



JustFix



BetaNYC

Testimony before the New York City Office of Civil Justice Regarding the Right to Counsel for Tenants Facing Eviction

Friday, February 24, 2023

Thank you for the opportunity to testify. My name is Lucy Block and I'm a Senior Research and Data Associate at the Association for Neighborhood and Housing Development (ANHD), testifying on behalf of members of the Housing Data Coalition. ANHD builds community power to win affordable housing and thriving, equitable neighborhoods for all New Yorkers. As a member organization of community groups across New York City, we use research, advocacy, and grassroots organizing to support our members in their work to build equity and justice in their neighborhoods and citywide. HDC is a group of organizations and individuals that collaborate on the use of public data to further housing justice in New York City and to combat speculation and displacement.

As part of HDC's work, ANHD, along with University Neighborhood Housing Program (UNHP), JustFix, and BetaNYC, have been collaborating with the Right to Counsel Coalition for over four years to obtain, publish, and analyze housing court data from the Office of Court Administration (OCA). This data allows us to quantify the state of evictions in New York City and New York State. With access to OCA data, we have been able to track trends in eviction filings throughout COVID and the implementation and expiration of various legal protections against evictions.

Filings have taken off since the end of eviction protections

Despite multiple protections against evictions proceeding through the courts, landlords consistently filed eviction cases in large volumes throughout most of the pandemic. **Over 82,000 residential evictions were filed in New York City between March 23, 2020 and January 15, 2022. Over 110,000 evictions have been filed since then.**

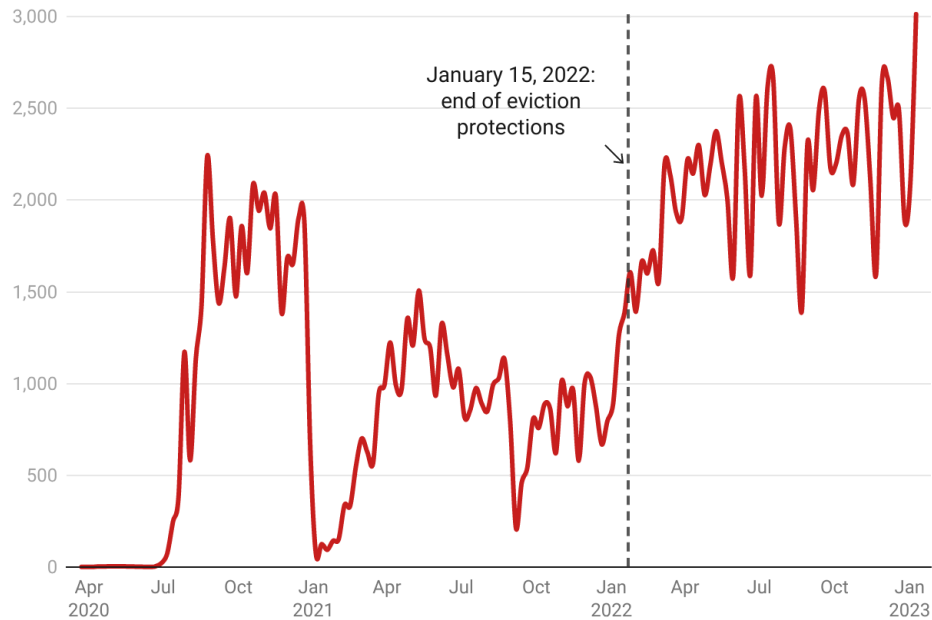


Chart by ANHD. Data source: NYS Office of Court Administration via the Housing Data Coalition in collaboration with the Right to Counsel Coalition, available at github.com/housing-data-coalition/oca.

As you are aware, advocates warned that the lifting of eviction protections would flood and overwhelm the courts. The Right to Counsel Coalition and the legal services providers that represent tenants in their eviction cases knew that there was not adequate infrastructure to handle all the eviction cases in the pipeline. But in contrast with the series of orders that accounted for the exceptional circumstances of the pandemic by slowing eviction cases, on January 15 2022, the courts reverted to the pre-pandemic status quo, with grave consequences.

Since early last year, providers have not been able to take on all tenants facing eviction who are eligible for Right to Counsel. Tenant attorneys, who do their work because they care deeply about the right to housing of New York City's most marginalized and vulnerable tenants, are overworked and exhausted. Over and over, they are facing the impossible choice of either turning tenants away, meaning that tenant may unnecessarily lose their home, or taking on so much work that they simply cannot do all of it with integrity. As a result, they are experiencing intense burnout, meaning that attorneys are leaving their organizations in droves, only exacerbating the problem. Unionized attorneys are striking in part due to these unsustainable caseloads. The situation is absolutely untenable and unjust to tenants and attorneys alike.

Less than half of tenants have representation

In collaboration with the Right to Counsel Coalition and the other organizations involved in this work, ANHD calculated the "rate of representation" for eviction cases that were filed since January 15 of last year. To do this, we took all residential non-payment and holdover cases filed in New York City courts after that date that have had two scheduled appearances already occur. We excluded cases in which tenants never appeared. We

