMR for a modest apartment in New York City ranges from \$1,665 for a studio, to \$1,951 for a two-bedroom apartment. The gap between the shelter allowance and FMR levels exists across NY State. For eligible families, State and City FHEPS fills in much of the gap between the shelter allowance and FMR, but is subject to rent caps, which means as the FMR increases, fewer households are able to take advantage of the program.

⁵ THOMAS P. DiNAPOLI, STATE COMPTROLLER, HOUSING AFFORDABILITY IN NEW YORK STATE, OFFICE OF THE NEW YORK STATE COMPTROLLER (2019), <https://www.osc.state.ny.us/reports/housing/affordable-housing-2019.pdf>.

⁶ See THE U. S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT, THE 2019 ANNUAL HOMELESS ASSESSMENT REPORT (AHAR) TO CONGRESS: PART 1: POINT-IN-TIME ESTIMATES OF HOMELESSNESS (2020), <https://files.hudexchange.info/resources/documents/2019-AHAR-Part-1.pdf>.

⁷ See GISELLE ROUTHIER, POLICY DIRECTOR, COALITION FOR THE HOMELESSNESS, STATE OF THE HOMELESSNESS 2020, COALITION FOR THE HOMELESS (2020), <https://www.coalitionforthehomeless.org/wp-content/uploads/2020/03/StateofTheHomeless2020.pdf>; see also Coalition for the Homeless, *Memorandum in Support* (Jan. 30, 2019), <https://static1.squarespace.com/static/57e97a8803596e728b8e3827/t/5c8154fbb208fc530a51ada2/1551979771249/CFTH+memo+A1620.pdf>.

increasingly lethal, as homeless New Yorkers have no home to which they can retreat and experience higher rates of infection due to the COVID-19 exposure in densely populated shelters.

Without intervention, the current crisis will cause a significant increase in these already dire numbers. Existing rent subsidy programs are generally available to families with children in New York City who otherwise meet stringent eligibility criteria, but those with children over the age of 18, couples without children, and individual adult households are generally ineligible and lack access to meaningful assistance. As FMRs increase over time and subsidy levels remain static, the available assistance becomes increasingly inadequate. Federal housing programs like Section 8 are not a realistic alternative. For example, in New York City, the Section 8 waiting list is currently closed to new applicants, but it is not uncommon for those who are already on the list to wait ten years or more for an available voucher. While certain elements of the application process for available assistance have been modified to deal with the already high demand, the eligibility criteria and levels of assistance have not been modified nor have gaps in the types of households covered by the existing programs been filled.

To address the insufficiencies of this landscape, the Housing Working Group proposes four categories of housing assistance-related recommendations: (1) creating a stream-lined application process accessible to tenants and landlords; (2) enacting critical modifications to the terms and eligibility criteria for existing relief programs; (3) adopting changes that will prevent cases from going to housing court and otherwise alleviate homelessness; and (4) implementing additional programs to fill the gaps in assistance available to the variety of households who need help statewide. The clear first step is to modify existing programs. However, once one evaluates the existing programs against the expected need presented by COVID-19, it is clear that additional programs are needed to give all households adequate protection.

1. Recommendation: Create a “One-Stop” Portal for Tenants to file a Single Application for Rental Assistance.

As a threshold matter, we note that to manage this complex patchwork of existing and new subsidies and grants, it is imperative that New York State either devise or commission a streamlined “one-stop” portal where tenants can file a single application for rental assistance containing pertinent information for the full range of available assistance instead of the current process which involves multiple applications and multiple points of contact. In addition to being more efficient for the government agencies and tenants, such a system has fewer negative public health consequences. It also has the added benefit of making it easier for landlords to directly upload documents needed to commence the process of obtaining assistance. Finally, as new forms of federal assistance being urged by stakeholders are adopted, the State needs such a streamlined system to best conserve assistance with the most generous eligibility criterion for those who are not eligible for other forms of assistance. Such coordination is key to the efficient and timely use of available funding, especially given the urgent needs.

2. Recommendation: Modify Existing Assistance Programs To Expand Eligibility And Program Reach.

As an initial step to secure housing assistance for New Yorkers who need it, existing programs need to be modified to make sure that program terms are adequate to prevent eviction and that eligibility rules are modified to expand program reach to more New Yorkers in need.

a. **Increase Assistance Available Under Existing Programs.**

Existing assistance under the New York State FHEPS program (which is only available in New York City) should be expanded to all New York State residents and increased to FMR levels. The state should likewise require New York City to make parallel increases in the City FHEPS program. This is essential because the maximum rent permitted under FHEPS and CityFHEPS is below the median FMR for an apartment that accommodates a family. For example, the maximum rent the State FHEPS program permits a family of four is \$1,580 per month (many are limited to \$1,311), which is below the median rent for a 2-bedroom apartment in New York City at \$1,951. Increasing these subsidies will help many more households affected by COVID-19 pay the rent and ultimately prevent an increase in homelessness.

b. **Modify Eligibility Rules to Expand Access to Existing Programs**

Eligibility for cash assistance is in turn a condition of eligibility for major subsidies like FHEPS and other forms of rental assistance. Accordingly, expanding eligibility for cash assistance during the current period of economic distress will mean more New Yorkers will have access to rent assistance. Even outside the emergency situation which exists now, State Social Services Law authorizes OTDA to establish regulations defining income and resources. The Housing Working Group urges you and OTDA to exercise your executive authority to adopt the following key changes during the pendency of the crisis triggered by COVID-19:

- i. **Increase or Suspend the Cash Assistance resource limit.** Households seeking cash assistance are generally required to use resources to reduce the need for assistance. The applicable statute and regulations exempt \$2,000 from the resource limit consideration (or \$3,000 for households containing members age 60 or over). During this unprecedented crisis, these extremely low limits are not good public policy, as they ask New Yorkers who need even short-term assistance to put themselves in a more unstable economic situation long-term by relinquishing savings, including 401K savings, life insurance policies and tax refunds (which count for rent arrears applicants). These resource limits should be suspended during the economic crisis.
- ii. **Eliminate income rules that exclude families who have lost hours of work or have had household wages reduced from program eligibility.** Stringent income limits should also be eliminated during the pendency of the economic crisis to increase access to assistance, especially for households who have lost work but may continue to have earned income below the federal poverty level. Accordingly, New York State should (a) suspend the bar on eligibility for families who have earnings that exceed 185 percent of the “standard of need” (another name for the amount of the welfare grant) because many such families still have income below the

federal poverty level and need assistance during this time⁸; (b) change the rules for disregarding earned income to make them apply to all New Yorkers, not just those whose households include children and increase the amount of income disregarded from 54 percent to 75 percent⁹; and (c) apply the disregarded income to all new applicants, not just those who received cash assistance within the past four months.

- iii. **Treat as non-reportable income all forms of COVID-19 related federal assistance.** All federal assistance that is provided to address the economic crises created by COVID-19 should be excluded as income for the purpose of program eligibility. For example, Pandemic Unemployment Compensation (PUC) insurance payments, which have now lapsed, have been considered unearned income and must be budgeted when determining eligibility for cash assistance. *See* GIS, 20 TA/DC035. Even the U.S. Housing and Urban Development agency did not take this approach to counting PUC.¹⁰ New York State should likewise commit to treating all forms of federal assistance that become available as invisible for the purposes of budgeting. Such benefits are a supplement to the economic stability of New Yorkers during the pandemic, not an excuse to deny support to New Yorkers.
- iv. **Suspend limitations on recurring housing assistance, including “one-shot” deals that limit emergency rental assistance for those who have previously received one-shot deal rental assistance and have subsequently been affected by the COVID-19 pandemic.** Currently, individuals who have received a “one-shot” EAA grant may only receive a maximum of four months of rent in a 12-month period. Individuals who receive a “one-shot” EAF or ESNA grant are limited to a total of six months of rent once every five years. Similarly, other benefits are limited to a maximum of six months of rental arrears payments in every five (5) years or, for those who received Supplemental Security Income, a maximum of four months of rental arrears payments every 12 months. To increase access to emergency assistance for adults and households previously assisted, these limitations should be suspended on a state-wide basis for the duration of the COVID-19 pandemic for individuals who have been affected by the COVID-19 pandemic.
- v. **Suspend “one-shot” deal requirement that tenants be able to prove a future ability to pay rent prior to receiving assistance.** Currently, individuals seeking rent assistance under the emergency assistance to children with families, or emergency safety net assistance “one-shot” deal, must prove a future ability to pay their rent. This requirement should be

⁸ *See* Soc. Serv. L. § 131-a (10).

⁹ *See* Soc. Serv. L. § 131-a (8); GIS 20 TA/DC-52 (May 27, 2020) (raising disregard to 54 percent).

suspended for those who have been affected by the COVID-19 pandemic. Individuals who are between jobs for example or who have not yet been able to secure employment at the time of their application for emergency financial assistance, should still be eligible for the emergency financial assistance.

3. Recommendation: Adopt Solutions that Prevent the Need to File Cases in Housing Court and Otherwise Alleviate Homelessness.

