



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



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

HEARING: November 18, 2021

TESTIMONY OF THE ASSOCIATION OF LEGAL AID ATTORNEYS (ALAA) Presented by: Joanna Laine

Good evening. My name is Joanna Laine and I am a tenant defense attorney in the Brooklyn office of The Legal Aid Society. I am also an officer of The Association of Legal Aid Attorneys - Local 2325 of the United Auto Workers. ALAA is a labor union which comprises a diverse group of compassionate, driven, and skilled attorneys at The Legal Aid Society, CAMBA Legal Services, New York Legal Assistance Group, Neighborhood Defender Services of Harlem, Catholic Migration Services, and other legal services organizations who are dedicated to safeguarding the rights of tenants. I thank the Office of Civil Justice for allowing ALAA to testify about our experience on the front lines of implementing the Right to Counsel (RTC) program. I also want to thank Jordan Dressler for his stewardship of the Right to Counsel program over the years.

Our overarching goals as housing attorneys are to eliminate evictions, end homelessness, and ensure tenants' homes are safe places to live. We support the agency's mission to reduce homelessness by decreasing evictions, providing subsidies to tenants, and funding the Right to Counsel program to ensure that tenants' rights are protected.

The COVID-19 pandemic has had devastating impacts on low-income tenants and has put so many at risk of homelessness and landlord harassment. Despite the various eviction moratoria and other protections that have been in place for most of the past 20 months, the risk and fear of eviction is still very real. The Emergency Rental Assistance Program (ERAP) has made significant rental arrears payments to many of our clients' landlords, giving these clients a temporary reprieve from the threat of eviction. However, while ERAP has been a successful program, the documentation requirements have been onerous and have dissuaded some tenants from completing their applications and have led to denials for others. We strongly urge the City to advocate for simplifying documentation requirements for ERAP applications so that more tenants can be protected. We further request the City push the State to reopen the ERAP application portal to provide respite to tenants still struggling to get by.

During the pandemic, HRA has rightfully led the expansion of RTC to all NYC zip codes. As advocates, we support this much-needed expansion. However, without sufficient funding, legal

services organizations are not able to fully staff our offices in order to represent the increased number of clients seeking assistance. Our organizations are becoming increasingly unable to sustain the Right to Counsel program with the level of resources that are currently allocated to them, as the funding that they receive is not enough to finance the true cost of RTC's implementation. We ourselves experience this every day as we struggle to maintain untenably high caseloads. Nearly every member of our union reports being overwhelmed, and we expect this will worsen when the eviction moratorium expires. We are deeply concerned that the level of resources currently being provided to fund Right to Counsel won't be enough to sustain the momentum of this essential program.

Without adequate funding, we are not able to hire or retain enough supervisors or experienced attorneys, and cannot afford to hire the social workers, paralegals, and investigators who are crucial to providing holistic services to our clients. Without this support, our attorneys—who, on average, have half the experience of our colleagues representing clients in criminal and juvenile proceedings—will struggle to provide the quality of representation that our clients deserve. Further, with increased landlord aggression during the pandemic, we have had to take on additional affirmative cases, such as illegal lockouts and HPs, to ensure that our clients are not forced out of their homes due to illegal acts or because of deplorable conditions. We are also seeing landlords file cases in forums they previously did not utilize in order to put pressure on tenants to self-evict, by suing them for monetary claims, breach of lease, and ejection. This change necessitates more funding and support to protect tenants in these forums where landlords can cause immense economic damage, and to enable us to spend more time on our clients' cases. We ask that HRA expand the types of proceedings that are funded in the RTC program to cover the changing needs in tenant representation.

Additionally, we urge OCJ to work with the Courts to ensure that cases are given the proper amount of time to be fairly adjudicated. Throughout the pandemic, our members have staffed myriad and changing virtual court parts. However, the courts, despite being virtual, have continued to calendar multiple cases for the same time slot, hindering our ability to effectively advocate and communicate with our clients. This is not the only problem. The courts have routinely failed to send notices advising tenants of the dates and times they must appear, leading to confusion for our clients. Court appearances must move forward on a predictable and reasonable schedule to enable meaningful participation from our clients.

Technology, including video conferencing and electronic filing, has allowed us to continue to provide a high level of representation to our clients. Virtual proceedings have been beneficial, both in preventing the spread of COVID-19, and in allowing our clients who work, have caretaking responsibilities, or who have disabilities to participate in their cases without losing their jobs or expending scarce resources to come to court in person. In a certain sense they have been an unexpected gift. The first appearance in a matter where a tenant is connected to an attorney through Right to Counsel never needed to be in person, and now it does not have to be. The virtual option must be maintained permanently. However, many of our clients lack access to the technology that would enable them to video conference with us and the courts. We encourage HRA to provide grants for technology access and permit tenants to use City equipment so that they can participate in their cases while not being forced to put their health at risk by travelling to court. Additionally, we ask that HRA pressure the Office of Court Administration and the State to accept filings

through JustFix.nyc and to permanently enact remote notarization to facilitate free access to justice. We encourage HRA to push the Courts to maintain virtual proceedings and work to ensure that cases are timely heard so that tenants are not forced to spend multiple hours waiting for their cases to be called only to never see a judge.

The Right to Counsel program has been enormously successful in reducing evictions—in 84% of all cases in which they were represented by an attorney, tenants were able to stay in their homes. However, without continued and expanded rent subsidies, tenants will continue to be pushed out of their homes as rent becomes more unaffordable. To that end, ALAA would like to thank the City Council for passing Intro 146, which increased the rent limits for the CityFHEPS program to comport with the realities of the New York City rental market and will enable tenants at risk of eviction to more easily maintain or find suitable housing for themselves and their families. We reaffirm the need for Governor Hochul to sign A8009/S6573 into law so that the rent limits for the FHEPS program are increased in line with the new CityFHEPS limits.

The past 20 months of the pandemic have resulted in enormous upheaval in the housing market. After January 15th, when the State's eviction moratorium expires, the crisis will only worsen for tenants across the city. We thus ask that OCJ strengthen support for tenants by increasing funding for the Right to Counsel program, providing resources so that our clients have the technology to participate in their cases, and expanding subsidies so our clients can remain in their homes. While we as attorneys will continue to fight for our clients, we cannot do this alone. We ask for your continued financial support so that we can effectively advocate for our clients to remain in their homes and communities.

**The Bronx
Defenders**

**Redefining
public
defense**

Thursday November 18, 2021

**NYC Human Resources Administration & Department of Social Services
Office of Civil Justice's Hearing on Universal Access to Legal Services for
Tenants Facing Evictions**

**Written Testimony of The Bronx Defenders
Submitted By: Siya Hegde, Policy Counsel to the Civil Action Practice**

The Bronx Defenders (“BxD”)¹ thanks Mr. Jordan Dressler and his colleagues at the Office of Civil Justice (“OCJ”) for the opportunity to testify today.

BxD’s Civil Action Practice (“CAP”) was one of the first public defender offices in the country to address the civil enmeshed penalties of our clients’ multi-legal system contact. Our litigation and advocacy initiatives focus, in large part, on defending tenants from the threat of eviction and other forms of housing displacement. We firmly believe in housing as a human right, have been a longstanding collaborator in the movement to establish a right to counsel in housing, and are proudly one of the city’s legal service providers providing representation under the Universal Access Program. Our Housing Right to Counsel team has expanded in size and expertise over the past three years, and we are grateful for OCJ’s continued and expanded support to allow us to better address the critical housing needs of the community we serve.

We respectfully submit these written comments and recommendations as an individual organization, a member of the Right to Counsel NYC Coalition, and a member of the Leap Coalition.²

¹ We are a holistic public defender non-profit that is radically transforming how low-income Bronx residents are represented across various legal systems, and, in doing so, is transforming those systems themselves. Our robust staff of over 400 consists of criminal, civil, immigration, and family defense attorneys, as well as social workers, benefits specialists, legal advocates, parent advocates, investigators, paralegals, data and communications experts, and team administrators, all of whom collaborate to provide quality holistic advocacy to our clients. Through an interdisciplinary team-based structure, we have pioneered a groundbreaking, nationally-recognized model of representation called holistic defense that works to address the causes and consequences of multi-legal system involvement. We annually defend over 20,000 Bronx community residents in criminal, civil, immigration, and child welfare cases, reaching thousands more through our community intake, organizing, and youth mentorship programs. Through impact litigation, policy advocacy, and community organizing avenues, we also push for broader systemic reform at the local, state, and national levels. Our direct services advocacy with clients and community members inform our innovative initiatives to bring about real and lasting change.

RECOGNIZE & SUPPORT THE HOLISTIC EXPERTISE OF CIVIL DEFENDERS IN THE UNIVERSAL ACCESS TO LEGAL SERVICES PROGRAM

Holistic civil representation has been the cornerstone of CAP's ability to implement the Right to Counsel's Universal Access Program. Our civil advocacy model -- including benefits specialists and civil legal advocates, social workers, team administrators, and housing attorneys - is integral to the representation we provide our clients. Benefits specialists and civil legal advocates frequently interface with the Human Resources Administration ("HRA"), Department of Social Services ("DSS"), Department of Homeless Services ("DHS"), and various Homebase providers to ensure accuracy in our clients' welfare budgeting, eligibility of housing rental subsidies (i.e., CityFHEPS, FHEPS, Cash Assistance, etc.), and recertification of Section 8 subsidies and Public Assistance cases.