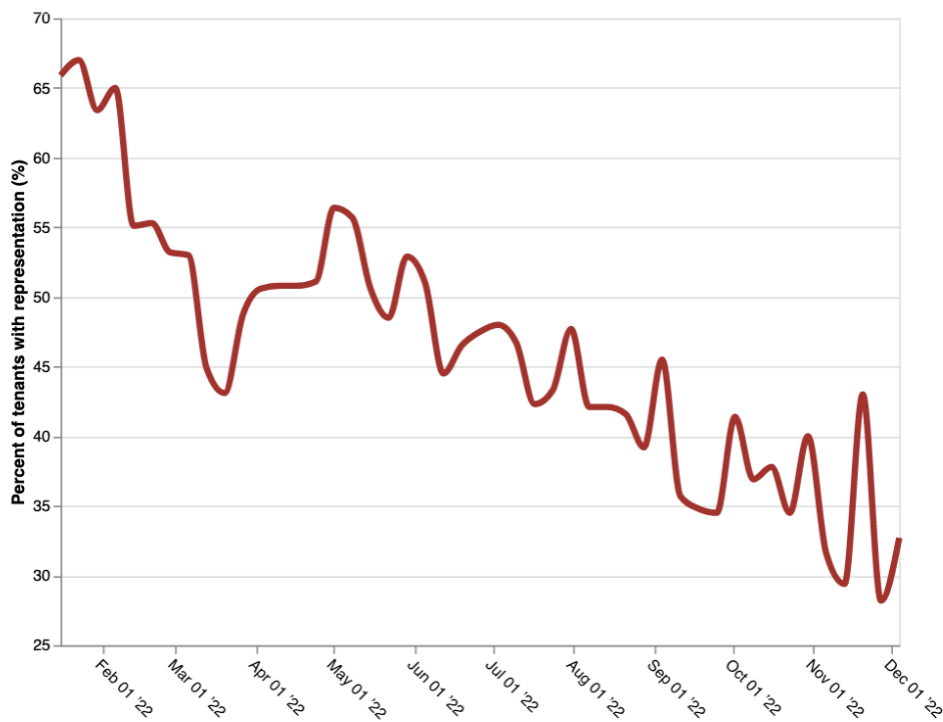
then took the share of cases in which the defendant was represented by counsel or was marked as “SRL” - a self-represented litigant. By dividing the represented defendants by the total number of cases that met these criteria, we arrived at our rate of represented tenants.

What we found was the following:

Out of all eviction cases that have been filed in New York City since eviction protections ended on January 15, 2022, **only 47% of tenants who appeared in court¹ have received representation in their case** -- whether through Right to Counsel or not. Because some of those tenants have private attorneys, the share of tenants with Right to Counsel representation is lower than 47%. The share of unrepresented tenants equates to over 17,000 households – 17,535 as of this week – who are facing eviction in court alone. In contrast, it has been estimated that 82% of households facing eviction should be eligible for Right to Counsel.² This is the current state of affairs, and it is shockingly inadequate.

Share of Represented Tenants

Percent of all tenants with eviction cases who are represented by an attorney by the week the case was filed



¹ Instances in which tenants did not appear in court are excluded from this analysis.

² Report of Stout Risius Ross, Inc. for Pro Bono and Legal Services Committee of the New York City Bar Association: The Financial Cost and Benefits of Establishing a Right to Counsel in Eviction Proceedings Under Intro 214-A, 2016.

<https://cdn2.hubspot.net/hubfs/4408380/PDF/Cost-Benefit-Impact-Studies/SRR%20Report%20-%20Eviction%20Right%20to%20Counsel%20%203%2016%2016.pdf>, p.3.

Chart by the Association for Neighborhood and Housing Development (ANHD) in collaboration with the Right to Counsel Coalition. Data source: NYS OCA.

Denying legal representation and protections in housing court impacts Black and brown tenants most. As a result of discriminatory housing policy, racist systems of urban development, segregation, wealth extraction, and disinvestment from communities of color, poor Black and brown tenants are most often the ones losing their homes through eviction. ANHD has found that evictions are filed more than twice as often in majority people of color zip codes compared to majority white zip codes.³ Evictions destabilize households and communities and fuel displacement. They are violent and disruptive, and result in tenants entering a shelter system that is under-resourced and an unaffordable, competitive housing market that prioritizes profit over people. They have a harmful impact on education, employment, relationships, and physical and mental health. New York has the power to change this, and it is the Office of Civil Justice's responsibility to make sure we do.

OCJ must push the courts to change course

Right to Counsel was a landmark victory that was hard-fought by advocates and tenants alike to shift the enormous historic imbalance between landlords and tenants and reduce homelessness. When properly implemented, RTC keeps 84% of tenants facing eviction in their home. But because of the decisions of our courts and government officials, RTC is failing to meet its mandate.

The Office of Civil Justice was created to implement Right to Counsel and is responsible for upholding it. OCJ is not fulfilling that responsibility. We understand that ultimately, the State courts must implement our City law, and are not legally compelled to do so without legislation at the State level. However, OCJ has a history of pushing the courts to make changes that are fully within their power in order to uphold RTC, such as adjusting calendars, posting accurate signage, and having judges make announcements to inform tenants of their rights and options. The implementation of RTC was a collaboration between OCJ and the courts. Now, OCJ is remaining silent and allowing legal service providers to take the blame for a problem that can only be solved by the courts.

We call on OCJ to do the following:

- Publicly state that you will defend RTC
- Demand that the courts:
 - Issue an administrative order that mandates all eviction cases where a tenant is eligible for RTC be stayed until the tenant is able to retain an RTC attorney
 - Calendar new eviction cases only after all eligible tenants with currently pending cases have retained counsel for full representation.

³ <https://anhd.org/report/new-yorks-pandemic-rent-crisis>

- Reduce the volume of eviction cases on court calendars so that the number of new cases each day matches legal service provider capacity to provide full representation to all eligible tenants.
- Provide sufficient time between court dates to allow time for lawyers to complete essential work on each case, keeping in mind the current staffing shortages and work overload.
- Manage the waitlist of tenants to ensure that all tenants who have been denied RTC get a lawyer
- Meet regularly with tenants and organizers to develop solutions
- Increase the budget for RTC by at least \$70 million and ensure that future funding matches the need
- Announce when you will release the Fiscal Year 2024 Request for Proposals for \$3.57 million to implement Local Law 53.

Stable housing is critical to the overall health and wellness of individuals and communities, and we have the power and tools to ensure that stability for tenants. Housing court, as it is operating today, is failing to do so, and OCJ is allowing it to happen. OCJ must fulfill its mandate by backing the Right to Counsel Coalition's demands to solve the current crisis in housing courts. Universal access must be universal.

Thank you again for the opportunity to testify.