The commitment to prevent homelessness during this unprecedented crisis in a manner that minimizes the health risk of sending tenants to overcrowded housing courts requires adopting measures that enable stakeholders to resolve issues at an early stage and prevent the need to file cases altogether. Unless relief is structured to achieve this goal, housing court will be overwhelmed with tenants, landlords, and counsel all needing immediate relief, and their presence will further jeopardize public health in communities throughout New York State. To achieve this goal, we recommend adoption of the following interrelated policies:

a. **Accept Notices of Default and Rent Demands to Prove Eligibility for Housing Assistance.** Rent demands and notices of default made by landlords should be substituted for any existing requirement that a lawsuit be filed as an eligibility criterion for both existing forms of rental assistance and new forms of assistance. This will not only save the cost and time of litigating a case in housing court, it will prevent evictions and homelessness and prevent adverse public health outcomes. The State can save people from exposure to COVID-19 and homelessness with this change. Accepting rent demands and notices of default instead of requiring lawsuits will also enable assigned counsel, as recommended above, to resolve cases at an earlier stage, and even prevent the need for the filing of a case. Verified rent bills or ledgers showing a balance could also be used to trigger access to benefits.

b. **Forgive and Suspend Repayment of Rental Assistance for Struggling New York Families.** Given the extraordinary level of unemployment and the widespread impacts of the economic downturn, the State should suspend repayment obligations for recoupable forms of assistance, permanently or at least until the economy has recovered. In this unprecedented time of economic uncertainty, families who need help should not face debt collection down the road.

c. **Extend the temporary elimination of face-to-face requirements for benefit applications.** The State has already recognized the importance of allowing application and recertification interviews by telephone instead of face-to-face in an effort to reduce the likelihood of transmission of COVID-19.¹⁰ However, the suspension of the face-to-face requirement, see 18 N.Y.C.R.R. Secs 350.3(c), 351.20(b)(3), only extends through September 4, 2020. The waiver is of critical importance to enable New Yorkers and local agency staff to

¹⁰ See GIS 20 TA/DC016 at 2; GIS 20 TA/DC028 at 1; date extended by GIS 20 TA/DC057 (extending date to August 5, 2020), GIS 20 TA/DC078 (extending date to September 4, 2020).

remain healthy during the pandemic and should be extended until at least all restrictions are lifted throughout New York State.

d. **To help relieve the homelessness crisis, ensure adequate assistance is available to households whose apartments cannot be saved, especially in New York City.** Even if all recommendations of the Housing Working Group are adopted, some families will still become homeless. The state funded “HomeBase” program in New York City plays a key role in not only preventing homelessness but helping families exit the shelter system. The steps below should be adopted to ensure that, for those who do become homeless, the duration of their stay in a shelter is minimal:

- i. **Prevent entry into the shelter system** - In cases where housing cannot be saved, eligible households should be assigned to their local HomeBase to obtain state or CityFHEPS “shopping letters” to look for new apartments, so families do not all enter the shelter system at the same time, which would further exacerbate the homelessness and public health crisis, especially in New York City.
- ii. **Help families move instead of having to enter shelter** - The state can help families who need to move by increasing assistance with brokers’ fees for families who receive State FHEPS from half a month’s rent to fifteen percent of a year’s lease, which is the amount of assistance recipients of CityFHEPS receive. The state should also include a signing bonus for landlords and payment of one month’s rent to hold an apartment if there is a delay in processing the move. This is a CityFHEPS practice. Finally, the state should direct HomeBase to help families safely search for suitable new housing by providing safe transportation to minimize the need for travel on public transportation.
- iii. **Provide cash security deposits for eligible households facing imminent homelessness** - While source of income discrimination protections prohibit landlords from refusing to rent to tenant applicants because they are utilizing a Department of Social Services Security Agreement, many landlords continue to refuse such agreements which prolongs the housing search process for low-income tenants. The state should instead provide cash security deposits for eligible households that seek new housing.

4. **Recommendation: Adopt New Programs To Fill Gaps In The Reach Of Existing Programs.**

In the existing landscape, there is no form of assistance available to many New York households who need help to avert evictions and homelessness. New York City is the only jurisdiction in which the ongoing State FHEPS subsidy is available, and it is limited to households with children under the age of 18. Single individual and adult-only households who are not among the very few able to obtain public housing or federal Section 8 assistance have few options for affordable housing. Outside of New York City, options are even more limited. Even households with children do not have access to FHEPS or a similar program. Current

programs help tens of thousands of households, but even with the adoption of the recommendations to modify these programs included above, they would still not cover a significant number of New Yorkers at risk of losing their housing as a result of a lost job due to the COVID-19 pandemic. In order to settle disputes expeditiously, reduce the number of matters litigated in the courtroom, compensate landlords and keep tenants in their homes, new subsidy programs need to be implemented.

Accordingly, we recommend that New York State expeditiously adopt new short-term and long-term subsidies as authorized by regulation and Social Services Law § 131-a (2)(b). As a general matter, these subsidies should be available to meet rent obligations at FMR levels. They should also be available regardless of household members' immigration status.

Short-term subsidies are especially needed to assist clients facing holdover actions or non-payment cases where the household is ineligible for other subsidies because their rent is too high. Such subsidies should be available for up to a year to avoid tenant displacement during the crisis. The subsidy would require the household to pay no more than 30 percent of their income towards rent, with the remainder being covered by the subsidy.

Longer-term subsidies are especially needed for three categories of households currently underserved and disproportionately impacted by COVID-19: (i) seniors; (ii) households who are in receipt of federal disability or survivors benefits or Supplemental Security Income whose income is at or below 250 percent of the Federal Poverty Guidelines and who are not eligible for existing State FHEPS or CityFHEPS subsidies; and (iii) other households that have been severely impacted by COVID-19 in a way that is likely to be long-term. If a FHEPS-like subsidy was made available to tenants around the state at FMR levels, including households that do not contain children under 18, it would go a very long way to keeping New Yorkers securely housed and preventing homelessness and its attendant consequences and expense during the pendency of the economic crisis.¹¹

¹¹ We point the state to two model programs that are currently the subject of pending state legislation and enjoy broad support among stakeholders: the Housing Stability Support ("HSS") program (A.8178 Hevesi/ S.2375 Krueger) and the Housing Access Voucher Program (S.07628 Kavanagh)/A.9657 Cymbrowitz). HSS would establish realistic rent supplements up to the FMR, with increases for inflation, to prevent eviction and homelessness statewide to a variety of household types, and would cost significantly less than the average cost of housing the same households in shelters. For example, vouchers would cost \$11,224 annually for a family of three in New York City, compared to \$38,460 in shelter fees; \$10,296 for a family of three in Westchester County versus \$57,040 in shelter fees; and \$4,687 for a family of three in Monroe County compared to \$32,400 in shelter fees. *See* David Brand, *Despite Broad Support, Albany Might Again Balk on Rental Help for the Homeless*, CITYLIMITS (Feb. 19, 2020), <https://citylimits.org/2020/02/19/despite-broad-support-albany-might-again-balk-on-rental-help-for-the-homeless/>. The Housing Access Voucher Program would create a state-wide Section 8 program to provide low-income New Yorkers with access to safe and affordable housing, just as our neighbors in Massachusetts and Connecticut have done. Like Section 8, the program would provide homeless and low-income New Yorkers with affordable housing vouchers, capping tenants' rent at 30 percent of household income to increase housing stability as beneficiaries' incomes rise and fall and would cover between 90 percent and 110 percent of a community's FMR. The program requires that at least 50 percent of all funding would go to individuals and families who are currently homeless, who are

Finally, many households only need help with arrears until their furlough ends or they secure a new job. While the existing rent arrears grants are available to many, they do not cover every household in need. New York State needs to ensure that new funding such as the federal ESG funds are used to fill existing gaps.

CONCLUSION

Neither tenants nor landlords will be able to carry the tremendous financial burden resulting from COVID-19. Without additional state and federal relief, homelessness rates of epic proportions seem all but inevitable. These recommendations, together with the Housing Working Group's recommendations in the Report, will provide much needed support to all stakeholders. Modifying these public assistance programs together with the changes recommended in the Report – improved access to counsel and modified court procedures – will go a long way to ameliorating the effects of this unprecedented crisis. We believe the State can and will step up to this challenge.

Sincerely,

Alan Levine (Chair), *Cooley LLP*

Edward Campanelli, *New York Legal Assistance Group*

Tina Foster, *Volunteer Legal Services Project of Monroe County, Inc.*

Beth Goldman, *New York Legal Assistance Group*

Adriene Holder, *The Legal Aid Society*

Seymour James, *Barket Epstein Kearon Aldea & LoTurco, LLP*

Kenneth Kanfer, *Kanfer & Holtzer, LLP*

Jason Polevoy, *Patterson Belknap Webb & Tyler LLP*

Andrew Scherer, *New York Law School*

extremely vulnerable during the pandemic. An added benefit is that the program would be administered by the public housing authorities throughout the state, the same authorities that already administer the federal Section 8 program.

Sara Wagner, *Teamsters Local 237 City Employees
Union Legal Services Plan*

Housing Court Answers
Testimony before the Office of Civil Justice
By Jenny Laurie, Executive Director
1..23.2020

Housing Court Answers operates a hotline, funded in part by the city, to assist with the implementation of Right to Council. The number is given to tenants by the court (and through a required notice from landlords) for help with filing answers and connecting to legal representation.

At the beginning of the COVID 19 pandemic, we were assisting tenants who had no idea how they would pay the rent, tenants with no food in the house, and tenants who had a death in the family and needed access to burial assistance. While the full moratorium was in effect, we could focus on getting folks access to basic life needs – meals, gift cards, benefits, information on utility and phone cut offs. We were able to assist tenants with emergency repair actions using a website created by JustFix and to focus on tenants who were illegally locked out, facing intense harassment or had other emergencies threatening their housing stability.

During April, we received about 50 calls a day from tenants; by October we were receiving about 200 calls a day; today, we had received over 600 calls by 1pm. We are now talking mostly to tenants facing eviction – how to answer, how to connect with legal representation, and how to get help with rent arrears.

Last week, the court issued a directive to further restrict in person activity in the courthouses because of the rising wave of COVID19 cases. The CDC canceled Thanksgiving. The Mayor closed the New York City school system for in person instruction. And in the midst of all this, the court has just sent 40,000 tenants a letter telling them they face eviction.

The letter includes a copy of the answer form and says “you can bring a copy of your written answer to the courthouse in-person, but you may not be able to get into the courthouse right away due to the health and safety requirements. DO NOT WAIT UNTIL THE LAST MINUTE TO ANSWER IN-PERSON. Not being able to get into the courthouse may not be an excuse for failing to answer.”

It’s all too much – too much for the tenants who have had a horrible year and are facing a brutal time next year if their eviction cases go forward. It’s clearly too much for the court system – hundreds of callers have reported to us that they cannot get through to the answer clerks or that they were not allowed into the buildings to file an answer.

While there has been an utter failure at the top levels of government, there are so many folks in community organizations and at city agencies who have met the challenge of the pandemic and gone out of their way to help others who are in great need. I want to thank the staff of the Office of Civil Justice and HRA. You have done a really great job and your commitment to making right to counsel work has been so helpful to all of us in the advocacy world.

The Right to Counsel law, now in its third year of implementation, has been a tremendous success. HCA is proud to have been a part of the RTC Coalition’s campaign to both win the law and, after its passage, to win a just implementation. Thanks to the law, we now have a robust rank of attorneys, paralegals and other support staff for eviction defense. This, we hope, will

result in a much lower number of pandemic-caused evictions than we might have seen without the law.

I echo what others have said or will say tonight for what needs to be done going forward:

1. Right to Counsel is all the more important now during the COVID-19 pandemic to prevent evictions and the fear of evictions.
2. The city should make sure that tenants facing eviction know about the right to counsel. The messages tenants receive from landlords and the courts add to their anxiety and the possibility that tenants will give up apartments or default in their eviction cases.
3. The Office of Civil Justice should play a coordinating role with the courts in calendaring the cases and ensuring that all tenants in eviction cases, emergency HP Actions, and illegal lockouts have full legal representation.
4. Right to Counsel should be available to all tenants regardless of income and zip code.
5. The City Council should enact Intro 2050 which would require immediate implementation of Right to Counsel.
6. The city should fully fund the current counsel program – including sufficient funding for robust services to prevent housing instability so to include case management, mental health services and paralegal assistance.
7. Enact statewide legislation for a full universal moratorium and for a statewide Right to Counsel law.