The integration of social work into our advocacy in 2020 has immensely benefited countless other clients at risk of eviction who may live in supportive housing, suffer from mental illnesses, or have a history of chronic homelessness that impedes their ability to maintain permanent housing. The pandemic has brought to light how access to safe, quality housing is a public health issue, and how people with mental health disabilities are among those most susceptible to housing displacement, chronic homelessness, and criminalization. We are most fortunate to have a growing Social Work practice that is skilled to provide clinical expertise for this client demographic.

In at least one noteworthy example, a client who struggled with crippling mental health impairments defaulted in his nonpayment eviction case and was eventually issued a Notice of Eviction. Having previously worked with a BxD attorney for a case (that was since discontinued), the client reconnected with the attorney in the aftermath of receiving his eviction notice. This occurred just days before pandemic court closures in March 2020. Our Social Worker advocated with Adult Protective Services ("APS") to reopen his case and approve him for CityFHEPS. She also connected him with services, including therapy, so that he had the necessary resources to care for his mental health and emotional needs. All of this enabled him to pay off his arrears exceeding \$30,000 and avoid an eviction. He also received services that extend beyond the court case and will help to improve his life circumstances.

In addition to our comprehensive civil advocacy, we work collaboratively with our colleagues who are experts regarding criminal, family, and immigration court systems and legal

² Leap is a membership organization comprised of direct civil legal services providers in NYC: Brooklyn Defender Services, Brooklyn Legal Services Corporation A, CAMBA Legal Services, Catholic Migration Services, The Door, Goddard Riverside Law Project, Housing Conservation Coordinators, JASA/Legal Services for the Elderly, Lenox Hill Neighborhood House, Make the Road New York, Inc., Mobilization for Justice, Neighborhood Defender Service of Harlem, New York Lawyers for the Public Interest, Northern Manhattan Improvement Corporation, TakeRoot Justice, The Bronx Defenders, Urban Justice Center, and Volunteers of Legal Services.

processes. The breadth and depth of this multidisciplinary expertise allows us to support and inform tenants -- i.e., those who may have criminal legal system involvement, those whose children may have been removed by the Administration for Children's Services ("ACS"), those who may not be Citizens, etc. -- seamlessly, beyond their eviction matters. Our clients who are threatened with eviction have in fact benefitted from this cross-practice expertise. In some instances, we have intervened in drug or nuisance holdover proceedings resulting from arrests. In other instances, we have advocated for parents in family court and housing court when their children are removed from their care and custody based on unsafe housing conditions and instability. As such, **OCJ should consider the enmeshed civil consequences that tenants experience across multiple justice systems and make them an automatic priority for representation. These funding increases should be made effective immediately.**

Though we are fortunate to receive some funding support from other sources to make this holistic civil defender advocacy possible, the needs of our clients outweigh the capacity we have to serve. The diversity of CAP's staff roles and expertise has been instrumental in shaping our collective advocacy and litigation efforts for marginalized Bronx residents in housing court and other administrative fora. Our advocacy and litigation on behalf of clients fighting evictions has demonstrated that full and adequate representation requires the recognition and support of services that are not solely legal in nature.

Accordingly, **OCJ should increase funding and capacity for holistic representation of tenants in housing courts and other administrative entities, considering the expertise of social workers, public benefits specialists, legal advocates, paralegals, and other service providers. The City must recognize the collective benefit of legal as well as non-legal services that offices like ours provide, taking into account the merits of holistic implementation of the Universal Access Program that address causes and long-term consequences of housing court involvement.**

CONTINUE TO BUILD COHESION AMONGST LEGAL SERVICE PROVIDERS AND TENANT ORGANIZERS

The implementation of Right to Counsel has made it possible for tenants and housing court litigants to be better informed of their legal rights in pending eviction actions, to seek immediate recourse in housing court for emergency repair actions and illegal lockouts, and to remain connected to attorneys and tenant organizers for eviction prevention strategies and long-term housing assistance.

As a member organization of the Right to Counsel NYC Coalition, BxD has continued to cultivate strong relationships with tenant leaders and organizers in support of its policy and organizing efforts. Collaborating with Bronx-based tenant organizers like CASA and Northwest

Bronx Community Clergy Coalition (“NWBCCC”) on Know Your Rights workshops, public education outreach, press materials, and various housing justice campaigns for advancing legislation has reinforced the Right to Counsel law’s far-reaching impact. Increasing funding to tenant organizers emboldens tenants to have agency over their housing cases, and demand services from their landlords (i.e., repairs, rent abatements, etc.) to which they are legally entitled prior to a new eviction filing. Tenants are often unable to obtain these services without relationships with tenant organizers, mutual aid organizations, or other community resources advocating for their right to adequate housing.

The advocacy made possible by the Right to Counsel law’s expansion also allows us to make referrals to tenant organizers, community-based housing providers, and other external resources so that our clients are more proactively taken care of. The provision of these services, ideally, should work constructively to prevent residents from facing future eviction proceedings and their traumatic aftermath.

Accordingly, OCJ must continue to fund tenant and community organizations’ outreach and public awareness efforts in order to encourage tenants’ participation in the Right to Counsel movement. Its resources must continue to build cohesion between these organizations and legal service providers so that the law’s impact is achieved to the fullest extent possible.

INCREASE INCOME ELIGIBILITY TO 400% OF THE FEDERAL POVERTY GUIDELINES FOR THE RIGHT TO COUNSEL

While acknowledging the historic nature of the passage of Right to Counsel, the Right to Counsel law, as is, is currently too restrictive with respect to eligibility determinations. The right only applies to those residents with household incomes at or below 200% of the federal poverty guidelines.³ This means that a household of four only qualifies for free legal assistance if its annual income is at or below \$53,000; a household of two only qualifies at or below \$26,130.⁴ Many individuals in need of a lawyer to fight their housing case are excluded by these requirements. For example, a single New Yorker earning a \$15 hourly minimum wage is not currently eligible for representation. Moreover, the financial realities of families living in poverty during the COVID-19 pandemic and the skyrocketing cost of living in New York City were unaccounted for at the time that the Right to Counsel law was passed and implemented. The City should increase the income threshold to 400% of the federal poverty line so that more individuals who are currently ineligible can gain housing stability.

³ We recognize the City has provided temporary waivers during the pandemic regarding income eligibility, however the right to representation only applies to those at or under 200% of FPL under the current law.

⁴ See *U.S. HHS Poverty Guidelines for 2021*, ASPE: OFF. OF THE ASSISTANT SEC’Y FOR PLANNING & EVALUATION (2021), <https://aspe.hhs.gov/topics/poverty-economic-mobility/poverty-guidelines>.

While the Right to Counsel law expanded in May of this year to cover all income-eligible tenants in eviction and termination of tenancy proceedings in New York City, the need to raise the income threshold for the Universal Access Program remains most dire in the Bronx. In 2019, over one-third of Bronx renter households were severely rent burdened, meaning that over half of their household income went towards rent.⁵

The Bronx has also remained one of the hardest hit regions of the city and state in terms of COVID-19 death rates and its number of residents threatened with eviction. Since the start of the pandemic, city landlords have brought an estimated total of 60,720 residential eviction filings, of which Bronx landlords are responsible for nearly 35% -- the highest proportion of active pandemic eviction cases out of any city borough.⁶ Many more pending cases were filed before the pandemic. Tens of thousands of unemployed Bronx residents have been unable to pay rent, with heavy reliance on the state's Emergency Rental Assistance Program ("ERAP"), which has experienced major delays in application processing and funding disbursement. As of November 14, the Office of Temporary Disability Assistance announced that no additional ERAP applications would be considered due to funding depletion, with hopes that additional funds would be earmarked for New York residents by the federal Treasury.⁷ Moreover, in our advocacy, we see every day how working tenants fall through the cracks because of these income restrictions.

As such, the city should pass Intro. 1104, raising the income threshold for representation eligibility to 400% of the federal poverty line.

SUPPORT PROVIDERS' ABILITY TO BUILD AND SUSTAIN CAPACITY TO ACTUALIZE THE RIGHT TO COUNSEL

With the Right to Counsel in its final year of expansion and the growing number of vulnerable tenants at risk of eviction who require representation now and increasingly will once the state eviction moratorium expires, our program has had to quickly grow and expand. Given this need, our practice as well as other civil legal services programs like ours, have had to expand rapidly to have the requisite number of attorneys, supervision and program support. This has presented various recruitment, hiring and retention challenges for us and non-profit organizations like ours developing the Right to Counsel.

⁵ See *Neighborhood Profiles: The Bronx*, NYU FURMAN CTR. (2021), <https://furmancenter.org/neighborhoods/view/the-bronx>.