Signed,

Association for Neighborhood and Housing Development (ANHD)

JustFix

BetaNYC



**RTCNYC Coalition Testimony on Right to Counsel Implementation
February 24, 2023**

The failure of the city to uphold and protect one of its most powerful tools to stop displacement, reduce homelessness and expand and uphold tenants' rights is simply outrageous. In the midst of an unprecedented crisis, the city has shown no leadership and instead has allowed its own law to be violated. We are writing to express our outrage and to urge the city to reverse course.

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.

NYC is the first city in the nation to establish RTC. On the heels of our success, 15 other cities and 3 states have passed RTC and it has sparked a national movement. The law has had tremendous impact in just the first few years since it passed: 84% 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.

Yet, in the last year, [more than 17,000 tenants are being denied Right to Counsel](#). Denying tenants RTC impacts poor tenants of color the most. We are all well aware of the capacity challenges the legal services organizations face, the backlog of cases due to COVID that the court started moving forward last year and the pressure from the landlords to move cases forward. However we don't accept the logic that cases have to move forward at a rate that outpaces justice for tenants and denies them their rights under NYC law.

We understand that one of the challenges you face is that we need the *state housing* court to willingly implement a *city* law---they can't be required to do it without state legislation. However, pre-COVID the courts were adjusting calendars and implementing different rules to uphold RTC, like signage, notice in court papers, judges making announcements, in close collaboration and in part due to pressure from the Office of Civil Justice. OCJ under this administration has shown no political will to demand that OCA does more to defend and uphold RTC.

But you can and must. We, at the Right to Counsel NYC Coalition, have been urging the courts to take action since the beginning of 2022. We are calling on the courts to:

- Issue an administrative order to mandate that all eviction cases where a tenant is eligible for RTC shall be administratively stayed until the tenant has had an opportunity to meaningfully meet with and retain a right to counsel attorney.

- Calendar new eviction cases *only after* all eligible tenants with currently pending cases have retained counsel for full representation.
- Reduce the volume of eviction cases on court calendars so that the number of new cases each day matches legal service provider capacity to provide full representation to all eligible tenants.
- Provide sufficient time between court dates to allow time for lawyers to complete essential work on each case, keeping in mind the current staffing shortages and work overload.

[The legal arguments](#) for multiple and prolonged adjournments for the purposes of Right to Counsel assignment, both in terms of NYC's Right to Counsel law and also as a matter of due process, are clear. Your office must do more to adhere to your mandate to uphold RTC. It's critical that OCJ and the city administration as a whole commit to upholding the law as it is versus any attempts to water it down. Doing so would accept the court's logic that cases have to move fast at all costs--COVID showed us that is not true--and permanently weaken a powerful law in the face of a temporary challenge.

In addition, the pace of cases cannot be separated from the current labor shortage---moving cases at a pace that forces RTC lawyers to make choices where they can't represent tenants to their best ability is deeply demoralizing. Implementing the above changes would go a long way towards retaining a talented, experienced and passionate tenant bar.

In addition, the city needs to Fund RTC in two critical ways:

First, in May of 2021 the city passed **Local Law 53**, which ties tenant organizing to Right to Counsel. The intent of Local Law 53 is clear - to fund trusted tenant organizing groups working in low-income communities of color to lead outreach and education efforts through community meetings, workshops, Tenant Association meetings, and more. This is the vital work of tenant organizers, and ensuring that tenants are informed of Right to Counsel and supported prior to an eviction case being filed. Tenants know about their rights and exercising them is a preventative and proactive measure.

We understand that HRA allocated \$3.6 million towards this bill, had drafted the Request for Proposal (RFP) and was going to release it in November of 2021 but it was never released. We understand you plan to release an RFP on this for FY 2024 for \$3.57 million. This RFP needs to be released NOW in order for **tenant organizing groups to do their work to educate and organize tenants across NYC about their rights.**

Second, Local Law 136 as it stands is not fully funded. While the city allocated \$166 million it simply isn't enough to cover the full cost of the work. The retention rates at the legal services organizations are proof of this. According to the provider community, RTC is currently funded at about 70% of its current cost, and that's not even accounting for what it would cost if we were to implement best practices with all of the support roles tenants need, fair salaries for legal services workers, and caseloads that ensure all tenants receive the best possible representation. **This means that the city needs to increase the budget for RTC by at least \$70 million dollars to fund the law as it is now, while also looking to further increase the funding to achieve best practices and its full potential for tenants.** In addition the city needs to set up a mechanism to monitor the cost---if cases go up the cost goes up and the city needs to proactively plan for this.

The Office of Civil Justice exists because of the tenant movement. The rights we won, that your office is tasked with upholding, save lives. We urge you to address this crisis with the seriousness it deserves.

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

www.righttocounselnyc.org

www.worstevictorsnyc.org

www.evictionfreenyc.org



MANHATTAN | 1010 Avenue of the Americas, Suite 301, New York, NY 10018
tel: 212.674.2300 fax: 212.254.5953 vp: 646.350.2681

QUEENS | 80-02 Kew Gardens Road, Suite 400, Kew Gardens, NY 11415
tel: 646.442.1520 fax: 357.561.4883

www.cidny.org

February 24, 2023

Good afternoon,

My name is Elizabeth Gradinger, and I am the Associate General Counsel of the Center for independence of the Disabled, New York (CIDNY). This testimony is submitted on behalf of the executive leadership at CIDNY. CIDNY's mission is to ensure full integration, independence, and equal opportunity for all people with disabilities by removing barriers to the social, economic, cultural, and civic life of the community.

CIDNY is testifying today before the Office of Civil Justice (OCJ) to provide support for New York City's Universal Access to Legal Services program for tenants facing eviction, and to advocate for increased funding to expand this program to ensure more access to this crucial legal support for our consumers.