Thanks again to all who have worked so hard to make Right to Counsel work for New York City tenants. Right to Counsel will make a huge difference to tenants facing eviction during the city's worst pandemic ever.

John K. Carroll
President

Janet E. Sabel
*Attorney-in-Chief
Chief Executive Officer*

Adriene L. Holder
*Attorney-in-Charge
Civil Practice*

NYC OFFICE OF CIVIL JUSTICES' PROGRAMS TO PROVIDE UNIVERSAL ACCESS TO
LEGAL SERVICES FOR TENANTS FACING EVICTION

HEARING: NOVEMBER 23, 2020

TESTIMONY OF THE LEGAL AID SOCIETY
Presented By: Julia McNally, Director of Housing

The Legal Aid Society

The Legal Aid Society, the nation's oldest and largest not-for-profit legal services organization, was founded in 1876 to provide free legal representation to marginalized New York City families and individuals. The Legal Aid Society's legal program operates three major practices – Civil, Criminal and Juvenile Rights – and through a network of borough, neighborhood, and courthouse offices provides comprehensive legal services in all five boroughs of New York City for clients who cannot afford to pay for private counsel. Each year, the Society handles more than 300,000 cases and legal matters for clients, taking on more cases for more clients than any other legal services organization in the United States.

Our Civil Practice works to improve the lives of low-income New Yorkers by helping vulnerable families and individuals to obtain and maintain the basic necessities of life - housing, health care, food and self-sufficiency. We serve as a “one-stop” legal resource for clients with a broad variety of legal problems, ranging, among others, from government benefits and access to health care, to immigration and domestic violence. Our depth and breadth of experience is unmatched in the legal profession and gives the Society a unique capacity to go beyond any one individual case to create more equitable outcomes for individuals, and broader, more powerful systemic change at a societal level. Over the last fiscal year city-wide, we worked on more than 41,500 cases benefiting more than 103,300 low-income children and adults.

Our work has always taken an explicit racial and social equity lens and the current crisis has further focused our efforts to advocate for the needs of New York's marginalized communities. For clients

Justice in Every Borough.

for whom we have data, more than 90% identify as people of color. We represent significant numbers of low-wage and service workers. All these groups are populations that are disproportionately impacted by COVID-19 infections in New York City, are far more likely to experience serious medical issues or fatalities¹, and will continue to be impacted by future economic slowdowns long after the initial crisis subsides.

We offer this testimony to provide feedback and recommendations about the implementation of Local Law 136, also known as New York City’s historic right-to-counsel law (UA), which tasks the Office of Civil Justice (OCJ) with providing access to legal services for tenants facing eviction in housing court or termination of tenancy in New York City Housing Authority (NYCHA) administrative proceedings.

UA Has Been Key to Protecting Vulnerable Tenants- and all New Yorkers- During the Pandemic

Covid-19 has devastated New York City, altering daily life, disrupting essential services, and killing thousands of people. The secondary effects of this pandemic have also been significant: closing schools, overwhelming hospitals, shuttering educational and cultural institutions, and destroying many aspects of the economy. As mentioned earlier, Covid-19 has also disproportionately impacted communities of color. It is low-income, people of color, and some immigrants who have fallen ill and died at greater numbers given their employment in industries with the least economic security, and deemed “essential” i.e., service-sector jobs, food preparation and delivery, building cleaners and janitors, transportation operators, personal care, home health aides, and service providers. Their need to work to survive in the midst of a pandemic places these workers at increased risk of exposure to Covid-19. They are also working in the “gig economy” where they are afforded far fewer rights, protections, and benefits of traditional employees.²

It is also these same populations who have lost service-sector jobs, such as in the restaurant and food delivery industry, taxi and car-service, and other person-to-person fields. Finally, these same populations are the most likely to live in substandard housing and to pay a higher portion of their income towards it as rent. In sum, many of the most vulnerable in New York to the pandemic are also the most vulnerable to harassment, displacement, and eviction. The effects of an eviction cascade outward. When a family is evicted, they are scattered across the city, and forced to bed down in conditions where social distancing is impossible. They double-up with relatives or enter the

¹ Data from the initial outbreak show that Black or African American New Yorkers in the five boroughs are twice as likely as white New Yorkers to die from the novel coronavirus and are more than twice as likely to experience a non-fatal hospitalization. See: <https://www1.nyc.gov/assets/doh/downloads/pdf/imm/covid-19-deaths-race-ethnicity-04162020-1.pdf>

² Because of the economic insecurity inherent in these industries, many essential workers have little choice but to work during this crisis even if they are living with comorbidities. Black people are more likely to be employed as essential workers. Although Black people make up 21% of all workers in New York City, they make up 33% of essential workers. Similarly, Latinx workers make up 27% of all New York City workers and are 30% of all essential workers. Immigrants in New York City make up 53% of all essential workers. See: <http://fiscalfpolicy.org/wp-content/uploads/2020/04/Essential-Workers-Brief-Final.pdf>

shelter system. They're churned through homeless intake centers, public assistance offices, and hospitals, and, of course, Housing Court. Under these conditions, an infection could spread like wildfire.

Pre-pandemic, UA and associated OCJ funded housing programs enabled The Legal Aid Society to work on nearly 13,500 cases in FY19. In this past FY20 which includes the first 4 months of the pandemic, we worked on more than 10,000 cases. We have successfully assisted in keeping tenants safely housed through our advocacy and litigation throughout all five boroughs of New York City. UA has allowed us to help many thousands of New Yorkers transform their apartments into their homes, by providing long-term stability, protecting health and safety, and safeguarding bedrock communities. We have hired a new core of dedicated and talented attorneys to help tenants to fight eviction and displacement, for apartment conditions to be addressed, and for harassing behavior by landlords to cease. These new lawyers will be key parts of the tenant rights movement in New York City, and help to establish the foundations for a permanent right to counsel program in New York City. Our work through UA has also helped serve as a model for other jurisdictions to follow in securing the rights of tenants in their cities.

After Covid-19 hit New York, lawyers at The Legal Aid Society immediately understood the link between public health and housing – that unsafe, overcrowded housing can be a vector for the spread of a such a disease. With the encouragement of OCJ, we took on cases to fight against harassment, neglect, and illegal evictions which all had the life-or-death consequence of displacement during a pandemic. We were also able to use our platform as a UA provider to advocate for reforms to the housing court filing process so that organizations like JustFix could create digital tools for tenants to safely and remotely file HP and harassment cases. We also advocated for system-wide reforms, like eviction moratoria, the Safe Harbor Act, rent relief, and other policies.

In sum, through UA and associated OCJ funded housing programs, The Legal Aid Society was able to fight to protect thousands of vulnerable tenants during the pandemic, to advocate to reform the eviction system permanently, and to protect the public health of all New Yorkers by allowing many to remain safely in their homes. We remain grateful for this important partnership and the City's investment in UA and associated housing programs. This investment is one of the smartest and most effective public interventions to fight poverty.

Flexibility on Deliverables

Covid-19 was the unforeseen event of the century requiring. Building on our experience of responding to crises such as 9/11 and Superstorm Sandy, our response has combined direct advocacy with OCA, the Governor's Office, and State Legislature, with rapid scaling-up of our capacity to assist our clients and their emergent changing needs remotely. Fortunately, OCJ granted The Legal Aid Society and other providers the flexibility to continue to serve our vulnerable clients amidst a shifting landscape. OCJ allowed us to modify our deliverables under our existing contract to expand eligibility for our services, lower the barriers to eligibility determinations, and eliminating zip code

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limits for our services. Because of these changes, The Legal Aid Society was able to pivot to meet the needs of vulnerable New Yorkers.

The Legal Aid Society thanks OCJ for their support, and request that all providers be permitted to continue to apply flexibility of eligibility criteria, and permanently eliminate zip code phase-in restrictions in the immediate and long-term as our City strives to meet the continued demands posed by Covid-19 into the post-Covid world. We want to remain nimble, and have the financial support to address emergent needs in this new world to help as many of our client community households as possible.

Housing Hotline and Intake

OCJ had the foresight to launch a housing hotline early into the pandemic. To date, this vehicle has allowed The Legal Aid Society to connect with tenants on more than 3,650 calls about repair, harassment and lockout claims, and to answer questions about evictions, rent and rent relief, and other issues. We recognize how critical this tool was for people across New York City as they struggled to make sense of the impact of the pandemic on their homes. We ask OCJ to continue to maintain a dialogue with us and other providers as we refine this hotline to make it work more efficiently and effectively.

The Digital Divide and Virtual Conferences

As the court modified its own rules and procedures for court appearances during the pandemic, The Legal Aid Society and its lawyers had to adapt to new means of litigation: virtual conferences and hearings. OCA, as did many other institutions, took an ad hoc approach to the roll out and implementation of platforms such as Skype for Business and MS Teams. Curiously, OCA chose not to use Zoom, which is the preferred platform of most other institutions and business, including the New York City Department of Education. OCA neglected to properly account for the “digital divide” which leaves many of our clients unprepared for appearing in virtual proceedings because they cannot afford the required technology, including reliable, secure internet access.

As a result, the burden of helping low-income tenants exercise their due process rights fell on non-profits like The Legal Aid Society, who already have limited resources. We ask OCJ to be a partner with us to help us bridge the digital divide for our clients. We hope to collaborate to identify points of challenges in OCA’s systems, like filing answers, defaults, technology challenges, and language access. We believe that these issues impact the due process rights of our client community.

Similarly, we hope OCJ will partner with us as we press OCA to fix the New York State Courts’ e-filing system (NYSCEF). Presently, this system is cumbersome and faulty and totally unusable by many users. NYSCEF obstructs The Legal Aid Society from efficiently representing our clients.

Operational Issues

As stated above, the shifting landscape of housing court has hurt our clients. The courts need to enhance its technology, so it has one place on the web (and a phone system) where litigants can ask questions, access information regarding their court appearances, ask how to adjourn matters, obtain numbers and get specific procedural assistance about their matters. The Legal Aid Society has called on OCA to change its policy of defaults, which is opaque. Many tenants are not on notice of pending eviction proceedings, cannot come to court because of health issues, or do not want to risk exposure to Covid-19 by appearing in person. OCA seems focused on clearing its backlog of cases. OCJ should join us in advocating to change OCA's priorities.