⁶ See *New York Eviction Filings Tracker*, HOUSING DATA COAL., JUSTFIX.NYC, & ANHD (2021), <https://housing-data-coalition.github.io/rtc-eviction-viz/> (Off. of Court Admin. data managed by the Right to Counsel NYC Coalition's Housing Courts Must Change! Campaign).

⁷ See *Emergency Rental Assistance Program (ERAP): Important Update on ERAP*, OFF. OF TEMP. & DISABILITY ASSISTANCE (2021), <https://otda.ny.gov/programs/emergency-rental-assistance/>.

To sustain this important work and ensure the highest quality representation, **OCJ must not only ensure adequate funding for the RTC legal services providers like ours so that there are enough trained attorneys, supervisors, support and other staff to meet the need and to support a pipeline to sustain this right, but also should strongly advocate for OCA to structure the work in a volume that matches the capacity of RTC legal services.**

Thank you again for the opportunity to submit this written testimony on behalf of BxD.



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:

**Kevin Li
CAMBA Legal Services**

November 18, 2021

Hello everyone. Thank you for this opportunity to testify about the Universal Access program. My name is Kevin Li and I am an attorney at CAMBA Legal Services. CAMBA Legal Services is proud to be one of the providers of the Universal Access program, where we have served clients in need throughout Brooklyn, Staten Island, and surprisingly, a few in the other Boroughs. We are also a member of LEAP, a coalition of seventeen New York City civil legal services providers, many of which participate in the Universal Access program.

We would first like to thank the City Council for continuing the Universal Access to Legal Services for Tenants Facing Eviction program at a time when municipal budgets across the world have been forced to do more with less; the Mayor and his administration for their work on this program, which will leave a lasting legacy on New York City; our partners for working with us as the Right to Counsel program expands to help more people than ever; and many others such as the Right to Counsel Coalition, the Community Based Organizations, tenants, and tenant organizers from across the City, who work tirelessly to promote justice for all. Last, but not least, we would like to thank the Office of Civil Justice for its continuing work to ensure those in need obtain the legal help they need to keep their homes. Their hard work the past 4 years has helped create an incredibly important and successful program.

We have spoken in the past about the overall financial savings the program provides to the City budget by limiting homelessness. This continues to be true. However, today, we want to highlight the unquantifiable human help the program and its participants, like CAMBA Legal Services, have provided during these trying times.

This past year, CAMBA Legal Services has continued to assist our fellow New Yorkers with housing issues amid the continuing COVID-19 pandemic. This unprecedented pandemic has resulted in hardships that would have culminated in more homelessness were it not for this program, which has expanded across the City to help nearly everyone facing eviction in Housing Court. Without the program, tens of thousands of New Yorkers may not have had the time, knowledge, or help applying for the Emergency Rental Assistance Program, also known as ERAP, which provides much needed money to help pay for rental arrears that accrued because of the pandemic. With the help of the Office of Court Administration, Housing Court Judges, and their staff, Universal Access has helped create a process to ensure that everyone facing eviction knows their rights, avoids unnecessary eviction, and preserves their tenancies.

We also want to unequivocally state how successful virtual representation has been. Despite some issues, which we all continue to work together to resolve, we have proven that virtual representation in and of itself has not resulted in diminished representation and has in fact expanded access to justice. The intake process connecting those sued by landlords to legal service providers has ensured that almost everyone facing eviction is able to talk to a lawyer; even if someone is not eligible for full representation, they have an opportunity to have someone review their case, which enables them to know their rights and thus better protect themselves. In short, virtual representation of our clients and Housing Court's implementation of it has been an unqualified success that should continue following the pandemic.

Despite these successes, there are still things that need to be done to ensure that those facing eviction have their rights protected. They include the following:

- **Access to all court files digitally.** The New York State judiciary system and the Office of Court Administration has done a commendable job during this pandemic, balancing the need to access the courts with safety. One of its most impactful actions during the pandemic was the implementation of the New York State Court Electronic Filing system (“NYSCEF”) for Housing Court. This has been tremendously impactful as it allows us providers to access court files digitally without having to go into the various Housing Courts throughout the City. While the implementation of NYSCEF has resulted in almost all new cases and their court files being easily accessible digitally, there continues to be shortcomings in digitizing older court files of cases that commenced before the pandemic. While we understand the difficulties in digitizing these files and thank the hardworking staff of the courts who do the best they can, many of these older court files continue to be active cases of people who deserve meaningful representation. Delays in obtaining their court files because they have not been digitized results in less than adequate representation. We urge that more resources be provided so that the Office of Court Administration to remedy this issue.
- **Expanded Access – HP Cases.** As the pandemic continues and legislation, directives, and orders continue to protect those facing eviction with temporary stays of their cases, we have noticed an increase in harassment by landlords. This has manifested with false accusations of nuisance behavior, withholding of

required services such as heat, gas, and hot water, failure to adhere to the Housing Maintenance Code by refusing to do necessary repairs, and more. While we recognize that many landlords are just as hardworking and honest like many of the clients we represent and do not do such things, many landlords still have resorted to these behaviors with the goal of driving our clients out of their housing. Luckily, tenants and occupants have tools to combat against this harassment. One such tool is the filing of Housing Part or HP actions. HP actions are critical because it allows tenants and occupants to bring unscrupulous landlords to Housing Court to face consequences for their improper actions and to stop harassment. The very concept of HP actions also serve as a deterrent against such behavior generally. However, to properly serve as a deterrent, our clients must be able to bring such cases. It is often more burdensome to bring HP actions because our clients do not have the knowledge of how to properly bring such cases and are thus discouraged from doing so. We urge that the program be expanded to include HP actions so that legal service providers can serve as the bulwark against such harassment.

Thank you again for giving us this opportunity to testify. We want to close our testimony by sharing a case involving Ms. Charles to demonstrate how important and successful this program has been. We received her case at the beginning of the year and conducted intake over the phone, where we discovered that the landlord brought a nuisance case against her. During numerous virtual appearances before the court, we tried

to resolve the case amicably. Unfortunately, her landlord opted to take the case to trial. Our office was able to prepare for trial virtually and in-person, conduct the trial in court, and ultimately received a decision dismissing the landlord's claim, thereby helping Ms. Charles preserve her tenancy and secure her housing for her, her husband, and 3 young children. Without the Universal Access program, she might not have been able to obtain representation and she and her family might have lost their home in the midst of this pandemic. We take great pride in the work that we have done, what the program has achieved, and we look forward to continuing our work together to ensure that all tenants have a Right to Counsel to help them keep their home.

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 18, 2021

TESTIMONY OF THE LEGAL AID SOCIETY

Presented By: Julia McNally

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 250,000 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.

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 for whom we have data, nearly 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

Justice in Every Borough.

or fatalities,¹ 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, which tasks the Office of Civil Justice (OCJ) with providing access to legal services for tenants facing eviction in housing court and termination of tenancy in New York City Housing Authority (NYCHA) administrative proceedings.

Universal Access to Counsel (UATC) Has Been Key to Protecting Vulnerable Tenants During the Pandemic and Remains a Critical Part of New York's Recovery

The Legal Aid Society is proud to be a leader in New York's historic right to counsel program, which has protected housing for thousands of New Yorkers and served as a nationwide model. Access to counsel in housing court is not only a requirement of civil rights and due process, but also a key tool to mitigate the worst effects of the pandemic. The COVID-19 crisis places the connection between public health and affordable housing in sharp relief, as thousands of Americans could not stay at home safely because they lacked access to decent, stable housing. It has also demonstrated the widespread instability of a market that forces the poorest families to pay as much as 50% of their income on rent during this period of economic strife.²

UATC has served as a buffer that has allowed the New Yorkers most impacted by COVID-19 to avoid displacement and the attendant risk of serious illness or death. Low-income people, people of color, and our most vulnerable immigrant communities have been disproportionately impacted by the loss of a family member, long-term health consequences, job loss, and increased caretaking obligations.³ As a result of government policies that have contributed to and caused the racial wealth gap and housing segregation, these same families are the most likely to live in substandard housing and to pay a higher portion of their income as rent.⁴ The people whose lives have been most severely disrupted by the pandemic are thus also the most vulnerable to harassment, displacement, and eviction.

With the support of OCJ, The Legal Aid Society has fought harassment, neglect, and illegal lockouts, which all have the life-or-death consequence of displacement during a pandemic. We have advocated for system-wide reforms, such as eviction moratoria, the Safe Harbor Act, and emergency rental assistance. With our fleets of attorneys and paralegal case handlers on the ground, we ensure that

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 At the borough level, rates ranged from 21.0% of households paying at least 50% of their income towards gross rent in Manhattan, to 23.3% in Staten Island; 26.2% in Brooklyn; 26.6% in Queens; and 33.3% of households in the Bronx. From <https://rentguidelinesboard.cityofnewyork.us/wp-content/uploads/2021/04/2021-1A.pdf>

³ "Nationwide, Black people have died at 1.4 times the rate of white people." From <https://covidtracking.com/race>.