The Covid-19 pandemic has had devastating impacts on low-income tenants and put many people from our city's most marginalized groups, including those with disabilities, at risk of losing their right to safe, appropriate, and affordable housing. CIDNY has seen firsthand how people with disabilities, particularly people with mental health disabilities, are among the most at risk for eviction, landlord harassment, and homelessness. CIDNY works with individuals with disabilities throughout the five boroughs of New York City, and many of CIDNY's consumers contact our offices specifically because they are experiencing issues related to their housing and are at risk of being evicted from their homes. With the ending of the State's Eviction Moratorium, this problem has only worsened. In fact, calls to CIDNY related to housing and eviction cases have increased dramatically in the past year, and the need to ensure access to legal services to assist people with disabilities in responding to their housing concerns has reached a critical point.

CIDNY does not currently provide direct legal service representation in matters related to housing to our consumers because CIDNY does not have the funding to do so. As such, a large part of CIDNY's role when consumers contact us for a housing issue is to refer them to a legal service provider where they can get an attorney to provide them with legal advice and direct representation. CIDNY is extremely grateful for the implementation of the Right to Counsel (RTC) law, since we know that the RTC program has been very successful in reducing evictions. The existence of this program has also made it possible for CIDNY to better advise our consumers about their right to get an attorney to assist them when they are facing the threat of eviction. However, CIDNY is extremely concerned by the feedback we have received from Consumers, who often report back to CIDNY that they are unable to get the assistance they require, despite the existence of the RTC program. It has become clear that legal service organizations in NYC who have been tasked with implementing this program are becoming increasingly unable to sustain



MANHATTAN | 1010 Avenue of the Americas, Suite 301, New York, NY 10018
tel: 212.674.2300 fax: 212.254.5953 vp: 646.350.2681

QUEENS | 80-02 Kew Gardens Road, Suite 400, Kew Gardens, NY 11415
tel: 646.442.1520 fax: 357.561.4883

www.cidny.org

the program and are unable provide the level of services the program requires to meet the needs of our consumers.

Given the above, CIDNY is advocating for the OCJ to increase funding to organizations who are currently implementing the Right to Counsel Program, as well as to expand funding to enable more organizations to hire experienced attorneys and develop the programs required to appropriately address the legal needs of people with disabilities related to their housing.

Furthermore, CIDNY is also advocating for more accessibility and reasonable accommodation for people with disabilities to better enable them to access housing court proceedings and the RTC programs. CIDNY is often contacted by consumers who have received a notice of eviction from their landlord and are overwhelmed and completely unaware of their right to obtain an attorney and reasonable accommodations for print access to assist them in these proceedings. In fact, by the time we are contacted by consumers it is often too late for them to find an attorney to assist them. People with disabilities access information very differently. Some people use assistive technology, human readers, braille documents, and/or screen-reading devices. Thus, it is imperative that universal access must include access to print documents and the ability for these documents to be understood for those individuals with cognitive disabilities. True access must include the right to counsel and the ability to understand the information presented. CIDNY is requesting that OCJ work with disability rights advocacy organizations to ensure that efforts are made to ensure that people with disabilities can have equal access to the RTC program, and all other aspects of housing court proceedings. CIDNY believes that safe and stable housing is a right for all!

Thank you for the opportunity to testify on this important matter for our consumers, and for your consideration of our testimony.

Elizabeth Gradinger
Associate General Counsel
Center for Independence of the Disabled, NY (CIDNY)



Thank you to the New York City Office of Civil Justice for holding a hearing on NYC’s Right to Counsel law. My name is Oksana Mironova and I am a senior housing policy analyst at the Community Service Society of New York (CSS). We are a leading nonprofit that promotes economic opportunity for New Yorkers. We use research, advocacy, and direct services to champion a more equitable city and state.

We have been tracking New York’s eviction trends for decades. From 2020 to 2021, New York held off a sharp increase in evictions with rental assistance programs and an eviction moratorium. With the end of the moratorium in early 2022, eviction filings climbed sharply. Our 2022 Unheard Third Survey—the longest running survey of low-income people in the US—[shows that](#) 15 percent of all tenants were targeted for eviction, the highest share in a decade. Families with children under 18 account for nearly half of attempted evictions, while making up only 28 percent of New York City’s households.

As a result of the uptick in evictions, one in five tenants of all incomes – and nearly one in four low-income tenants – have had to move in with others because of financial reasons in 2022.

In late 2017, New York became the first city in the country to implement a Right to Counsel (RTC) law. RTC proved to be effective from the onset. [Looking back at two years of data in late February 2020](#), we found that evictions in zip codes covered by RTC declined by 29 percent, 13 points more than in non-RTC zip codes with similar eviction, poverty, and rental rates. Further, 84 percent of tenants with access to counsel in eviction cases were able to stay in their homes. The data shows that RTC was extremely effective in bringing eviction rates down in NYC.

Unfortunately, today, more and more eligible tenants are facing housing court without legal counsel as thousands of eviction cases move forward without RTC. Last year, [14,000 tenants with eviction cases](#) were denied their legal right to an attorney. Analysis by [the publication The City](#) last year showed that tenants living in upper Manhattan, the Bronx, and northeast Queens and the Rockaways had the least access to attorneys.

The Office of Civil Justice (OCJ) must do more to defend and uphold RTC. Specifically, OCJ must:

- Demand that the courts pause eviction cases for RTC-eligible tenants until they are able to be represented by a lawyer.
- Work to ensure that all tenants who have been denied RTC are able to access counsel.
- Establish a regular meeting schedule with tenants and organizers.

More broadly, the City of New York must fully fund Right to Counsel to avoid destroying this highly effective strategy for preventing evictions at a critical time. The city allocated \$166 million to cover the cost of Right to Counsel, but extreme labor shortages among legal service providers are proof that this amount is simply not enough. RTC is funded at about 70 percent of its current cost, without accounting for changes that are vital, including fair salaries for legal



services workers and caseloads that ensure all tenants receive the best possible representation. The city must increase the RTC budget by at least \$70 million, while looking to further increase the funding to achieve its full potential.

Thank you for the opportunity to testify. If you have any questions about my testimony or CSS's research, please contact me at omironova@cssny.org.