Financial Assistance for Vulnerable Tenants

New York must provide rent relief. The pandemic has wrought unprecedented levels of economic loss. Tenants are struggling to make rent payments and living in fear of displacement and homelessness once the eviction moratoria are lifted. Although the Safe Harbor Act signed into law by Governor Cuomo on June 30, 2020 is an important step towards preventing massive evictions by making judgments obtained in certain non-payment cases non-possessory, the Act alone is not sufficient to address the crisis. Because it allows for money judgments against eligible tenants, over time, low income working people will see their wages garnished and will struggle even more to pay the rent. For some tenants proving financial hardship could be challenging. It does not provide a mechanism to help with rent arrears or ongoing rent.

Access to legal counsel and modifying court procedures are not alone sufficient to ameliorate the surge in eviction cases. Lawyers still need remedies like rent arrears relief, and housing assistance available to resolve cases. Ensuring that such financial assistance is available to tenants in distress, including those who have never needed it before, is essential. Currently available assistance is inadequate to meet this demand, and there are New Yorkers whose needs are not met by any available program. We also need access to rent arrears for undocumented families, and a subsidy program to support any tenant family who is rent burdened.

Attached to this testimony is a letter provided to the Governor in September 2020 outlining recommendations to ensure access to financial assistance needed to prevent evictions and homelessness. Our recommendations center on ensuring access to the assistance needed to prevent evictions and homelessness due to the impact of COVID-19 on our State. The current shortfall in available assistance is a critical issue we can partner with OCJ to immediately address.

Funding and Sustainability

We appreciate OCJ's commitment to funding The Legal Aid Society and other providers as we undertake UA. Moving forward, we ask OCJ to build sustainable funding into our contracts so we

can attract and retain dedicated staff and maintain high-quality operations as costs inevitably increase.

Conclusion

As we move through the many stages of this crisis, we remain on the frontline of efforts to ensure that the needs of New York's marginalized communities are met. We will continue to make the case for justice and equity. As our clients undergo this unparalleled crisis, we stand right there beside them. So much of this would not have been possible without the consistent investment of OCJ funding since 2014. On behalf of The Legal Aid Society, I thank you for your continued support, and again for the invitation to share our recommendations with you today.



**TESTIMONY OF LEGAL SERVICES NYC
REGARDING UNIVERSAL ACCESS TO COUNSEL
IN HOUSING COURT**

**Human Resources Administration
Office of Civil Justice**

November 23, 2020

Three years ago, the New York City Council passed landmark legislation establishing the Universal Access to Counsel program, which commits the City to make legal services available to all tenants facing eviction in housing court and public housing authority termination of tenancy proceedings. Today, in the midst of a global pandemic, the need for such services is even more acute, and we are fortunate that the City foresightedly laid the foundations three years ago for a program that today must play a key role in forestalling a tsunami of COVID-related evictions.

Legal Services NYC welcomes the opportunity to give testimony on this important topic before the Office of Civil Justice. Legal Services NYC is one of the largest law firms for low income people in New York City. With community-based offices and outreach sites located throughout each of the City's five boroughs, the mission of Legal Services NYC is to provide expert legal assistance that improves the lives and communities of low income New Yorkers.

According to OCJ's most recent report, over the last three years, the proportion of tenants obtaining legal representation in Housing Court has skyrocketed from 1 percent to over 30

percent, with the increase concentrated among the City's poorest and most vulnerable tenants.¹ The number of City Marshal evictions has declined by over 30 percent since 2013, from 29,000 to 20,000. OCJ estimates that over 84 percent of represented tenants were able to retain their homes. At Legal Services NYC alone, in the 2019 fiscal year, our attorneys and non-attorney advocates of assisted thousands of low income New Yorkers in avoiding eviction in the Housing Courts in all five boroughs. Every day, we witness first-hand what the OCJ has repeatedly observed in its annual reports: that the assistance of counsel makes a dramatic difference in the ability of tenants to prevent eviction and remain in their homes and their communities.

Today, the need for anti-eviction legal services is greater than ever. NYU's Furman Center estimates that as many as 142,000 low income New York families are unable to pay their rent due to COVID-19, with a monthly rental shortfall of \$267 million.² These families are maintaining their housing solely due to the existence of State and federal eviction moratoria that are currently due to expire in the New Year. The Office of Court Administration estimates that 160,000 eviction cases were pending when the Housing Courts were closed in March, and another 10,000 cases have been filed since the court began accepting new eviction petitions in June.

Currently, thanks to the current moratoria and the prudent health measures adopted by OCA, the Housing Courts are processing only limited numbers of motions brought by landlords who seek to execute on previously issued warrants, or who seek entry of default judgments and

1

https://www1.nyc.gov/assets/hra/downloads/pdf/services/civiljustice/OCJ_UA_Annual_Report_2019#:~:text=In%20FY2019%2C%20the%20second%20full%20year%20of%20Universal%20Access%3A&text=OCJ%2Dfunded%20legal%20organizations%20provided,other%20threats%20to%20their%20tenancies.

² <https://furmancenter.org/thestoop/entry/understanding-the-potential-magnitude-of-rent-shortfalls-in-new-york-state.>

warrants in cases filed prior to COVID-19. Because OCA has limited the number of these cases to what the courts can handle virtually, LSNYC and other legal services providers have been able to offer representation to *all* tenants currently appearing in Housing Court – ironically, the COVID pandemic has allowed us to achieve a full right to counsel, but only temporarily.

When eviction moratoria expire on December 31, we expect landlords to expand the filing of new eviction cases and file many more motions in pre-existing cases. Needless to say, the eviction of families in the midst of the ongoing pandemic will have catastrophic health consequences both for the individuals concerned, and for the public health of the City as a whole. A chilling report by epidemiologists at the University of Pennsylvania estimates that because evicted tenants often move in with other family members, increasing the chance for viral transmission. Levy’s model predicts that a 1% eviction rate would result in a 5% to 10% higher incidence of infection, leading to approximately 1 death for every 60 evictions.”³ It is therefore essential, even in the midst of a pandemic-caused fiscal crisis, that the Council maintain funding for the ever more vital Universal Access to Council program. Ultimately, to prevent an unprecedented wave of homelessness, the City will also need to partner with the State and federal governments to provide broadly-available rental assistance to families facing eviction.

Coping with the steady increase in Housing Court volume presents a host of challenges, from connecting attorneys with clients to accessing court records to conducting virtual hearings with clients who lack access to technology. We thank OCJ for its steadfast partnership in making Access to Counsel a reality in these difficult times, and for the flexibility and creativity you have

³ <https://www.medrxiv.org/content/10.1101/2020.10.27.20220897v1>

shown in helping us overcome the challenges we face. We look forward to continuing our work together to make legal representation a right for all tenants facing eviction.

Respectfully submitted,

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Legal Services NYC
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**TESTIMONY REGARDING
UNIVERSAL ACCESS TO COUNSEL**

**PRESENTED BEFORE:
OFFICE OF CIVIL JUSTICE
HUMAN RESOURCES ADMINISTRATION
CITY OF NEW YORK**

**PRESENTED BY:
ELISE BROWN
DIRECTOR OF LITIGATION FOR HOUSING
MOBILIZATION FOR JUSTICE**

NOVEMBER 23, 2020

MOBILIZATION FOR JUSTICE, INC.
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New York, NY 10038
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I. Introduction

Mobilization for Justice, Inc. (“MFJ”) envisions a society in which there is equal justice for all. Our mission is to achieve social justice, prioritizing the needs of people who are low-income, disenfranchised, or have disabilities. We do this through providing the highest quality direct civil legal assistance, providing community education, entering partnerships, engaging in policy advocacy, and bringing impact litigation. MFJ assists more than 25,000 New Yorkers each year.

MFJ participates in the landmark Universal Access to Counsel program (“UATC”) in Bronx Housing Court, and we have an extraordinary and dedicated team of lawyers, paralegals and support personnel who fight every day to keep residents of the Bronx housed. UATC is crucial for our work as we face the needs of our communities impacted by Covid-19 whose devastation is hitting marginalized communities the hardest.

II. UATC Must Continue: Evictions in the Time of Covid-19

In March 2020, courts and offices closed, and many New Yorkers learned to adjust to working from home. HRA’s Office of Civil Justice worked with providers to set up a citywide hotline to receive calls from tenants in distress. Although pending eviction cases were held in abeyance as the court system adjusted to remote work, courts remained open for certain types of emergencies: those that arise when a landlord illegally locks somebody out of an apartment, and those that involve emergency repairs that threaten tenants’ health and safety. Indeed, MFJ witnessed a 180% increase in complaints of illegal lockouts in 2020 as compared to 2019.

In one case MFJ handled during Covid-19, a Black¹ tenant in her 60s reached out to us for assistance. She had shared a rent-stabilized apartment for 15 years with her recently deceased mother, but the landlord had changed the apartment’s locks and our client had resorted to sleeping in her car. Following a virtual hearing over four days, the court ordered the landlord to restore our client to possession of the apartment. In another case, our client, a Black senior, moved into his partner’s apartment with her in February 2020, but in March they both contracted Covid-19. Our client’s partner died in the hospital in late March, while our client remained ill at the apartment. The landlord then demanded to know when our client was going to move out, and afterward deactivated his key fob to the building. Following a hearing and post-trial briefing, the court ordered the landlord to restore our client to possession of the apartment and to either reactivate our client’s key fob or provide him with a working key fob. These are just two of the many illegal lockout cases MFJ has handled during the pandemic.

As the Covid-19 pandemic has worn on, the court system has begun hearing additional types of cases, including setting for hearing a class of about 15,000 cases across the city in which tenants were on the verge of being evicted before the March shutdown but had not yet been evicted. None of these tenants had been represented by counsel while their case had been in court pre-Covid-19. HRA worked with the court system to ensure that these at-risk tenants are provided access to counsel as their cases are brought into court virtually. Now, instead of standing in the court

¹ As part of MFJ’s mission to further racial justice, we name the race and/or ethnicity of clients to shed light on their identities.