⁴ "In the mid-20th century, federal, state and local governments pursued explicit racial policies to create, enforce and sustain residential segregation." From <https://www.nytimes.com/2020/01/20/opinion/fair-housing-act-trump.html>.

tenants get the full benefits of eviction moratoria by filing hardship declarations and Emergency Rental Assistance Program (ERAP) applications, defending challenges to stays, and advocating for the full benefits of rental relief programs. Our organization's efforts to enforce tenant protections have made evictions during the moratorium exceedingly rare.

As we plan for the end of the eviction moratorium, we are training a class of new attorneys and paralegals who will be at the forefront of the fight against displacement and the future of the tenants' rights movement. We provide real-time legal information and advice to hundreds of New Yorkers each week through our Housing Help Program hotline.

We look forward to partnering with OCJ to push for tools that will be crucial to prevent needless evictions, such as online platforms to file orders to show cause and a mechanism to alert providers when tenants are about to receive notices of eviction. Creating a portal enabling pro se tenants to file Orders to Show Cause without coping with the complexity of NYSCEF will help prevent a flood of tenants appearing in courthouses upon expiration of the moratorium. Similarly, establishing a procedure for marshals to notify OCJ of impending evictions will allow prompt assignment of counsel, preventing evictions and reducing court delays.

We are deeply grateful for OCJ's investment in our programming during the pandemic and during the recovery. That partnership has doubtless saved thousands of homes, but the work is far from complete. As long as New Yorkers are at risk of displacement, we will continue to fight for decent, sustainable housing for every member of our community, and we look forward to your continued support.

Extending Protections to Prevent Displacement and Bolster Family Stability

The Legal Aid Society continues to advocate for policies to stabilize families, including the Good Cause eviction bill (S 2892A(Salazar)/A 5030(Hunter)). Prohibiting evictions that are without cause or due to exorbitant rent increases is an essential tool in the fight to prevent the displacement that undermines family stability. Without the right to a renewal lease, tenants cannot freely exercise their rights without fear of eviction. These protections are even more critical during the pandemic. The Good Cause bill will extend basic protections to tenants in unregulated apartments, reducing the number of eviction proceedings and contributing to a more level playing field in court. We ask HRA to join us in supporting the passage of the Good Cause bill.

Funding and Sustainability

Due to the reduced case filings and court calendars since the onset of COVID-19, The Legal Aid Society and other providers have been able to offer representation to every income-qualified tenant facing eviction. However, despite the full roll-out of UATC funding, we are concerned that there will be insufficient resources to cover all cases in Housing Court after the end of the eviction moratorium. We urge OCJ to carefully monitor trends in eviction filings and the restoration of eviction cases to the

Justice in Every Borough.

calendar, and to partner with legal services providers to ensure maximum coverage as the courts return to more expanded dockets.

We also urge OCJ to review and revisit its model for funding and deliverables to ensure that legal services providers are able to cover their costs in a way that will continue to provide high-quality legal representation in a sustainable manner over the long term.

Financial Assistance for Vulnerable Tenants

Although the State ERAP program has paid or obligated close to \$2 billion to prevent evictions throughout New York State, these funds still do not cover the rent arrears owed by New York tenants. We urge OCJ to partner with the State to seek additional funds from the federal government. In the interim, the State should immediately reopen the ERAP application portal and continue to receive applications. Doing so will enable vulnerable tenants to continue to receive the immediate eviction protections granted upon submission of an application and will also provide a more accurate representation of the scale of needs, such that the resources to address those needs can be sought as quickly as possible.

We also ask the New York City Human Resources Administration (HRA) to stand ready to fill gaps left by ERAP, both for tenants who owe pre-COVID arrears, and for those who may be left with arrears due to shortfalls in ERAP funding. Such emergency grants, like ERAP grants, should not require repayment. In addition, we hope to partner with OCJ and HRA in seeking a long-needed increase in Family Homelessness and Eviction Prevention Supplement (FHEPS) shelter payment levels, so that indigent families can pay their ongoing rent obligations without falling once again into arrears.

Remote Proceedings Can Work If the Court Enhances Measures to Bridge the Digital Divide

As the court modified its own rules and procedures for court appearances during the pandemic, The Legal Aid Society and its lawyers adapted to virtual conferences and hearings. We learned that, under the right circumstances, remote proceedings can promote the dual goals of public safety and due process. In fact, remote proceedings can enhance access to justice for those with mobility impairments, limited access to transportation, caretaking responsibilities, and work responsibilities that are compromised by traveling to and waiting in court.

The Legal Aid Society supports the continuation of virtual appearances as an option for litigants, with measures that properly account for the “digital divide.” We urge the Office of Court Administration (OCA) to develop creative approaches, such as hardware libraries, to make devices and internet access available to all litigants, as well as more standard approaches, such as having full-time technical assistance available via telephone, chat, and email for troubleshooting during virtual proceedings. OCA must further ensure due process by, among other measures, adjourning matters where tenants experience technical difficulties, developing a user-friendly system for pro se litigants to file

electronically; and creating a user-friendly website that includes relevant contact information, information about future court appearances, and legal and procedural guidance.

Further, for both in-person and remote appearances, equity requires a uniform, straightforward, and clear means to request reasonable accommodation and that all forms and directions are available in multiple languages.

Similarly, we hope that OCJ will partner with us as we press OCA to build on the lessons of the past 18 months by developing a court system that is effective and equitable both for litigants who choose to appear in person and those who elect to access the courts remotely. In so doing, New York can become a leader not only in providing counsel, but also in providing comprehensive access to justice.

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 REGARDING

Universal Access to Counsel

PRESENTED BEFORE:

**Office of Civil Justice
Human Resources Administration City of New York**

PRESENTED BY:

**Cristina Quiñones-Betancourt
SUPERVISING ATTORNEY
MOBILIZATION FOR JUSTICE, INC.**

November 18, 2021

MOBILIZATION FOR JUSTICE, INC.

**100 William Street, 6th Floor
New York, NY 10038
(212) 417-3700**

**424 East 147th Street, 3rd Floor
Bronx, NY 10455
(212) 417-3800**

www.mobilizationforjustice.org

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 by prioritizing the needs of people who have low incomes, have disabilities and/or are otherwise disenfranchised. We do this by providing the highest quality direct civil legal assistance, engaging in community education, entering into partnerships, participating in policy advocacy, and commencing affirmative impact litigation. In a typical year, MFJ assists more than 25,000 New Yorkers. In the last year, MFJ provided advice, counsel, and representation to over 13,000 tenants and obtained over \$6.3 million in monetary relief for our housing clients.

MFJ appreciates the opportunity to share information with OCJ about the vital work MFJ has done because of the Universal Access to Counsel (“UAC”) law, as well as some thoughts about how the implementation of UAC can be improved. We would also like to extend a special thank you to Jordan Dressler, who will be leaving his position as Civil Justice Coordinator at OCJ to join OCA. Jordan has been instrumental in the implementation of UAC as we have continued to navigate the challenges posed by the COVID-19 pandemic. We appreciate the efforts he has made to ensure that we are able to continue providing zealous representation to our clients during these uncertain times.

II. MFJ’s Universal Access to Counsel Work

MFJ participates in UAC in the Bronx. There are currently four court parts dedicated to connecting UAC-eligible tenants with attorneys. Each Tuesday, a team of approximately 16 advocates, comprised of supervising attorneys, staff attorneys, and paralegals, conducts intakes for dozens of tenants who are at risk of eviction. We also receive additional referrals from HRA on a weekly basis via email.

In calendar-year 2021, MFJ provided advice, counsel, and representation to thousands of tenants and prevented almost 800 evictions through UAC. We have also obtained millions of dollars in monetary assistance for our UAC clients to date and expect to obtain much more as our clients’ applications for rent relief pursuant to the Emergency Rental Assistance Program (“ERAP”) are processed.

These successful outcomes have been achieved through the tremendous efforts of our attorneys and paralegals. In every case, we are committed to providing zealous and holistic representation to not only shield our clients from imminent eviction, but to also protect them from the threat of eviction in the future. Prior to the COVID-19 pandemic, we litigated numerous trials, won motions, frequently engaged in appellate advocacy, and had many impactful decisions published in the New York Law Journal and in the New York Official Reports. Although the Pandemic has, in many circumstances, constrained our ability to litigate cases in court in the traditional sense, that has not deterred us from continuing to passionately advocate for our clients and devising creative solutions to obtain the results our clients need and deserve. In fact, throughout the pandemic, MFJ has continued to aggressively advocate for tenants even when their cases in housing court have been stayed. In such cases, in addition to having the eviction proceeding discontinued, our attorneys frequently obtain essential benefits for their clients, such as repairs for

serious conditions, access to essential services, reasonable accommodations, abatements, lease renewals, and the reinstatement of housing subsidies that were previously terminated. We have also advised countless tenants about their rights under the Tenant Safe Harbor Act (“TSHA”) and the COVID-19 Emergency Eviction and Foreclosure Prevention Act (“CEEFPA”). Additionally, we have helped our clients, many of whom lack access to technology, are disabled, and/or are advanced in age, to file hardship declarations to ensure their cases are stayed in court and file applications for rental assistance through ERAP to ensure they will be able to pay their arrears.