Testimony on Right to Counsel
Bronx Borough President Vanessa L. Gibson
Hearing of the Office of Civil Justice – February 24, 2023

Good evening, I am Bronx Borough President Vanessa L. Gibson and I want to thank you for the opportunity to speak on the importance of strengthening our city's Right to Counsel Program and the challenges that the program is currently experiencing.

In 2017, I was proud to partner with then- Council Member Mark Levine– to pass the Right to Counsel legislation in the City Council. We passed this bill to fight the evictions crisis in our city and ensure that New Yorkers would not lose their homes without the benefit of legal representation. While the plan was to have the program roll out over the following few years, the COVID-19 pandemic significantly altered this. With the eviction moratorium that lasted between Spring 2020 and Spring 2022, many New Yorkers were able to avoid eviction and stay in their homes.

But, since the end of the moratorium in 2022, thousands of New Yorkers – including many from The Bronx – have faced renewed threat of eviction and have had to fight to stay in their homes in Housing Court. Unfortunately, many of them have had to do so without a lawyer, despite the Right to Counsel law. This is an unacceptable reality, and we must do more to ensure that this does not occur.

We know the significant harms that evictions inflict on our families, from homelessness to health problems, and social disconnection to job and learning loss. These harms must be mitigated, but fortunately we have the solution. Right to Counsel works. Since the program has rolled out, 84% of tenants with counsel won their cases and have been able to stay in their homes. Fewer evictions cases are being

filed, and communities are getting organized. We need to keep this progress intact going forward.

The Right to Counsel mandate deserves full funding in the next City Budget, and I pledge to work with our Council partners to ensure that full funding is included. But we must also work to build capacity – there are simply too many tenants facing eviction and not enough lawyers.

Alongside Borough President Levine, I have called on the Office of Court Administration to slow the calendaring of evictions cases until every eligible tenant has access to a lawyer. The Courts should not be violating our residents' rights. Unfortunately, we have not had a positive response from OCA on this front, so we must turn to ensuring that our tenants will be able to have access to the counsel that they are entitled to.

The failure to ensure that every eligible tenant in housing court has a lawyer by their side is an unacceptable failure that has resulted in displacement and homelessness. The City must act now to prevent even more tenants from being denied their rights by fully funding Right to Counsel and related programs such as the tenant organizing program through Local Law 53.

Thank you for your efforts in running this essential program and I urge you to continue to address this crisis with the seriousness that it deserves.

EAST HARLEM OFFICE
105 EAST 116TH STREET
NEW YORK, NY 10029
TEL: (212) 828-9800
FAX: (646) 596-8603

BRONX OFFICE
214 ST. ANN'S AVENUE
BRONX, NY 10454
TEL: (347) 297-4922
FAX: (347) 270-1213

LEGISLATIVE OFFICE
250 BROADWAY, SUITE 1763
NEW YORK, NY 10007
TEL: (212) 482-6673
FAX: (646) 596-8603



THE CITY OF NEW YORK
OFFICE OF DEPUTY SPEAKER
DIANA AYALA
COUNCIL MEMBER
8TH DISTRICT, MANHATTAN & BRONX

CHAIR
COMMITTEE ON GENERAL WELFARE

COMMITTEES
FINANCE
OVERSIGHT AND INVESTIGATIONS
PUBLIC HOUSING
MENTAL HEALTH, DISABILITIES
AND ADDICTIONS

SUBCOMMITTEES
COVID RECOVERY
AND RESILIECNY

RE: Office of Civil Justice Right to Counsel Hearing

February 24, 2023

Dear Office of Civil Justice,

Right to Counsel is and will continue to be a pillar in our fight against unfair and forced evictions. All New Yorkers deserve the opportunity to fight their eviction notice with the resources they need to succeed. We have come a long way since implementation of the Right to Counsel Program. Although, the program has the potential to do what is intended, the lack of staffing, and an increased caseload in the midst of a housing crisis, has left the program unable to meet the needs of New Yorkers. It is imperative that we work to find solutions that address the issues facing the program.

We need to do more to expand access and awareness of services. We need to provide more funding for lawyers ensuring that no one has to be alone in front of a judge. We need to make sure that we are paying the people that provide these services appropriately. The implementation of Right to Counsel was the first step in leveling the playing field between tenants and property owners. Now we must move on to the next step of making sure that we are providing the appropriate funds for the program and fine-tuning issues that arise.

As many of you know, I am the chair of the General Welfare Committee. As chair, oversight of the Right to Counsel Program falls under my committee's jurisdiction. Additionally, as a formally homeless person, I understand the importance of these programs and take my role seriously in ensuring that all families have access to the services they need.

I want everyone here to know that we are holding a Right to Counsel hearing on March 3, 2023, at 10AM. I hope that many of you can come and share your experiences with the program virtually or in-person. It is incredibly important to me that we take an honest look at the policies we put in place and make sure that they are working as intended and have the resources to fulfill their purpose. I am eager to hear testimony from the public today and I thank everyone for their advocacy.

Sincerely,

A handwritten signature in cursive script that reads 'Diana Ayala'.

Diana Ayala
Deputy Speaker

COMMUNITY OFFICE
37-32 75TH STREET, 1ST FLOOR
JACKSON HEIGHTS, NY 11372
TEL: (718) 803-6373
FAX: (718) 803-9832

CITY HALL OFFICE
250 BROADWAY, ROOM 1816
NEW YORK, NY 10007
TEL: (212) 788-7066

EMAIL: krishnan@council.nyc.gov



THE COUNCIL
OF
THE CITY OF NEW YORK
SHEKAR KRISHNAN

COUNCIL MEMBER, 25th DISTRICT, QUEENS

CHAIR
PARKS AND RECREATION

COMMITTEES
IMMIGRATION
EDUCATION
LAND USE
OVERSIGHT AND INVESTIGATIONS
CONSUMER AND WORKER PROTECTION
SMALL BUSINESS

Gary P. Jenkins
Commissioner
150 Greenwich Street
New York, NY 10007

February 24, 2023

As a civil rights lawyer who spent over a decade representing low-income tenants and was part of the fight to establish and expand the Right to Counsel law, I know how crucial it is in stopping displacement, reducing homelessness and protecting tenants' rights. In the midst of an unprecedented housing crisis, the city must do far more to ensure the success and full implementation of this program. The ongoing failure to do so will further harm communities and greatly exacerbate the housing crisis. This is especially true for tenants of color, particularly women and families. Moreover, these unnecessary evictions impact so much more than just a tenant's housing. It impacts their education, employment, physical and mental wellbeing and so much more.