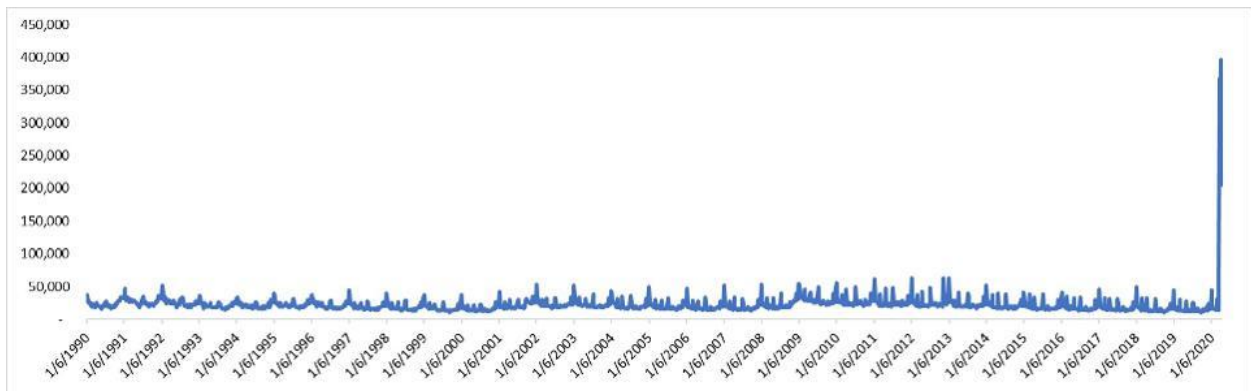
hallway every Monday morning offering representation to tenants facing eviction, MFJ appears “virtually” in court as the cases are called, connecting with tenants in that forum or later by telephone. We are often able to prevent eviction in these cases.

For example, a landlord filed a motion seeking to enforce a pre-March 2020 warrant of eviction that was heard in the special part devoted to this type of case. After connecting with the tenant, we learned that there was a February 2020 order that required payment of \$4,689.36, which was all rent owed through March 2020. Our clients did not pay on time. By September 2020, our clients had paid the entire judgment amount and had earmarked the money orders to reflect payment in accordance with the judgment. MFJ successfully opposed the motion seeking an eviction warrant, and the court granted MFJ’s cross-motion to dismiss the proceeding.

As the court allows landlords to press forward with eviction cases – even in the face of a second Covid-19 surge – OCJ will need to continue to work with UATC providers to ensure that tenants are provided with the maximum possible protection. Rendering New Yorkers homeless amid a pandemic, particularly when those New Yorkers are disproportionately Black and Latinx and thus disproportionately affected by Covid-19, is racial injustice and must be countered by the most robust possible response.

A. Housing Stability Is Crucial in the Time of Covid-19

The pandemic has made MFJ’s work to save homes and create safe housing even more necessary. Tenants have lost their jobs. The chart below shows the number of New York State’s weekly unemployment insurance claims have skyrocketed to unprecedented levels.



The Federal Reserve estimates that 40% of households that made \$40,000 or less lost their jobs in March 2020.³ Even when the economy was “good” over a quarter of New York City tenants already paid more than half of their income towards rent, and 70% of low-income renters have

² New York State Weekly Unemployment Insurance Claims, Data ending April 18, 2020, New York State Department of Labor (2020).

³ Jeanna Smialek, Jim Tankersley, and Emily Cochrane, *Fed Chair Warns of Lasting Harm Without New Aid*, NEW YORK TIMES A1 (May 14, 2020).

saved less than \$1,000.⁴ The average tenant qualified for UATC has less than \$500 in savings.⁵ These savings are less than the median rent of \$1,480 for economically vulnerable tenants.⁶ More tenants are extinguishing savings and going into unsustainable debt to keep up with rent.⁷ This loss of income makes tenants more likely to be unable to pay rent and more susceptible to harassment from the loss of economic security. This can include harassment leading to informal evictions, abusive debt collection practices, discrimination, disrepair, and legal evictions.

Economic pressure is only a part of the current risk. Housing has long been recognized an essential part of healthcare. When you can best protect your own and your family's health by sheltering in place, the existence of having a safe shelter becomes paramount. Now, more than ever, we need to make sure communities particularly at risk to the pandemic can safely live in their homes.

B. Covid-19 Has Disproportionately Impacted Black and Latinx Communities

UATC drastically improved tenants' access to justice by connecting them to attorneys and has assisted tens of thousands of New Yorkers.⁸ For its part, MFJ has provided full in-court representation to more than 2,600 Bronx tenants and has preserved more than 1,750 tenancies. Black households comprise 33.5% and Latinx households 48% of our Bronx UATC cases. Spanish is the first language of 27% of our clients, many of whom are mono-lingual Spanish speakers. UATC is racial justice work. In addition, more than 50% of our Bronx UATC clients have minor children in their household, and more than 17% of our clients are seniors. Twenty-four percent of our clients suffer from a disability.

At the height of the pandemic, each day, upwards of 600 New York City residents lost their lives to Covid-19.⁹ Statewide, the number of lives lost daily to the virus swelled well over 1,000.¹⁰ As we move towards the end of 2020, and are now nine months into the pandemic, research has begun to reveal the devastating effects of Covid-19 on our city, state, and national economies, as well as our communities.

We now know that Black and Latinx individuals contract the virus at disproportionately higher rates than White individuals – this is evident across all national regions¹¹ and New York is no

⁴ Ella Torres, *1 Million New Yorkers Could Be Evicted Under COVID Without City Assistance: Report*, ABC NEWS (May 13, 2020), <https://abcnews.go.com/US/million-yorkers-evicted-covid-city-assistance-report/story?id=70657852>.

⁵ Clara Eisenpress, *Unemployed New Yorkers Cling to Fragile Pandemic Safety Net*, THE CITY (May 10, 2020), <https://thecity.nyc/2020/05/unemployed-new-yorkers-cling-to-fragile-pandemic-safety-net.html>.

⁶ Noah Kazis, *COVID-19 and the Rental Market*, NYU Furman Center (Apr. 30, 2020), <https://furmancenter.org/thestoop/entry/covid-19-and-the-rental-market>.

⁷ Will Parker, *Out-of-Work Apartment Tenants Putting Monthly Rent on Plastic*, WALL STREET JOURNAL (Apr. 15, 2020), <https://www.wsj.com/articles/out-of-work-apartment-tenants-putting-monthly-rent-on-plastic-11586966251>.

⁸ New York City Office of Civil Justice, *Universal Access to Legal Services 2020 Report*.

⁹ NYC Health, *COVID-19: Data*, NYC.gov (Oct. 21, 2020), available at: <https://www1.nyc.gov/site/doh/covid/covid-19-data.page>.

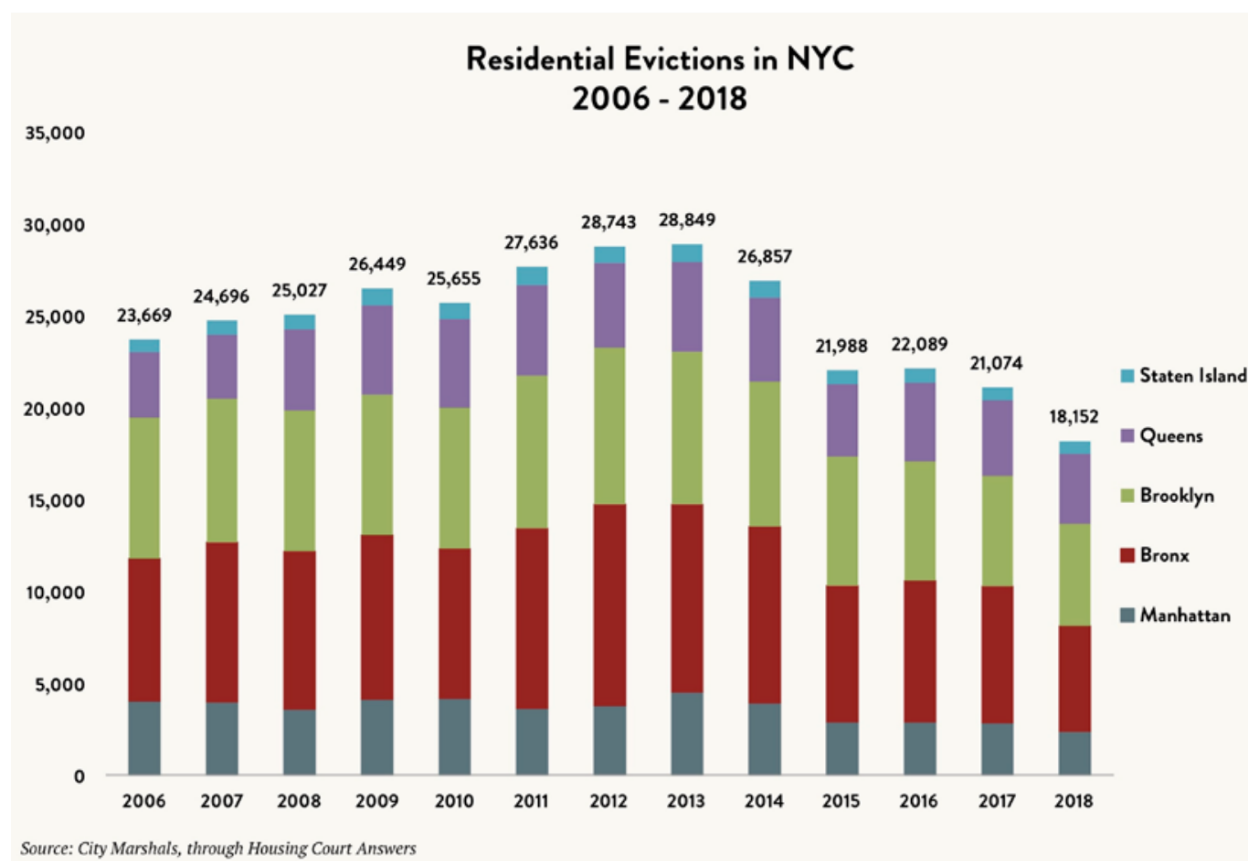
¹⁰ *New York Covid Map and Case Count*, N.Y. Times, updated October 21, 2020, available at: <https://www.nytimes.com/interactive/2020/us/new-york-coronavirus-cases.html>.

¹¹ Richard A. Oppel Jr. et. al, *The Fullest Look Yet at the Racial Inequity of Coronavirus*, N.Y. Times (Jul 5, 2020), available at: <https://www.nytimes.com/interactive/2020/07/05/us/coronavirus-latinos-african-americans-cdc-data.html>.

exception. In the midst of the current pandemic, we see more clearly than ever that long-existing and deeply entrenched systemic racial inequities in wealth, stable and affordable housing, health care access, food security, education, economic opportunity, and upward mobility can create even greater hardships for Black and Latinx families.¹²

III. UATC Saves Money

UATC saves New York City money through preventing eviction. In fiscal year 2018, it cost the City an average of \$81,700 to provide emergency shelter to a family and \$47,000 to provide emergency shelter to a single adult, given the average lengths of stay for each population.¹³ Between fiscal years 2011 and 2018, the City shouldered 92% of the increased shelter costs not covered by the Federal government.¹⁴ In light of the current austerity measures being proposed at the state and federal level, it is conceivable the burden will fall even disproportionately harder on New York City to provide shelter to the unhoused. The chart below from the Coalition for the Homeless with data collected by Housing Court Answers highlight the progress the City has made to reduce legal evictions.