It cannot be overstated that, without UAC, many of the tenants we currently represent would have faced a very real risk of eviction, been forced to continue living in substandard and dangerous living conditions, and may have been unable to obtain protections under the TSHA and CEEFPA and rent relief through ERAP. Accordingly, we are extremely thankful for UAC because it provides MFJ the opportunity to fulfill our mission and to make a greater impact for New Yorkers who have low incomes.

III. Ways to Continue to Improve UAC

It is undeniable that UAC has saved countless tenants from eviction. However, MFJ also believes there is room to improve the implementation of UAC to ensure we can better fulfill our obligations. The following are some ways the process can be changed to better benefit clients, the Court, and attorneys:

- Although HRA has improved its referral process over the last couple of years, we have a suggestion on how the process could be further improved. Currently, HRA refers some housing court cases to us via email, with each case being referred in its own, separate email. This system makes the referrals difficult to track. Accordingly, we would appreciate a system that would allow us to see all of the referrals for the entire week in a single place, such as in a PDF, spreadsheet or a shared document.
- Housing law is a highly technical and complicated area of practice that frequently involves the intersection of city, state, and federal laws, regulations, and rules. To make matters even more challenging, eviction cases are summary proceedings that move quickly and the best results are achieved when tenants are connected to counsel early in the case. In light of these considerations, we would ask that HRA provide us with as much advance notice as possible when referring cases to providers because we frequently receive referrals for cases that are scheduled to be conferenced within a matter of days. This short turnaround time is often insufficient to complete an intake, much less to make meaningful strides towards resolving tenants’ legal issues because, in order to ascertain a tenant’s rights, we typically need to investigate a litany of issues, including the regulatory status of the apartment, whether there are hazardous conditions present in the apartment, who owns the property, and the defenses that are available.
- In order to provide holistic representation to our clients, legal services providers should be authorized to prepare CityFHEPS applications in-house. The outsourcing of these applications creates needless delays and places tenants at risk of eviction. While we appreciate our partners at HomeBase and understand they are dealing with a massive

volume of cases, our reliance on them results in miscommunication and uncertainty; that circumstance, in turn, places tenants at risk of eviction. Allowing our paralegals to handle the process from start to finish would greatly benefit our clients, speed up the process, and allow our attorneys to make fewer emergency motions to prevent evictions and focus on legal work for other clients.

IV. Conclusion

Again, we thank OCJ for holding this hearing and considering our testimony and to Jordan Dressler for his years of service. Through UAC, we have made great progress towards the goal of ensuring that all New Yorkers have a place to call home. We look forward to continuing to work with OCJ to improve UAC in the coming year for the benefit of our clients and their families.



TESTIMONY OF THE NEIGHBORHOOD DEFENDER SERVICE

before the

**New York Human Resources Administration
Office of Civil Justice**

IN RELATION TO

The New York City Universal Access to Legal Services Program

by

**Austen Refuerzo
Supervising Attorney, Housing Defense Team**

November 18, 2021

Introduction:

I am Austen Refuerzo, Supervising Attorney of the Housing Defense Practice at 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 and a member of the LEAP coalition. 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 the 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 legal system.

Realizing the Right to Counsel:

The New York City Right to Counsel Law has begun to fundamentally upend the dynamic and function of Housing Court. Housing Court historically—and notoriously—operated as a high-speed eviction mill; a place where unrepresented tenants were deceived, tricked, and bullied out of their homes. Prior to the implementation of the Right to Counsel, moneyed landlords and their attorneys faced little opposition in throwing indigent New Yorkers out on the streets or into the cold embrace of the city shelter system. The 2017 Right to Counsel Law and resulting infusion of tenants’ attorneys, however, has made evident that access to counsel makes a stark difference in both a tenants’ experience of Housing Court as well as the ultimate outcome of their case.

The past four years have proven: tenants represented by an attorney are significantly more likely to be able to remain in their homes. Keeping tenants in their homes protects families, preserves communities, and prevents the destabilization that too often precipitates involvement in the criminal legal or child welfare systems. As a holistic public defender, NDS knows that the Right to Counsel when fighting an eviction case is a bulwark against the worst injustices of our legal system.

It is alarming to imagine how woeful the last 20 months would have been had the Right to Counsel not been partially—and thanks to Intro 2050, fully—implemented during the COVID-19 pandemic. By marshalling the existing army of Right to Counsel attorneys, the City—working through HRA and with the legal service providers—was able to avoid the tragic, violent, and potentially fatal wave of evictions feared at the beginning of the pandemic. And, despite the welcomed protections by the CDC and New York lawmakers, Right to Counsel attorneys, community organizers, and other community partners were essential to the realization of those protections by the most vulnerable tenants.

An Effective Right to Counsel

HRA and Right to Counsel attorneys have done an admirable job reacting to the dual affordable housing and COVID-19 crises. However, we at NDS seek to provide a more lasting stability and, in doing so, interrupt the cycle of the same tenants ending up in housing court over and over. At NDS, social workers ensure that our Right to Counsel clients have the support and access to the services they need; our legal advocates ensure that our clients have access to any rental assistance they qualify for and seek to pair tenants with rental subsidies which will provide long term solutions and lasting stability. These are not services currently funded through HRA or promised to every Right to Counsel tenant across the city, but they should be. We must acknowledge that racist, carceral, and oppressive systems are connected and that the right to an attorney is but a balm treating the symptoms of larger problems, not a panacea. An effective Right to Counsel is one funded in a way to ensure that tenants have access to social workers and legal advocates if they require those services.

Imagining a better Housing Court landscape—and a more equitable City that preserves the fabric of our communities—requires a Right to Counsel that is more proactive and holistic. The pandemic has thrown a harsh light on the prevalence of landlord harassment and deplorable housing conditions. The Right to Counsel must meet tenants where they are; a reality that can only be achieved by the incorporation and funding of community organizers into the Right to Counsel program.

Conclusion:

Because of the Right to Counsel program, fewer New Yorkers have been evicted. The program has been a success. However, with the forced resumption of housing court proceedings during the COVID-19 pandemic, it is axiomatic that the Right to Counsel requires support that that enables attorneys, social workers, and advocates to dedicate the required resources to fight for *lasting* stability. This is the only way to truly shift the dynamic of the Housing Court from eviction mill to a place of equal justice, and the only way to preserve our communities.



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

**By Sheila S. Boston, NYC Bar Association President and
Alison King and Andrew Scherer,
Task Force on the Civil Right to Counsel Co-Chairs
November 18, 2021**

Co-Chairs

Alison King

Pro Bono Counsel, Arnold & Porter

Andrew Scherer

Policy Director, Impact Center for Public Interest Law, New York Law School

Secretary

Alexis Wanzenberg

Associate, Arnold & Porter

Members

Deborah Archer

Professor, NYU Law School

Mary Lu Bilek

Sheila S. Boston

NYC Bar Association President, ex officio
Partner, Arnold & Porter

Ellen Chapnick

Dean Emerita for Social Justice Initiatives (Ret.), Columbia Law School

Marjorie P. Cohen

Urban Justice Center

Maria Cilenti

Senior Policy Counsel, NYC Bar Association

Hon. Fern Fisher (Ret.)

Professor, Hofstra Law School

Ayanna Fortson

Director of Housing, National Urban League

Glenna Goldis

NYC Dept of Consumer & Worker Protection

Hon. Allan Gropper (Ret.)

Adjunct Professor, Fordham Law School

Rene Kathawala

Pro Bono Counsel, Orrick
Also acting as liaison to the Pro Bono and Legal Services Committee

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 as well as the current president who sits *ex-officio*, 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, has been guaranteed legal representation. Since New York City passed this landmark legislation, thirteen additional localities have adopted the right to Counsel, including Newark, San Francisco, Cleveland, Philadelphia, Boulder and Baltimore, as well as the states of Washington, Maryland and Connecticut.

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 homes of New York City's low-income



Glenn Lau-Kee
Partner, Lau-Kee Law Group

John Kiernan
Partner, Debevoise

Hon. Joan Lobis (Ret.)

Lorena Lopez
Tenant Organizer, Catholic
Migration Services

Roger Maldonado
Partner, Smith, Gambrell &
Russell

Martin S. Needelman

Jennifer March
Executive Director, Citizens
Committee for Children

Joseph Rosenberg
Executive Director, Catholic
Community Relations Council of
New York, Inc.