In the last year, more than 17,000 tenants were denied their Right to Counsel according to research from the Right to Counsel NYC coalition. I am well aware of the capacity challenges the legal services organizations face, the backlog of cases due to COVID that the court started moving forward last year and the pressure from the landlords to move cases forward. However I reject the logic that cases have to move forward at a rate that outpaces justice for tenants and denies them their rights under NYC law.

The Office of Civil Justice must urge the courts to:

- Issue an administrative order to mandate that all eviction cases where a tenant is eligible for RTC shall be administratively stayed until the tenant has had an opportunity to meaningfully meet with and retain a right to counsel attorney.
- Calendar new eviction cases *only after* all eligible tenants with currently pending cases have retained counsel for full representation.
- Reduce the volume of eviction cases on court calendars so that the number of new cases each day matches legal service provider capacity to provide full representation to all eligible tenants.
- Provide sufficient time between court dates to allow time for lawyers to complete essential work on each case, keeping in mind the current staffing shortages and work overload.

In addition to pushing the courts to adopt these measures, the city needs to fund Right to Counsel in two critical ways:

- The RFP for \$3.57 million for Local Law 53 needs to be released as soon as possible in order for tenant organizing groups to do their work to educate and organize tenants across NYC about their rights.
- The city needs to increase the budget for Right to Counsel by at least \$70 million dollars to provide full funding for the implementation of the law, while also looking to further increase the funding to achieve best practices and its full potential for tenants.

These measures will ensure that the City fulfills its duty under the law. I respectfully urge the Office of Civil Justice to implement them as soon as possible.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read 'Shekar Krishnan', written in a cursive style.

Shekar Krishnan
Council Member - District 25, Jackson Heights and Elmhurst, Queens

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

February 24, 2023

JOINT TESTIMONY OF BROOKLYN LEGAL SERVICES CORPORATION A, NEW YORK
LEGAL ASSISTANCE GROUP, LEGAL SERVICES NYC, AND THE LEGAL AID
SOCIETY

Presented By: Kristie Ortiz-Lam, Jonathan Fox, Rosalind Black, and Munonyedi Clifford

BROOKLYN LEGAL SERVICES CORPORATION A

Brooklyn Legal Services Corporation A (Brooklyn A) advances social and economic justice and community empowerment through innovative, collaborative, neighborhood-based legal representation and advocacy. We represent low- and moderate-income individuals and families throughout New York City. Our clients live in rapidly-gentrifying neighborhoods where many residents and small business owners have been displaced or are facing displacement and harassment. For over half a century, Brooklyn A has provided high-quality, low-barrier neighborhood-based legal services to individuals, families, nonprofit community-based organizations, community development corporations, coalitions, and small business owners, interested in developing and sustaining vibrant, healthy communities. Our Preserving Affordable Housing Program uses legal and advocacy strategies to preserve and protect affordable housing, prevent evictions, combat tenant harassment and discrimination, and ensure that working families, individuals, older adults and others live in stable environments and within their financial means.

An Example of Our Work:

We represented Tenant A in a nonprimary holdover proceeding where the tenant resided with her aunt for five years. Her aunt unfortunately passed away and we presented a succession defense. We prevailed after a three day trial where the court found that the relationship was more like a mother-daughter relationship, that the parties commingled their finances and that she lived in the apartment for the prerequisite two years.

NEW YORK LEGAL ASSISTANCE GROUP

New York Legal Assistance Group (NYLAG) uses the power of the law to help New Yorkers experiencing poverty or in crisis combat economic, racial, and social injustice. We address emerging and urgent needs with comprehensive, free civil legal services, financial

empowerment, impact litigation, policy advocacy, and community partnerships. We aim to disrupt systemic racism by serving clients, whose legal and financial crises are often rooted in racial inequality. 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.

An Example of Our Work:

Tenant L came to our NYCHA HP Action Clinic at the Red Hook Community Justice Center for help drafting her petition. During our interview, we discovered she also had a complicated non-payment proceeding in Housing Court and a pending administrative rent grievance, both of which were currently unrepresented and would not have gone through any Right to Counsel intake process. She retained us on all three matters, we were able to get the erroneous non-payment proceeding dismissed, and are working closely with her to resolve her rent grievance and get her much-needed repairs.

LEGAL SERVICES NYC

Legal Services NYC (LSNYC) fights poverty and seeks racial, social, and economic justice for low-income New Yorkers. LSNYC is the largest civil legal services provider in the country, with an over 50-year history and deep roots in all of the communities we serve. Our staff members assist more than 110,000 low-income New Yorkers each year and, along with other legal services organizations in the City, LSNYC's housing practice is at the forefront of the fight to prevent evictions, preserve affordable housing, and uphold tenants' rights. Legal Services NYC is also a proud member of the Right to Counsel NYC Coalition, a tenant and organizer led coalition of tenant organizing, advocacy and legal services organizations, which fought for the right to counsel for NYC tenants facing eviction and which is working to ensure just implementation of the right to counsel law.