¹² Kelly Glass, *Black Families Were Hit Hard by the Pandemic. The Effects on Children May Be Lasting*, N.Y. Times (Jun. 29, 2020) (“According to research from the Center on Poverty and Social Policy at Columbia University, working-age adults, children and Black Americans will fall below the poverty line at the highest rates as a result of the coronavirus pandemic’s economic effects.”), available at: <https://www.nytimes.com/2020/06/29/parenting/coronavirus-black-children-inequality.html>.

¹³ Coalition for the Homeless, STATE OF THE HOMELESS 2019 22 (2019).

¹⁴ *Id.*

We do not want to lose the progress we have fought so hard for in reducing evictions. Preventing evictions creates other positive externalities for the city budget, including reducing busing costs for students who lost their homes, reduced welfare costs, better employment retention, and improved health outcomes.¹⁵ For example, unsheltered people have been found to stay in the hospital 36% longer and at greater cost than someone with an apartment.¹⁶ This is extremely taxing on our health care system during the pandemic. The costs are also long lasting. It is estimated that the cost of a child whose life is disrupted by eviction is over \$40,000 in consequences from the trauma.¹⁷ These costs are deeply personal for the people forced to experience an eviction but also have a lasting financial impact upon the City.

IV. Conclusion

In 2017 New York City led the nation with the enactment of UATC, recognizing the fundamental truth that housing is a human right. Under the guidance and leadership of HRA's Office of Civil Justice, over the ensuing years legal services providers stepped up to provide critical legal services to an ever-increasing number of New York City tenants. In March 2020 New York City led the nation in a far more grim first: exploding Covid-19 infections and deaths that required officials to shut down the city and order its citizens to shelter in place. The primacy of safe shelter has never been more apparent. But thanks to UATC, New York City had in place legions of trained UATC attorneys, ready to meet the challenge of that dark hour. It cannot be disputed that during this ongoing pandemic, UATC attorneys have saved lives by ensuring that New Yorkers remain housed.

As we look to the future and the full implementation of UATC in fiscal year 2021, MFJ and its sister legal services providers will continue to work with HRA's Office of Civil Justice to preserve safe and affordable housing for poor and working poor New Yorkers.

¹⁵ Elizabeth Brown, *Estimate of the Cost of Legal Counsel in Housing Court and Potential Homeless Shelter Savings Due to Averted Evictions*, New York City Independent Budget Office (Dec. 10, 2014).

¹⁶ Sharon A. Salit, et. al., *Hospitalization Costs Associated with Homelessness in New York City*, 338 NEW ENGLAND JOURNAL OF MEDICINE 1734-40 (1998).

¹⁷ People's Emergency Center, *ESTIMATED ANNUAL COST OF CHILD HOMELESSNESS IN PENNSYLVANIA: \$363 MILLION* (Jun. 2012).



Neighborhood Association for Inter-Cultural Affairs, Inc.

1075 Grand Concourse, Suite 1B • Bronx, New York 10452 • Tel. (718) 538-3344 • Fax: (718) 537-3195

November 24, 2020

To: NYC Office of Civil Justice Programs to provide Universal Access to Legal Services
From: Marlen Valarezo, Esq., Executive Director of Legal Services

NAICA has been a tenant advocate that has been providing assistance and legal representation to low income Bronx residents since 1974. NAICA was founded in an effort to prevent low income tenants from losing their affordable housing due to a lack of resources or the misdeeds of unscrupulous landlords.

During the pandemic it has been difficult connecting with tenants who are either unable to connect virtually due to a lack of resources or because they are not technologically savvy. Virtual appointments and meetings have taken the place of simply “walking-in” to an agency for services. This has also caused a disconnect between the community and services. We have encountered tenants that have been referred to our agency for assistance that were unaware of upcoming court dates. Therefore, I question the propriety of the courts and landlords serving notices on Pro-Se tenants. We have encountered multiple tenants served with a notice of a court conference with an incorrect date. These are issues that assigned counsel have been able to intercede on behalf of the tenants and correct.

The Right to Counsel has played a vital role in the prevention of thousands of tenants from being evicted and having their tenancy rights maintained, especially during these unprecedented and desperate times. I support and applaud all of the legal providers throughout the five boroughs and the exemplary work being done during this difficult period to defend those who cannot defend themselves. This work is also preserving affordable apartments throughout the city. These services have been expanded during the pandemic to include those tenants who have income above the 200% poverty level. I have seen many tenants who previously would not

N.A.I.C.A. was founded in 1974 as a Non-Profit Community Corporation

have qualified for legal services receiving legal representation, which is preventing their evictions and restoring them to tenancy and stable housing. So it is extremely important that a permanent raise in the income level requirement to be eligible for legal services be implemented so that more New York City residents are able to receive the services that will preserve their housing.

Lastly, speaking also as a tenant who resides in the Bronx, I have many elderly neighbors that have reached out to me for help with their SCRIE/DRIE applications, lease renewals, repair issues, noise complaints and more as they are not aware of how to proceed due to the pandemic and the closure of many offices. I am certain there are numerous tenants throughout the city facing the same issues as my neighbors that need assistance. New York City needs to further expand services for the elderly.

N.A.I.C.A. was founded in 1974 as a Non-Profit Community Corporation

NDS



HARLEM

TESTIMONY OF THE NEIGHBORHOOD DEFENDER SERVICE

IN RELATION TO

**NYC Office of Civil Justice's Programs to Provide
Universal Access to Legal Services
for Tenants Facing Eviction**

by

**Austen Refuerzo
Supervising Attorney, Civil Defense Practice**

November 23, 2020

Introduction

I am Austen Refuerzo, Supervising Attorney in the Civil Defense Practice at the Neighborhood Defender Service of Harlem (NDS). NDS is a community-based public defender office that provides high-quality legal services to residents of Northern Manhattan. Since 1990, NDS has been working to improve the quality and depth of criminal and civil defense representation for those unable to afford an attorney through holistic, cross-practice representation. With the early implementation of Right to Counsel in key Northern Manhattan zip codes, NDS joined the Right to Counsel Coalition and began serving community through the Right to Counsel Program. As a holistic public defender office, NDS is particularly familiar with the collateral consequences of homelessness, including an increased chance of entering the criminal justice system.

The Right To Counsel Law We Have

The Right to Counsel Law enacted in 2017 has been an undeniable success. The significant infusion of anti-eviction attorneys has fundamentally changed the housing court landscape. The halls of housing court once dominated by the hostile voices of eviction attorneys berating black and brown families were finally provided a substantial counterpoint advocating for dignity, justice, and safety. The empirical evidence is clear, tenants represented by an attorney are significantly more likely to remain in their homes at the end of their housing court case. Tenants remaining in their homes strengthens communities, protects families, and prevents the destabilization that too often precipitates criminal justice involvement. As a holistic office, NDS knows that access to counsel to fight an eviction case is more than an access to justice issue, it is inexorably tied to the being targeted by the criminal justice system or having a family torn apart by ACS.

Through the Right to Counsel program, NDS is currently helping a tenant and his family fight harassment in the form of repeated frivolous nonpayment of rent cases. The tenant is fighting his third case since late 2018 despite the tenant always paying his rent on time. Notably, the landlord's attorney in this matter is also the owner of the building. The tenant is on his third Right to Counsel attorney in three years. Prior to the Right to Counsel program the tenant likely would have had to defend at least one of these proceedings without representation, resulting in either paying monies that he did not owe or, possibly, eviction. Knowing that he will be entitled to a lawyer each time his landlord frivolously drags him into court has empowered this tenant to fight back against his landlord's unlawful harassment.

The Right to Counsel Law We Need

In Lexington, KY, Phoenix, AZ, and cities around the country tenants have been evicted from their homes in the middle of the COVID-19 pandemic despite the CARES Act and CDC moratorium. These evictions have shed a stark light on the reality that tenant protection laws are ineffective if tenants are not themselves empowered to take advantage of those protections. During the COVID-19 pandemic, Right to Counsel attorneys have advised thousands of New Yorkers regarding their rights flowing from State and Federal protections. More importantly,

these attorneys informed New York City tenants of the sobering inadequacies of the Federal and State pandemic eviction protections—correcting the inaccurate messaging coming from the Governor’s office.

Just last month the Housing Court referred a tenant to NDS who had been harassed into vacating his apartment. The tenant was deceived into believing that he did not have a lease to the apartment and threatened with police and Immigration and Customs Enforcement intervention. As a result of the coercion, the tenant vacated the apartment and was homeless for approximately two weeks before learning that he could seek restoration. An NDS Right to Counsel attorney was assigned to the case and within two weeks, upon the threat of a trial and the pursuit of monetary damages, the tenant was restored to his apartment.

NDS is proud to be a part of this first-in-the-nation Right to Counsel. In the two years after the passage of the Right to Counsel, New York experienced a significant drop in eviction filings and actual evictions. The success of the Right to Counsel program can be seen in NDS’s clients who are empowered to assert their rights and fight back against powerful and well-funded interests seeking to maximize profitability by eradicating affordable housing. While not a panacea, the Right to Counsel has helped stem the loss of affordable housing in New York City.

Evictions have always been violent. Evictions during this pandemic can be deadly. Fortunately, the Right to Counsel program was already partially phased in around the city. However, the tsunami of evictions is on the horizon. Right to Counsel must be expanded to meet this historic moment. Funding to hire more attorneys, advocates, social workers and community organizers is needed. Full implementation, expanded access, and a recognition of the intersection between a tenants housing, familial health, and freedom are the necessary next steps to address the crisis at our doorstep.

Testimony by the New York Legal Assistance Group (NYLAG)
Annual Public Hearing on the NYC Office of Civil Justice’s Programs to Provide
Universal Access to Legal Services for Tenants Facing Eviction
November 23, 2020

Good evening and thank you for the opportunity to speak at today’s annual hearing on the Office of Civil Justice’s programs to provide Universal Access to Legal Services for Tenants Facing Eviction. My name is Ed Campanelli, and I am the Associate Director of the Tenants’ Rights Unit at the New York Legal Assistance Group (NYLAG).