Neil Steinkamp
Managing Director, Stout Risius
Ross, LLC

David Udell
Executive Director, National
Center for Access to Justice at
Fordham Law School

Sara Wagner
Associate Director, Teamsters
Local 237 Legal Services Plan
*Liaison to the Housing Court
Committee*

Advisory

Andrew Fyfe
Head of Evaluation, United
Nations Capital Development
Fund

David Jones
President, Community Service
Society of New York

**Hon. Jonathan Lippman
(Ret.)**
Of Counsel, Latham & Watkins

Robert Sheehan
Of Counsel, Skadden

households are entitled to be treated with dignity and respect. It is helping 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 is helping 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. During the pandemic, it has saved lives as well as homes by assuring that tenants have been able to avail themselves of pandemic-related protections against eviction as well as pre-existing rights. The City is to be applauded for leading the state and 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 the following principles from our observations and discussions that we believe are important for guiding the successful implementation of the law:

- Ensuring that the system affords tenants with 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.
- Ensuring well designed court processes, adequate court facilities, and judges who have transitioned successfully from the traditional model of a pro se court to the new model in which disputes are resolved by represented parties with civility and decorum.
- Ensuring sufficient resources to enable civil legal services organizations (“Legal Services Organizations”) to provide effective legal representation, with adequate compensation, support, supervision and training, as well as sufficient flexibility to offer deliver services to particular geographic communities, people with special needs and people who are simultaneously facing legal proceedings in family court, criminal court and other forums.

The logo for the New York City Bar, featuring the text "NEW YORK CITY BAR" in a serif font, centered between two horizontal blue bars.

NEW YORK CITY BAR

- Ensuring effective systems for information sharing on a range of levels, most importantly to educate tenants so they can avail themselves of this new right, but also to connect the court, community organizations, Legal Services Organizations, and all provider organizations.
- Ensuring full deployment of technology to streamline the flow of information, and to make appropriate and relevant information readily available to the court, litigants, and legal representatives.
- Ensuring prioritization 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 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 in New York State are at risk of housing instability or rent shortfalls. New York State's eviction moratorium will end on January 15, 2022.

Statewide, unemployment remained high during the course of the pandemic reaching 14.5% by May of 2020. Federally enhanced unemployment insurance, which helped many to stabilize their finances during the early pandemic period expired in July 2021. A recent analysis prepared by Neil Steinkamp of Stout, a member of the Task Force, estimates that over 1.1 million households in New York State--a number that has likely grown since the time of the study -- cannot pay rent, and that these rent shortfalls, which began in mid-March 2020, have aggregated at a rate of over \$875 million per month. New York State has earmarked approximately \$1.2 billion through the Emergency Rental Assistance Program ("ERAP") to aid tenants who fell behind on rent but problems persist. For example, the funds have been slow in reaching many low-income New Yorkers because of language barriers, access to technology, or technical glitches in software.

The logo for the New York City Bar, featuring the text "NEW YORK CITY BAR" in a serif font, centered between two horizontal blue bars.

NEW YORK CITY BAR

As of August 2021, Office of Temporary and Disability Assistance reported payments to approximately 7,072 households. Yet, the Princeton University Eviction Lab reports that approximately 75,000 eviction cases have been filed in New York City alone since the start of the pandemic. The civil right to counsel's assurance of attorney representation will be critical to the defense of tenants across the state with pending eviction cases.

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 whose communities in our City 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 in the beginning of 2022. And, as the New York State Office of Court Administration ("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 sufficient additional; remedial measures aren't taken.

Thankfully, there is a wide consensus about the importance of counsel for tenants and for New York City 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, so important not only to families but also to the current and future stability of neighborhoods in our City, 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 in a way that is most responsive to the needs of the community. We believe that no one should be evicted into a pandemic, and certainly not 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:

1. Support statewide RTC which covers any case that could result in a tenant losing their home, that requires the courts, judges and landlords to ensure that tenants know about their right to counsel and how to use it, and that requires the courts to adjourn cases until tenants have had time to retain and consult with their RTC attorney.
2. Increase the City's outreach and awareness of RTC: During this crisis, it is more important than ever for the City to initiate an aggressive public outreach and awareness campaign. We understand that the City's outreach plans were on hold as cases were paused and we applaud the City's rollout of a paid media to raise awareness about Right to Counsel. However, 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 did not know about their right to counsel prior to arriving in court (interviews took place between October 2019 and mid-February 2020). Unless tenants are aware of their right to counsel before they receive court papers, many could believe they have no chance of winning a case on their own and saving their homes, especially if they have been unable to pay rent in this economic and public health crisis.
 - a. We urge the City to ensure that the paid media campaign provides information in multiple languages across all the chosen platforms and media sources,



NEW YORK
CITY BAR

and that these platforms and sources include local, community media outlets and that the media campaign is sustained and supported on a regular basis.

- b. We also urge the City to implement and adequately fund Local Law 53 to engage community organizations in the outreach effort so that tenants know their rights and can protect their homes.
3. Implement a uniform process to provide the RTC and ensure that cases are calendared based on the capacity of Legal Services Organizations. The Task Force recommends that the Office of Civil Justice (“OCJ”) coordinate the assignment of counsel in eviction cases with the OCA to calendar cases in a volume that matches the capacity of RTC Legal Services Organizations. The Task Force further recommends that OCJ ensure adequate funding for the RTC Legal Services Organizations so that there are enough attorneys and support staff to meet the need.
4. Full and Adequate Representation in Evictions. The Task Force recognizes that social workers, paralegals, public benefits advocates, mental health professionals, and other service providers in addition to housing attorneys are necessary to ensure that tenants receive full and adequate representation to prevent evictions. The Task Force recommends that the City fund RTC legal services at a level that enables RTC Legal Services Organizations to use multi-role teams to provide holistic RTC representation.
5. Preserve Current Programs. The Task Force urges the City to preserve all funding sources supporting housing-related legal services. When RTC was first passed we presented the City with a list of principles for implementation. The Task Force recommends that the City maintain funding for existing programs providing affirmative litigation, building-wide work, or population-specific legal services. This includes funding for affirmative cases including, but not limited to, needed repairs and preventing harassment, for individual tenants and groups of tenants. The necessity of RTC funding for these cases was made clear during the course of the pandemic. Many families on the brink of eviction continue to face landlord harassment and live in dangerous and unhealthy conditions. These conditions often include mold,



rats, mice, cockroaches, and other pests, which are common causes and triggers of the types of respiratory conditions that make COVID-19 especially dangerous.

One final note. The Task Force recognizes the City's significant change of position in adopting the formulation "right to counsel" to describe the RTC program. This phrase is more-easily understood than "universal access." This shift to plain language has been important in enabling the public, and tenants, in particular, to understand their rights. More fundamentally, tenants and their allies fought hard to win the right to counsel and that right is being replicated around the country. The City is to be applauded for taking this step that helps to underline the importance of the right by educating the public about the right.

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.

* The Task Force gratefully acknowledges the assistance of New York Law School students Carly Gartenberg and Joseph Rochman in preparing this testimony.

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 18, 2021

Good evening and thank you to Jordan Dressler and the Office of Civil Justice for the opportunity to testify regarding the unprecedented Universal Access to Legal Services for Tenants Facing Evictions program in New York City. My name is Hannah Fishman, and I am a Supervising Attorney in the New York Legal Assistance Group's Tenants' Rights Unit and a tenant in New York City.

Founded in 1990, New York Legal Assistance Group (NYLAG) is a leading civil legal services organization combatting economic, racial, and social injustice by advocating for people experiencing poverty or in crisis. Our Tenants' Rights Unit (TRU) fights for housing justice: fair, safe, and affordable housing for adults and families so that they can stay in their communities and thrive.

The right to counsel for tenants in New York City has already been a resounding success. By the end of the fourth year of the program's administration, 74 percent of tenants in Housing Court already were receiving right-to-counsel legal services citywide, with 71 percent of tenants receiving full representation in their proceedings. Even more powerful: 84 percent of tenants provided with an attorney in Housing Court and New York City Housing Authority (NYCHA) administrative termination of tenancy hearings have remained in their homes.

Over the course of last 20 months of the COVID-19 pandemic, the importance of the right to counsel has been demonstratable at every turn. For example, TRU attorneys successfully returned a family of five with three minor children under the age of 12 to their home after they were evicted on

March 12, 2020, just days before the first pandemic-related eviction moratorium went into effect. This case came to NYLAG as an emergency referral after the start of the pandemic, and NYLAG attorneys worked tirelessly to convince the landlord to delay re-renting the apartment until we were able to apply for and obtain rental arrears assistance. In two weeks, we were able to secure the necessary money for the landlord and obtain the keys to the apartment so that our clients could return to their home, resolving the matter fully. Then, in December 2020, as COVID-19 cases were spiking again, another TRU attorney prevailed at trial in a chronic nonpayment holdover proceeding, preserving a 36-year tenancy for a 71-year-old tenant who had resided in an affordable Housing Development Fund Corporation (HDFC) building since 1984. Over the course of the pandemic, NYLAG attorneys have prevented eviction for and secured safe, habitable housing for hundreds of tenants citywide.

Now our attorneys are appearing daily in virtual parts, connecting tenants with the assistance programs and other legal mechanisms available to preserve their housing, including for clients who faced immense financial hardship during the pandemic. The complexity of the pandemic legal environment, with an array of ever-changing substantive and procedural law, underscores the critical need for every tenant to have a knowledgeable attorney to represent them in their eviction case. Other cities, states, and communities without a comparable right to counsel program have seen waves of mass evictions over the last several months. New York's eviction moratorium has played a crucial role in preventing that, but after the moratorium ends, the presence of right to counsel will ensure that many clients' homes will be preserved.