An Example of Our Work:

This past year, LSNYC was able to protect an East New York family living in unregulated housing from being evicted in a no-grounds holdover by prevailing on a retaliatory eviction defense that led to the case being dismissed. Tenant R, along with another adult and two minor children, was subjected to poor conditions in her unregulated housing. Before the eviction case was started, she complained to the city about these conditions. A retaliatory eviction defense means that when a tenant complains about conditions to a government agency, there is a rebuttable presumption that an eviction case filed within 12 months is retaliatory and such an eviction case is not proper. Through extensive investigation and careful preparation of the case, we aggressively litigated our client's retaliatory eviction defense and filed a motion to dismiss. Tenant R's landlord failed to rebut the presumption that the eviction was retaliatory, and the court dismissed the case. We then connected Tenant R to pro bono counsel to file a HP case against the landlord to obtain repairs. Tenant R and their family are no longer in fear of losing their home while they exercise their tenancy rights.

THE LEGAL AID SOCIETY

The Legal Aid Society (LAS), 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 health and housing crisis has further focused our efforts to advocate for the needs of New York's marginalized communities.

An Example of Our Work:

This past year, LAS represented a multi-generational household living in West Harlem in defense of a nonpayment proceeding. Our client has lived in the subject apartment for over 30 years with an HPD Section 8 subsidy. As a result of an accident, our client was in a coma for several months, and although she has since recovered, she suffered permanent brain damage that impeded her ability to walk or talk.

While in a coma, our client understandably failed to complete her Section 8 recertification or respond to any notices regarding it. Unfortunately, as a result, her subsidy was terminated. By the time LAS met with the clients regarding their non-payment matter in late March 2022, their rent arrears were close to \$100,000.

After determining that the time frame to file an Article 78 or any type of appeal to save the Section 8 had expired, we made a request to HPD to reinstate the subsidy as a reasonable accommodation to our client's disability. While the request was pending, we also filed an ERAP

application, which delayed the housing court case from moving forward. Through our advocacy efforts, ERAP was approved and the Section 8 subsidy was reinstated.

INTRODUCTION

It is critical for low-income people to have legal representation in housing proceedings.¹ In New York City 68.1 percent of households are renters.² The negative consequences of evictions on poor people are well documented.³ Evictions compound financial difficulties, contribute to poor health, disrupt families, and increase the risk of homelessness.⁴ Tenants who have an attorney in an eviction proceeding are less likely to be subject to a possessory judgment, the money judgments in these cases are less than in cases when the tenant is unrepresented, and these tenants are less likely to have a warrant of eviction issued against them.⁵ Additionally, tenants who are represented by attorneys are almost guaranteed to remain housed.⁶

Prior to the Right to Counsel (RTC), 1% of tenants facing eviction had a lawyer compared to the more than 95% of landlords who were represented in eviction proceedings⁷—tenants faced David and Goliath odds as their cases proceeded. After the RTC law was passed in 2017, representation increased exponentially for tenants in eviction proceedings from 1% in 2013 to 30% in 2018.⁸

The Right to Counsel has had an immeasurable impact on individuals facing eviction, and it is essential to maintain. There is also no question that the Right to Counsel program and the various stakeholders tasked with its implementation face significant challenges. These challenges include: the expansion of right to counsel beyond the “zip-code approach,” the end of the various pandemic-related eviction moratoriums, Housing Court’s steady and increasing calendaring of eviction cases, inadequate funding for the program, and high rates of attrition by housing practitioners and staff at the various agencies. These interrelated factors leave large percentages of tenants across the city without the right to counsel in their eviction proceedings.

¹ See, The Effects of Legal Representation on Tenant Outcomes in Housing Court: Evidence from New York City’s Universal Access Program, by Michael T. Cassidy and Janet Curre, NBER Working Paper March 2022, at pg. 3 Revised July 2022 available at: https://www.nber.org/system/files/working_papers/w29836/w29836.pdf (accessed 2/24/2023).

² Id. at 5.

³ Id. at 3.

⁴ Id.

⁵ Id.

⁶ See, Universal Access to Legal Services: A Report on Year One of Implementation in New York City Prepared by the Office of Civil Justice Fall 2018, page 27, available at: <https://www1.nyc.gov/assets/hra/downloads/pdf/services/civiljustice/OCJ-UA-2018-Report.pdf>(accessed 2/24/2023)

⁷ See, A Right to Counsel in Eviction: Lessons from New York City by Brian Bieretz December 31, 2019, available at: <https://housingmatters.urban.org/articles/right-counsel-eviction-lessons-new-york-city> (last accessed 2/24/2023).

⁸ See Universal Access to Legal Services: A Report on Year One of Implementation in New York City Prepared by the Office of Civil Justice Fall 2018, page 34 available at: <https://www1.nyc.gov/assets/hra/downloads/pdf/services/civiljustice/OCJ-UA-2018-Report.pdf>(accessed 2/24/2023)

We recognize and commend Raniece Medley and her colleagues at the City’s Office of Civil Justice (OCJ), for their continued work in close collaboration with legal services organizations and the Right to Counsel NYC Coalition, to ensure the best possible continued implementation of this groundbreaking initiative. All eyes are on New York City as the first jurisdiction to pass this landmark legislation—our success and failures will serve as a road map for other jurisdictions seeking to implement the right to counsel in eviction proceedings.

As a legal services provider community, we are committed to ensuring that the Right to Counsel realizes its full potential for preventing homelessness and displacement of low-income and vulnerable New Yorkers, building tenant power and balancing the scales of justice by making housing court a place where tenants can achieve just outcomes in their housing cases. In that spirit, and drawing on lessons learned from 5 years of RTC implementation, we offer this testimony to provide feedback and recommendations about this historic program.

I. OCJ SHOULD ENSURE THAT FUNDING LEVELS REFLECT THE TRUE COST OF PROVIDING HIGH QUALITY, HOLISTIC LEGAL SERVICES

We know that OCJ is aware of the need to ensure adequate funding levels for the RTC initiative, and we appreciate OCJ’s efforts to work with legal services organizations to ascertain what appropriate staffing and funding levels would be. This is especially crucial as we are anticipating a Request for Proposal/RFX to be released shortly that will provide right to counsel funding for the next 3 years, starting in Fiscal Year 2025. We are pleased to participate in meetings with OCJ, the legal services organizations and other stakeholders around questions of resources, salaries, case caps, case rates, supervision and essential staffing needs, and all other factors that influence the funding levels for the right to counsel initiative. We hope that these efforts will result in funding levels that allow us to provide holistic, high quality Right to Counsel representation by ensuring the following:

(a) Funding to match the true cost to providers

Our current funding is substantially and harmfully less than the cost of administering the Right to Counsel program. This gap is only growing as we grapple with rent increases on our existing spaces and rising healthcare, salary, and pension costs.