NYLAG uses the power of the law to help New Yorkers in need combat social and economic injustice. We address emerging and urgent legal needs with comprehensive, free civil legal services, impact litigation, policy advocacy, and community education. NYLAG serves veterans, immigrants, seniors, the homebound, families facing foreclosure, renters facing eviction, low-income consumers, those in need of government assistance, children in need of special education, domestic violence victims, people with disabilities, patients with chronic illness or disease, low-wage workers, low-income members of the LGBTQ community, Holocaust survivors, as well as others in need of free legal services.

For anyone who takes the time to review the transcripts from the prior annual public hearings held by the Office of Civil Justice (OCJ) concerning implementation of the Right to Counsel for tenants , a word that comes up frequently is “groundbreaking.” When the City Council passed the law in 2017 establishing the

Right to Counsel, it was indeed groundbreaking. But in 2020, it's not an exaggeration to say that for some tenants, the Right to Counsel will be lifesaving.

A now-retired administrative judge who invested much effort into trying to make New York City Housing Court more just said in a speech that all societal ills are filtered through Housing Court. And right now Housing Court is ground zero for NYC tenants during the ongoing COVID-19 pandemic. Our current public health emergency turned life on its head in a minute and swelled the ranks of the housing insecure. While there are no silver linings to be found amid this raging pandemic, it is the City's good fortune that because OCJ spent the prior 2.5 years implementing RTC, there already existed a standing army of attorneys and paralegals ready and able to assist vulnerable tenants navigate through the COVID-19 storm.

When the Governor, the Mayor, and the courts were trying to figure out what to do next, and before OCJ established a housing legal hotline, the staff at NYLAG and other legal service providers were helping the tenants who were already clients because of their Right to Counsel understand what was happening. As the courthouses and the offices of government and property managers became ghost towns, legal services providers maintained communication with our clients, which in turn allowed providers to be conduits of communication for these vulnerable tenants who, even in ordinary times, are often heavily reliant on government services.

Communication, for our staff, means actions as much as it does words. Take for example the family of five with three minor children under the age of twelve who our attorneys got restored to possession after being evicted on March 12 for nonpayment of rent right before the eviction moratorium went into effect. Just as the

public health messaging was to shelter in place, this family lost its home and relied on us for help. Communicating with Human Resources Administration for a rent arrears grant was tricky; city workers were displaced from their offices like everyone else. HRA RAU was generally unresponsive until very close to the payment deadline in the judge's order. After a tremendous amount of additional advocacy, HRA finally issued the checks. A NYLAG staff attorney who resides in Brooklyn retrieved the checks from HRA in Manhattan and then immediately met with the landlord and the family in Queens to exchange the checks for the keys so our clients could return to their home.

On February 24, 2020, Crain's New York Business published the article, "Council looking to expand program that gives tenants free legal help." We all know that the program has already expanded. Because of the astounding job loss and interruption in incomes, many more tenants qualify for services. In order to meet that increased demand, it is incumbent on OCJ to remain attentive, nimble, flexible, and passionate. Those aren't words that are ever associated with bureaucracy, but to your credit, you have already demonstrated those traits. And don't forget, you're not alone.

When people used to ask me what I did for a living, for many years my standard answer was, "Make bureaucracy produce the correct result for my client." But being part of Right to Counsel means working with bureaucracy to achieve the correct and just result for the tenants of New York City.

There are big open questions that can only be answered by action. What should OCJ advocate for to protect tenants? What should OCJ do when there is no longer is any moratorium on evictions? We respectfully suggest the following:

- Our guiding principle is the importance of keeping people in their homes. It is hard to imagine something beyond the current pandemic that can put that in starker relief, yet some will still need convincing, especially at budget time. But we will remain firm.
- To keep people in their homes, we will have to expand the Right to Counsel. The growing tsunami of pending and new Housing Court filings will smother the Right to Counsel if we don't shore up and expand the program now. We must support pending legislation, like City Council bill Intro 2050, that will improve the Right to Counsel and expand its reach for tenants in the City's Public Housing.
- OCJ is part of the Human Resources Administration, the city agency with the most crucial role in addressing the impact of COVID-19. Under Commissioner Banks, we've all experienced a better managed and more efficient bureaucracy. The back office so to speak is running well. But on the front end, the public interface, people needing assistance still find access impenetrable. Communication is key. Never getting a response from Homebase, or Adult Protective Services taking five months to process a CityFHEPS application must be a thing of the past.
- Create and improve upon referral mechanisms that connect tenants with attorneys at the earliest stage possible. Housing Court operations are expanding and with it the threat of eviction for many tenants. As OCJ explained in its most recent annual report, "OCJ is providing access to free legal representation for unrepresented

tenants who respond to motions by landlords to proceed with pre-pandemic eviction warrants by appearing for a scheduled court conference through the assignment of counsel to any tenant at such a conference who wants legal representation in their case.” This intervention is crucial now. It is well understood, however, that the earlier the intervention, the better the outcomes. When I started Housing Court practice, I was mostly occupied with drafting Orders to Show Cause to stay imminent evictions. The few tenants who had attorneys were getting assistance at the 11th hour. For me, the most important aspect of the Right to Counsel is coming into a case at the very beginning for the tenant. But here we are again meeting tenants for the first time on the cusp of the execution of an eviction warrant. Tenants facing pre-pandemic warrants need money or a break on the rent more than they need lawyers. We need to push for greater and expanded subsidies. But to prepare for the future, we need to get back to focusing on intercepting tenants as soon as they pass the threshold into a summary proceeding. Even better would be working to make sure the Housing Court case never comes. It makes no sense to wait until a tenant is already in court in order to get assistance with rent arrears.

The calendar year 2020 is almost over, and no one is going to miss it. At the start of the year, Community Service Society reported positively, “Right to Counsel and Stronger Rent Laws Helped Reduce Evictions in 2019.”¹ What will be the headline for 2021?

¹ Mironova, Oksana.” Right to Counsel and Stronger Rent Laws Helped Reduce Evictions in 2019.” 24 February 2020. <https://www.cssny.org/news/entry/right-to-counsel-and-stronger-rent-laws-helped-reduce-evictions-in-2019>

The actions that the City does or does not take now will write the story for next year. NYLAG appreciates its role in working towards the full implementation of Right to Counsel, and we look forward to continuing our partnership. Working together, we can write a story of hope for New York City tenants.

Respectfully submitted,

New York Legal Assistance Group



RTCNYC Coalition Testimony on Right to Counsel Implementation
November 23, 2020

Good evening, and thank you Jordan Dressler and the Office of Civil Justice for the opportunity to testify today. My name is Malika Conner and I'm the Director of Organizing for the Right to Counsel NYC Coalition, which led and won the campaign to establish a Right to Counsel for tenants facing eviction. We are proud of NYC's groundbreaking Right to Counsel legislation and applaud the City Council, the Mayor, and the Office of Civil Justice for its dedication to making the Right to Counsel available to all New Yorkers during this pandemic. The law had tremendous impact in its first two years of implementation, with 84 percent of tenants who had counsel winning their fight to stay in their homes and community groups actively using the Right to Counsel as a powerful tool to protect and advance tenants' rights. Since that time, Right to Counsel has also helped develop a body of more just case law, lower tenants' rents, re-stabilize apartments, and has forced landlords to make repairs.

Amidst the COVID-19 pandemic, Right to Counsel is more important than ever before. Hundreds of thousands of New Yorkers are unable to pay rent and emergency federal and state laws have added a level of complexity to eviction court proceedings that make housing court even more difficult to navigate. We know that evictions and housing instability have a disproportionate impact on people of color, especially women and children of color. Evictions and housing instability also have significant impacts not just on people's housing, but on people's education, employment, family relationships, physical and mental health, and so much more. NYC's Right to Counsel moves us closer towards achieving economic, gender, and racial justice.

Between January 1, 2020 and October 28, 2020, landlords — mostly large predatory equity corporations — filed eviction cases against more than 80,000 NYC families, and many more cases are still pending from 2019. On October 1st, Governor Cuomo ended the closest thing New York had to a real eviction moratorium, paving the way for the courts to return to business as usual. In the Office of Court Administration's (OCA's) own words, the priority was to "clear the housing court of its pending inventory of roughly 200,000 cases."¹ This "inventory" are New Yorkers facing the cruelty of eviction during a pandemic. Right to Counsel has been critical to ensuring that as many of these families as possible retain their basic human right to a home. Our Coalition applauds the Office of Civil Justice's response to the crisis of the pandemic, making the right to counsel available immediately to all New Yorkers regardless of zip code. We also applaud the Office for making right to counsel available to all tenants with pre-pandemic eviction warrants regardless of income.

All evictions are violent and unnecessary. We continue our organizing efforts to ensure that the more than one million families who are unable to pay rent and on the brink of eviction — during a resurging pandemic in the middle of the winter — are protected by a REAL Universal Eviction Moratorium, as outlined by State Senator Zellnor Myrie's bill (S08667/A10827).

In order to protect every New Yorker's basic human right to housing, and in the spirit of collaboration, we strongly encourage the City and the Office of Civil Justice to adopt the following recommendations:

RECOMMENDATIONS:

- 1. Increase Outreach and Awareness:** During this crisis, it is more important than ever for the City to initiate an aggressive public outreach and awareness campaign. While we are happy that the City is planning two rounds of RTC ad blitzes in multiple languages in the near future, we urge you to begin the awareness campaign

¹ https://drive.google.com/file/d/1dHEHRYIOciEuQSbWTdr_k_NXDHnAlbOF/view



immediately and intensively. In May 2020, the Hunter College Department of Urban Planning Studio released a report which indicates that 61 percent of eligible tenants in New York City's housing courts between October 2019 and mid-February 2020 did know about their right to counsel prior to arriving in court. Unless tenants are aware of their right to counsel before they receive court papers, many could leave their homes believing that they have no chance of winning a case on their own, especially if they have been unable to pay rent in this economic and public health crisis.