NYLAG was one of the first legal services providers to represent NYCHA tenants in administrative termination of tenancy proceedings as part of the right to counsel's NYCHA pilot program. With the expansion of the right to counsel, NYLAG has formed a NYCHA Defense Team ("NDT") to ensure that NYCHA tenants facing the loss of their affordable housing will have a dedicated team of attorneys equipped to handle the intricacies of NYCHA administrative practice and be ready to bring Article 78 actions in Supreme Court to challenge

agency decisions where meritorious appeals lie. NDT will also represent clients in NYCHA holdover proceedings in Housing Court who have colorable Remaining Family Member grievances at both the administrative affirmative grievance stage at the NYCHA Office of Impartial Hearings and in the defensive holdover proceeding in Housing Court. This comprehensive, multi-venue approach to representation is critical for preserving one of the few remaining sources of affordable housing in New York City. NYCHA Termination of Tenancy proceedings are plagued by a lack of due process, and it was extremely difficult for tenants facing the loss of their long-term homes to obtain counsel. The creation of NDT and its commitment to fighting hard for NYCHA tenants facing displacement demonstrates NYLAG's fidelity to a robust implementation of the right to counsel program and a signal to all that NYCHA tenants and their housing security matter.

The work of our attorneys can be life-changing for clients, but it is resource-intensive, never easy, and requires dedication, diligence, and commitment. Though the program has prevented eviction and enforced City tenants' rights for thousands of tenants, there is more that needs to be done to ensure not just access to counsel, but access to the high-quality legal services the program's drafters envisioned. What follows is a series of recommendations to ensure that our attorneys will have the capacity and resources to achieve the tremendous outcomes that are possible in many cases. New York City tenants deserve the strong, zealous advocacy contemplated when Local Law 136 first passed.

Case Assignment and Calendaring Must Consider Provider Capacity

It is imperative that OCJ develop a uniform and systematic process for providing tenants with a right to counsel that ensures cases are assigned and calendared based on the capacity of legal services providers. In June 2021, the program was expanded beyond the zip code model of its initial rollout phase to cover the entire city of New York. This expansion, though sorely needed, has stretched the capacity of our already overburdened legal services organizations, which has the potential to lead to the deterioration of quality of representation.

When the right to counsel law was passed, the tenant bar was tasked with developing an army of tenant attorneys. Prior to right to counsel, 10 percent of tenants were represented whereas 10 percent of landlords were not. Now, just four years later, 100 percent of tenants below the income threshold can be represented—and the vast majority of cases in housing court involve individuals and families experiencing poverty or crisis. But even with exponential growth in the tenant bar, staffing does not always align with current need. Attorneys already were dealing with caseloads higher than ever *before* the program was formally expanded in June, and now we are seeing calendars multiply in size. Adjournment dates are shorter during the pandemic than they were in pre-pandemic times, and even the expanding numbers of staff we have cannot meet that need. We are now staffed to meet the capacity we saw this summer, and yet calendars—and thus caseloads—continue to grow. With the eviction moratorium’s end nigh, motion practice will pick up and the enormous caseloads facing our tenant attorneys will require even more attention than they did during the moratorium with tenants facing imminent eviction.

What is more, we are building a tenant attorney army from scratch. Most of the attorneys joining us are recent law school graduates. While we are confident that they will develop into extremely capable zealous advocates, that development cannot happen overnight and requires significant training and resources. Overburdening advocates with unmanageable caseloads will exacerbate this problem by burning them out, preventing our legal services organizations from retaining the passionate, hardworking attorneys we work hard to develop and train.

There is a culture change happening in Housing Court today. Landlords and their attorneys, long accustomed to the eviction mill operating on their timeline, are now facing the highly competent attorneys representing tenants. This culture change—bringing housing court back to its inception as a place for tenants to assert their rights—is imperative and can only be effectuated with advocates who are sufficiently resourced to meet the needs of their community. There is a common misconception in the housing field that nonpayment cases are “simple”, or that some holdovers can be quickly

resolved. Of course, there are a few cases that fall into both categories, but the misconception arises from years of *pro se* tenants unaware of the rights and defenses available to them or without the power to assert them—the exact reason for the right to counsel program. Already we are seeing a change, with increased motion practice and reduced evictions because of it. A case that may have resolved quickly in the past no longer necessarily will because tenants are learning of defenses and rights of which they were unaware without the assistance of counsel. To continue to make the changes that will truly safeguard tenants’ rights, capacity cannot be stretched so thin as to make litigation impossible.

OCJ Should Work to Ensure Reasonable Accommodation and Language Access Needs Are Met During the Case Referral Process

Many tenants in New York City face challenges accessing their right to counsel because they are persons with disabilities, limited English proficiency, or both. OCJ must honor both the letter and spirit of local, state, and federal anti-discrimination laws to ensure that individuals with disabilities or language access needs can have those needs met.

While the providers have language access lines and resources for working with our clients with disabilities, that same access is often missing at the outset of a client’s representation. Tenants receive paperwork about their cases in English, and then they receive information about their right to counsel primarily in English as well. Even if a tenant does learn that they have an active housing court proceeding, there are rarely interpreters available at the upfront court appearances at which tenants are being connected to counsel. Elderly tenants or those with disabilities or conditions that predispose them to severe illness or death from COVID-19 can be obligated to go to court without reference to their health and safety, particularly under the new DRP-218 requiring that first appearances in resolution parts take place in person, despite months of effective virtual court appearances.

OCJ should work with community organizing groups to ensure that it meets tenants where they are with respect to their disabilities and limited

English proficiency, providing adequate interpretation resources and ensuring tenants remain safe during early appearances in Housing Court when tenants first get connected to counsel.

OCJ Should Work With and Fund Community Organizing Groups under Local Law 53

OCJ should work with community organizing groups to advocate on behalf of legislation and policy that will expand access to quality legal representation and resources to help tenants advocate for their right to habitable housing free from harassment. The City should develop an aggressive public outreach and awareness campaign so that litigants know about the right to counsel program and appreciate its power to defend their housing. Additionally, if tenants are unaware of their right to counsel before receiving court papers, many could and do leave their homes unnecessarily and prematurely, believing they have no way to win a case. We urge the City to include information in multiple languages across all the chosen platforms and media sources in any outreach campaign, and that these platforms and sources include local, community media outlets.

It is not enough for this organizing effort to come from OCJ alone, however. Local Law 53, requiring OCJ to work with trusted community organizing groups in the City, was passed earlier this year but has yet to be funded. We must adequately fund community organizing groups to do outreach and education about the program. This will empower tenants to fight for their rights and ensure they know that an attorney is available and what an attorney can do for a client.

Beyond Right to Counsel

The right to counsel in eviction defense is crucial to addressing the affordable housing crisis in New York City and to keeping people in their homes. We are proud to be a part of the City's unprecedented program. We are mindful, however, that the right to counsel alone cannot solve the problems facing our clients at risk of losing their homes and homelessness.

First, there are additional resources the City can provide that would protect our clients from the long-term effects of housing insecurity. As litigation expands with the influx of tenant representatives, attorneys will be better equipped to serve their clients effectively with the assistance of social workers, public benefits advocates, mental health professionals, and other service providers in addition to housing attorneys.

Additionally, the City administers a wide range of housing-related programming beyond the right to counsel in housing court. This includes funding for legal services, such as affirmative cases dealing with repairs, harassment, building-wide work, and population-specific legal services. It also includes programs like CityFHEPS, FHEPS, HASA, and the shelter system, among others. The right to counsel program is as successful as it is because these programs exist. They are crucial to ensuring access to habitable, safe, affordable housing free from harassment and should be both protected and expanded.

Second, the City should prioritize the protection and creation of affordable housing. Eviction defense attorneys can reduce evictions and provide tenants with the opportunity to leave their homes on their own terms, rather than through the violent eviction process. Attorneys cannot create affordable housing where there is none. Without increased attention to and focus on affordable housing beyond the limitations of the right to counsel program alone, tenants and those facing economic insecurity in New York City will never be able to achieve housing stability. The right to counsel is not enough; access to affordable, safe housing for all New Yorkers must also be a priority.

Thank you again to OCJ and Jordan Dressler for the opportunity to testify this evening. Mr. Dressler, as you prepare to move on from your current role, NYLAG also wants to thank you for your tremendous service to the City of New York over the last several years as the first-ever coordinator of New York City's

trailblazing Office of Civil Justice. We look forward to continuing to work with you in your new role in Housing Court.

Respectfully submitted,

Hannah R. Fishman, Esq.
Supervising Attorney, Tenants' Rights Unit
New York Legal Assistance Group
hfishman@nylag.org

**NORTHERN MANHATTAN
IMPROVEMENT CORPORATION**

(NMIC)

TESTIMONY

Regarding

New York City's Universal Access to Legal Services Program

Presented Before:

Human Resources Administration's

Office of Civil Justice

November 18, 2021

PRESENTED BY:

Jesenia Ponce, Esq.