2. **Implement a uniform and systematic process for providing tenants with Right to Counsel, ensuring that cases are calendared based on the capacity of legal service providers.** The Office of Civil Justice is perfectly positioned to coordinate the assignment of counsel in eviction cases with the Office of Court Administration. To be effective and fulfill the promise of the law, attorneys representing tenants must have the time and resources to mount a full and aggressive defense.
3. **Continue to make the Right to Counsel available to all New Yorkers, regardless of zip code or income.** NYC is on the brink of an unprecedented homelessness and eviction crisis. Right to Counsel can help stem this tide if it is available to all New Yorkers.
4. **Continue to apply a Right to Counsel to repair cases.** Most families on the brink of eviction continue to live in dangerous and unhealthy conditions. These conditions often include mold, vermin, cockroaches, and other pests, which are common causes and triggers of the types of respiratory conditions that make COVID-19 especially dangerous.
5. **Support the Passage of Intro 2050**, enshrining in law that Right to Counsel is effective immediately with no zip code rollout. Intro 2050 requires no additional funding, and will save the City millions of dollars in shelter, healthcare, and other costs that would otherwise be accrued when families are evicted.
6. **Support and join the RTC NYC Coalition in demanding that Governor Cuomo and our NY State Assembly and Senate immediately:**
 - a. **Pass Senator Myrie and Assemblymember Reyes' bills for a real, universal eviction moratorium** that protects ALL New York State residents. Violent and cruel in the best of times, evicting families during a pandemic is outright dangerous for all New Yorkers.
 - b. **Pass a state-wide Right to Counsel law.** Evictions have already resumed in upstate cities and towns. A right to counsel would stem the tide of evictions and ensure that New Yorkers across the state can stay in their homes.
7. **Full and adequate representation to prevent a family from being evicted requires social workers, paralegals, mental health professionals, and other service providers in addition to housing attorneys.** The City should recognize these services as necessary for the holistic implementation of the Right to Counsel.

For more information, contact Malika Conner: malika@righttocounselnyc.org • 585-465-7188

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www.worstevictorsnyc.org

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**TASK FORCE ON THE CIVIL
RIGHT TO COUNSEL**

**Testimony of the New York City Bar Association
Before the New York City Office of Civil Justice**

**By Alison King and Andrew Scherer,
Task Force on the Civil Right to Counsel Co-Chairs**

November 23, 2020

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This testimony is presented on behalf of the New York City Bar Association's Civil Right to Counsel Task Force (the "Task Force"). The Task Force was formed in the spring of 2018 to advocate for the most effective implementation of NYC's newly established right to counsel in eviction cases, to support the extension of that right to other jurisdictions and to advocate for the extension of the right to counsel in other civil matters where fundamental human needs are at stake. New York Law School Professor Andrew Scherer and Alison King, Pro Bono Counsel at Arnold & Porter, are the Task Force Co-Chairs. The Task Force includes the two immediate past Presidents of the City Bar, prominent members of the bar, judiciary and legal academia, leading housing rights advocates and liaisons to other relevant City Bar committees. By design, the Task Force does not include representatives of organizations with an immediate stake in the right to counsel program.

New York City's passage of legislation guaranteeing a right to counsel for low income tenants was a monumental step toward equal justice. For the first time anywhere in the United States, a tenant who faces loss of her home, displacement from her community and the threat of homelessness in a court of law, will be guaranteed legal representation. Since New York City passed this landmark legislation, five additional localities have adopted the right to Counsel, including Newark, San Francisco, Cleveland, Philadelphia and, by public referendum this past election day, Boulder. The Baltimore City Council passed right to counsel legislation just days ago and the bill is awaiting the Mayor's signature.

The right to counsel for tenants in New York City is leveling the playing field in Housing Court, giving people a fighting chance to assert their legal rights, and sending a message that the lives and

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homes of New York City's low-income households are entitled to be treated with dignity and respect. It has the potential, done right, to preserve low-income housing, stabilize low-income communities, stem the displacement of low-income households, promote the stability in the households of thousands of children, whose development depends on it, and reduce the incidence of homelessness and its concomitant human and governmental costs. It has the potential to transform the culture and nature of the Housing Court to a more balanced forum with greater civility and deeper attention to legal rights and principles. The City is to be applauded for leading the nation by adopting this measure, for enthusiastically moving forward with the massive undertaking of implementation and for engaging in ongoing dialogue with key stakeholders.

At our Task Force meetings, we have developed certain common principles from our observations and discussions. These include:

- The need to have a system in place that allows tenants to obtain legal assistance prior to the start of the eviction process. This will enable tenants to avoid waiving important rights and maximize their ability to protect their homes, as well as reduce the burden on the court of unnecessary filings.
- The need to have well designed court processes, adequate court facilities, and Housing Court Judges prepared to accommodate the shift from a primarily pro se court to a court equipped to resolve litigation between represented parties and a court marked by civility and decorum.
- The need to have sufficient resources to assure that the legal services organizations ("Legal Services Organizations") are able to provide effective legal representation, including adequate compensation, support, supervision and training to the staff attorneys for the delivery of services, as well as sufficient flexibility to allow services tailored to particular geographic communities, persons with special needs and persons simultaneously faced with legal proceedings in family court, criminal court and other forums.
- The need for effective systems for ongoing communication and information sharing on a range of levels: most importantly to tenants so that they can be made aware of and can effectively avail themselves of this new right; between the court and the

Legal Services Organizations; as well as between the different provider organizations.

- The need to take full advantage of technology to streamline the flow of information, to make appropriate and relevant information available expeditiously to the court, to litigants, and to their legal representatives.
- The need to determine what data is important, and for what purposes, and to have systems in place to collect that data and make it readily available as needed.

These principles are more important now than ever before. This is an unprecedented moment, with profound implications for the right to counsel. New York is in the midst of a deepening and dire housing crisis as a result of the COVID-19 pandemic. A staggering number of New Yorkers have lost their jobs, some permanently, and over 1.4 million households in New York State currently face a risk of housing instability or rent shortfalls. Statewide, unemployment was 14.5% by May of 2020 and has remained high throughout the pandemic. Federally enhanced unemployment insurance, which helped many to stabilize their finances during the early pandemic period expired in July. A recent analysis prepared by Neil Steinkamp of Stout, a member of our task force, estimates that over 1.1 million households in New York State cannot pay rent and these rent shortfalls, which began in mid-March, are aggregating at a rate of over \$875 million per month. Neither the federal nor state government has adopted meaningful measures to address this crisis, so tenants are facing an astounding number of eviction proceedings and consequent evictions.

The impact of this potential avalanche of eviction cases and resulting judgments will fall most heavily on people of color, people with disabilities, seniors, veterans and low-income New Yorkers who constitute the vast majority of respondents in eviction cases and who are the most critically affected by the COVID-19 pandemic.

Measures have been taken to address this crisis, but they have not been sufficient. The New York City Housing Court has been subject to a series of Executive and Administrative Orders that halted evictions and halted filings for a time. State and federal moratoria on evictions, the Tenant Safe Harbor Act and the Emergency Rent Relief Act have established some additional protections. The Housing Court administration has put in place yet additional notice requirements and other procedures to avert defaults and delay court appearances,

particularly for unrepresented tenants. However, many of these protections are slated to expire by the beginning of the year. And, as OCA continues to monitor COVID-19, the question of when courts will fully resume in-person operations remains uncertain, although virtual court operations are continuing. Either way, courts are already overwhelmed by hundreds of thousands of pre-pandemic, pending cases, and will be further compromised with an exponential increase in cases if remedial measures aren't taken.

Thankfully, there is a wide consensus about the importance of counsel for tenants at a time like this. The City, our Legal Services Organizations, and our courts have worked hard to transform themselves almost overnight in an effort to keep all of the stakeholders safe from the pandemic, and to extend the right to counsel to, for the moment at least, all tenants who are appearing in eviction cases. These measures are to be applauded.

The Task Force hopes to be a supportive and positive voice for how best to navigate the current crisis and the post-COVID 19 realities that are the most responsive to the needs of the community and provide access to justice and the right to counsel for tenants. We believe that no one should be evicted into a pandemic without counsel. This is especially true with the added complications and confusions of ever-changing federal, state and local laws, policies, executive and administrative orders. We offer these comments and suggestions:

- We are thankful that the Office of Civil Justice (“OCJ”) is currently providing counsel to all eligible tenants in NYC during the pandemic and not only to those eligible because they live in certain zip codes. We wholeheartedly support the City Council bill (Intro 2050) providing the right to counsel to all eligible tenants in NYC now and after the pandemic rather than returning to the zip code phasing approach.
- We encourage the Office of Court Administration (“OCA”), OCJ, and the Legal Services Organizations to continue to explore the use of technology as a means of providing information and notice to eligible tenants. The online tool for emergency HP actions is an example of all of the stakeholders working together to improve court procedures to include the use of technology. The use of 3-1-1 as a legal services hotline for housing matters is a good and appropriate means of communicating to the public. We are also encouraged that OCA is also moving swiftly to more broadly utilize electronic filing. These measures are

already having a significant positive impact. However, we caution all of the parties to think carefully about the “digital divide” barriers to technology that exist in the city’s low-income communities and to refrain from expanding that divide in ways that compromise due process.

- We appreciate the efforts to extend timeframes and to provide additional notices to tenants of the availability of counsel and to encourage appearances rather than default. We suggest that OCJ, OCA and Legal Services Organizations continue broadening their methods of providing notice of the right to counsel. We commend the OCA for Justice Marks’ June 18, 2020 memorandum that requires all notices of petition to include a phone number connecting the tenant to Housing Court Answers, as well as the efforts of Legal Services Organizations, OCJ and OCA to reach out to individuals who failed to appear at the first hearing to provide further notice. 20,000 cases have been filed since June 20th that are currently suspended by administrative order. We recommend that more outreach be done to provide actual notice to the tenants.

Underlying all of our recommendations is a need for tenants to be able to seek and have access to legal counsel before the courts become involved. There may be other remedies available prior to court, such as the tenant obtaining public benefits to which they are entitled but of which they were not aware, in order to resolve the issue and not necessitate the court’s intervention. To make that possible, there will need to be a more effective education campaign to advise the public that counsel is available, and to reach out for counsel’s assistance early in the process. The public education of tenants and landlords should be done through as many channels of communication as possible. We believe this should include news and social media outreach in partnership with the Right to Counsel Coalition, the Housing Justice for All Coalition, Legal Services Organizations, community groups, tenant organizers and houses of worship.

One final note. We have noticed, and appreciate the fact that, in the last year or so city officials have been increasingly using the phrase, “right to counsel,” a more-easily understood phrase rather than the confusing and opaque phrase, “universal access.” This shift, while small, is symbolic and important. Tenants and their allies fought hard to win the right to counsel and that right is now being replicated around the country.

Thank you for your time and consideration, and please do not hesitate to call upon the Task Force if we can be helpful with these or other implementation issues. We look forward to continuing these important discussions.

* Mr. Cooper passed away in November of 2020. Mr. Cooper was one of the great lawyers and great friends of his generation. This testimony is dedicated to his memory. We are forever thankful for his important voice on this Task Force.