Supervising Attorney

NORTHERN MANHATTAN IMPROVEMENT CORPORATION (NMIC)

My name is Jesenia Ponce, and I am a Supervising Attorney at Northern Manhattan Improvement Corporation (hereafter, "NMIC"). On behalf of NMIC, we thank you for providing

us the opportunity to submit our testimony on the importance of the functionality of the Universal Access to Counsel program for tenants facing eviction.

NMIC is a community-based settlement house founded in 1979. Our mission is to support underserved immigrant neighborhoods in New York with a focus on preserving safe and affordable housing for low-income residents. Our affordable housing initiatives include providing ongoing community organizing assistance to tenant associations across 36 buildings, housing development that has brought over 400 units and 15 buildings under tenant control, Weatherization services that completed weatherizing in 302 units across 6 buildings this past year, and our housing legal work which takes on individual and group cases to maintain housing for residents and achieve broad systemic change.

NMIC is part of several housing coalitions, including the Right to Counsel Coalition and Housing Justice for All. NMIC is also a member of Leap, a coalition comprised of 18 legal services agencies citywide. Additionally, our Legal Director is Co-President of the New York Legal Services Coalition which includes 50 legal services providers covering every county in New York State.

NMIC's Right to Counsel ("RTC") unit has over 30 staff members including attorneys, paralegals, and organizers, dedicated to assisting low-income families in housing cases. Each year, NMIC prevents approximately 1000 evictions and handles an additional 2,000 housing matters, including rent overcharges, HP actions for repairs, and securing rental subsidies to help maintain safe, affordable housing for families. We partner with several private law firms to bring impact cases that affect tens of thousands of New Yorkers. Additionally, our RTC staff has assisted community members in leveraging millions of dollars in rental arrears subsidies since the inception of the law. Our RTC attorneys have assisted thousands of community members to remain in their homes in the last five years. However, their legal representation often relies on the support of a team of staff who leverage city and private resources to ensure that we are able to address the underlying issues that are often required for our advocacy to be successful.

For example, many of the families in the housing matters we provide representation on often require advocacy in a number of different ways. As noted, we often need to advocate for rental subsidies and other supportive services for our clients. Our paralegals and support staff are integral in providing these services to the community. There are several components to

successfully representing a tenant with their eviction proceeding. For example, in holdovers, our office may need to leverage support from city agencies, like Adult Protective Services, and private agencies to fully remove the risk of eviction and discontinue the matter in court. Further, in most nonpayment cases, advocacy for rental assistance is required in order to successfully prevent eviction. Thus, successful termination of an eviction proceeding takes more than just litigation in housing court.

For these reasons, RTC is essential for the communities we serve. During the pandemic tenants were unable to pay their rent, and now are faced with the upcoming lift of the moratorium. While summary proceedings in housing court were already difficult for tenants even before the pandemic, there are now additional complexities involved with each case due to emergency federal and state laws passed during the pandemic. This added layer undoubtedly makes housing court nearly impossible to navigate for tenants in our community, most of which are native Spanish speakers. Right to Counsel is essential- not only because of the difficulties with the pandemic, but the program has been essential to maintaining affordable housing stock in underprivileged areas in New York City and preventing housing instability that has significantly affected our community even before the national crisis. Right to Counsel is a step toward a future where tenants can finally have housing stability in their communities.

Although the right to counsel was expanded during the pandemic to include representation for more households, landlords have also filed thousands of eviction cases in addition to those cases still pending from before March 2020. Thus, as we navigate through the upcoming wave of eviction cases after the moratorium lifts in January, there are several recommendations that the Office of Civil Justice can implement to grow the Right to Counsel program more successfully.

First, funding for proper staffing is essential to long term eviction prevention. Full representation and eviction prevention requires a team of paralegals and attorneys working together to resolve eviction proceedings. As mentioned above, our work does not end with settlement; eviction proceedings require far more than litigation. Our community needs a wholistic approach to resolution that will not leave tenants unstable in their homes.

Second, as attorneys navigate through the upcoming eviction wave, the predatory practices by landlords will likely be exposed at a greater scale. As it stands, most of our work

focuses on eviction prevention. However, we are unable to conduct investigative work and find patterns of inconsistencies across the city to engage in progressive work. Systemic issues exist but without proper funding to research these issues, we cannot make a difference long term. Impact litigation is crucial for a long-term solution to housing instability brought on by predatory landlords.

Lastly, most tenants in New York City are unaware of their right to an attorney, and their rights as tenants. More public outreach on several platforms about the Right to Counsel program is needed. Tenants may be unaware of their rights when they receive a 30-day Notice of Termination and leave their affordable apartments- without realizing that they may have been protected under the law. As we expect the wave of eviction cases this coming year, aggressive public outreach is crucial to protecting tenants' rights. Additionally, the city passed Local Law 53 earlier this year, but its implementation has not been successful. We ask that the City implement Local law 53 and fund community-based organizations to assist in this public outreach and education to tenants regarding their rights.

With the upcoming lift of the moratorium in January, the Right to Counsel program will be crucial in preventing a further state of housing instability in New York City.



RTCNYC Coalition Testimony on Right to Counsel Implementation
November 18, 2021

Good evening, and thank you Jordan Dressler and the Office of Civil Justice for the opportunity to testify today. Please accept our testimony on behalf of 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 just the first few years since it passed: 86 percent of tenants who had RTC won their case and stayed in their homes, landlords are suing people less and community groups are actively using the Right to Counsel as a powerful tool to protect and advance tenants' rights. 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.

As we have seen, during 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.

We applaud the city for extending Right to Counsel to all housing court cases during the pandemic regardless of zip code, for making right to counsel available to all tenants with pre-pandemic eviction warrants regardless of income, for instituting a blanket income eligibility waiver and for passing and implementing Local Law 54, speeding up the implementation of RTC by more than a year. We also applaud the city for enacting Local Law 53, requiring the city to work with and fund neighborhood based organizing groups and we are anxious to hear about its implementation.

Since the onslaught of COVID 19, between March 15, 2020 and November 1, 2021, landlords — mostly large predatory equity corporations — filed over 72,000 eviction cases against NYC families, and many more cases are still pending from before the pandemic. Our eviction protection laws are set to expire on January 15 of next year and the emergency rental assistance funds are almost all depleted. Right to Counsel has been critical to ensuring that as many of these families as possible retain their basic human right to a home. It's paramount that we focus on strengthening and expanding it.

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 the City's Outreach and Awareness:** During this crisis, it is more important than ever for the City to initiate an aggressive public outreach and awareness campaign. We understand that the city's outreach plans were on hold as cases were paused and we applaud the city's rollout of a paid media campaign this past Monday, Nov. 15th to raise awareness about Right to Counsel. 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 did not know about their right to counsel prior to arriving in court** (interviews took place between October 2019 and mid-February 2020). 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. We urge the city to ensure that the paid media campaign provides information in



multiple languages across all the chosen platforms and media sources, and that these platforms and sources include local, community media outlets and that the media campaign is sustained and supported on a regular basis.

2. **Implement and Fund Local Law 53.** As noted above, we applaud the city for passing this legislation but we are concerned that it has yet to be implemented. We urge the city to implement this law immediately so that tenants know their rights and can protect their homes.
3. **Support and join the RTC NYC Coalition in demanding that Governor and our NY State Assembly and Senate immediately:**
 - a. **Pass our state-wide Right to Counsel bill (Senate (S06678A) | Assembly (A07570A)).** The state law improves the NYC law in a few key ways:
 - i. It extends RTC to all new yorkers regardless of income. As we saw during COVID, we can and must make this a right to all tenants regardless of income.
 - ii. It covers any case that could result in a tenant losing their home. This includes supreme court cases, administrative hearings, appeals, and more.
 - iii. It requires the courts, judges and landlords to ensure that tenants know about their right to counsel and how to use it. It also requires the courts to adjourn cases until tenants have had time to retain and consult with their RTC attorney.
4. **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 should coordinate the assignment of counsel in eviction cases with the Office of Court Administration (OCA), and OCJ should strongly advocate for OCA to calendar cases in a volume that matches the capacity of RTC legal services organizations. OCJ must also ensure adequate funding for the RTC legal services providers so that there are enough attorneys and support staff to meet the need.
5. **The City must ensure that tenants receive full and adequate representation to prevent evictions. This requires social workers, paralegals, public benefits advocates, 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 and fund RTC legal services at a level that enables RTC legal services organizations to use multi-role teams to provide holistic RTC representation.
6. **Preserve Current Programs. When RTC was first passed we presented the city with a list of principles for implementation. Preserving other funding sources for legal services was and is still critical. The city MUST preserve all city-funded housing-related legal services programs and ensure that current funding for existing programs providing affirmative litigation, building-wide work, or population- specific legal services, is not eliminated, reduced, or redirected.** This includes funding for affirmative cases that deal with repairs, harassment, etc., for individual tenants and groups of tenants. **Extending RTC for these cases during the pandemic made this clear.** Most families on the brink of eviction continue to face landlord harassment and 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.

For more information, contact Susanna Blankley: susanna@righttocounselnyc.org