Without additional funding, the provider community has been forced to manage these increased costs by delaying hiring after staff departures, forgoing necessary support staffing such as social workers, paralegals, process servers or administrative support, and forgoing investment necessary to create and manage a fully implemented Right to Counsel program. We cannot expand and build out our physical spaces or fund adequate wraparound operational support including human resources, finance, grant management and IT until the provider community is funded to cover the full costs of administering the Right to Counsel program.

(b) Funding at a case rate sufficient to hire and retain an adequate number of attorneys for the volume of right to counsel cases, and to account for high rates of attrition and leaves

The funding must allow providers to hire and retain sufficient numbers of attorneys such that attorney caseloads can be maintained at a level where attorneys are not overburdened and where tenants can receive the best possible legal representation. Particularly because our practices rely on a regular influx of inexperienced attorneys to fill openings in a complex and rapidly changing area of law, these numbers also need to take into account the reduced caseloads that new attorneys are able to handle in their first year of practice

Funding also needs to allow providers to hire enough attorneys to address the challenges that arise in our practice from the unprecedented rates of attrition and leaves. When existing staff take extended parental, medical or other leave, routinely lasting six months or more, their caseloads must be absorbed by the existing staff who are already operating at capacity. The same is true for the caseloads of staff who leave the organization. The funding should grow to allow providers to have more staff on hand to absorb these cases.

Further, legal service providers lack sufficient funding to provide salaries that will continue to attract and retain Right to Counsel attorneys.

(c) Adequate paralegal, social work and other support staffing for the number of attorneys and cases

The funding provided must take into account not just the cost of attorneys, but also the necessary staffing to provide holistic and high-quality services. Paralegals are crucial to engaging in public benefits advocacy and this need is growing as providers experience enormous hurdles and delays in trying to obtain FHEPS or other HRA benefits for our client. Because our clients come to us in crisis and may have underlying mental health, economic, social or age-related challenges, having social workers on staff is crucial to adequately serve our clients and support our attorneys in handling the enormous stress of clients facing eviction or other challenges. In the absence of paralegals, attorneys who are already overburdened are tasked with assisting clients in need with their public benefits advocacy, and, in the absence of licensed social workers, the same attorneys are also tasked with managing clients in crisis without necessary support or training in crisis management. Moreover, working in an office where an attorney does not have other support needed to do the work such as investigators, process servers and administrative help increases the burden and stress on our attorneys, and does not allow them the time necessary to do the legal work on their cases.

(d) Sufficient funding to attract and retain experienced supervisors

The majority of attorneys entering the Right to Counsel practice are recent law graduates. Unlike private law firms where new attorneys may not work directly with a client or enter a courtroom for years, new Right to Counsel attorneys must immediately dive into all aspects of litigation including directly working with clients, researching and drafting legal papers, negotiating with opposing counsel, and handling all court appearances up to and including trials. This requires extensive supervision at every level to ensure high quality legal work on behalf of tenants.

However, attracting and retaining experienced supervisors remains a challenge across Right to Counsel legal service providers. Legal service providers lack sufficient funding to ensure appropriate supervisor to attorney ratios or provide competitive salaries, in some cases trailing experienced Law Department attorneys by more than twenty thousand dollars annually.

(e) Funding that takes into account the training needs of new attorneys and paralegals, the ongoing professional development needs of all staff, and new supervisor development.

High quality legal services require robust initial and ongoing training for all staff. Landlord-tenant law in New York City implicates complicated federal, state, and local laws and regulations. New attorneys must learn how to identify the type of rental housing at issue, the way the rent is set, and whether a tenant uses a subsidy to pay the rent to determine the respective rights and responsibilities of the parties. Resolving cases is also frequently dependent on an advocate's knowledge of numerous rent arrears and rent subsidy programs. Adequate training programs covering this material takes several weeks and must be offered repeatedly. Funding and caseload expectations for newly hired attorneys must take this into account.

Further, all staff must regularly attend updated training and other learning opportunities to keep pace with the rapidly changing legal landscape that is both the result of the Right to Counsel program itself and watershed changes in the law like the Housing Stability and Tenant Protection Act of 2019. Finally, most attorneys are never formally trained to be managers. When experienced attorneys are making the transition to supervisors, legal service providers must be able to provide them with development opportunities to ensure our on the ground staff receive appropriate supervision at all levels.

(f) Coverage of affirmative litigation that is directly needed to prevent eviction

There are many contexts in which affirmative litigation is critical to preventing a tenant's eviction such as where a tenant is subject to housing discrimination by a landlord who won't accept their Section 8 voucher, making the apartment unaffordable, or where a tenant is subjected to deplorable housing conditions that results in a constructive eviction because the

tenant cannot occupy the apartment safely. While the Fiscal Year 2024 HPLP renewal contract, at an acute moment for preserving capacity for eviction defense representation, removed the ability of providers to take on this work unless the tenant is already subject to an eviction proceeding, the ability to address this need should be reinstated in the next contract.

(g) Funding a sufficient number of cases to match the cases pending in housing court

While the case rate needs to be increased, OCJ also needs to ensure that it is funding enough cases to provide full legal representation to all tenants facing eviction proceedings. This means not only matching the anticipated number of new filings, but also ensuring there is funding to cover the cases that are pending where tenants do not have attorneys. OCJ should partner with the current providers to develop additional capacity within our organizations as well as seek potential new providers.

II. OCJ SHOULD WORK WITH LEGAL SERVICES PROVIDERS TO EXPAND PROVIDER CAPACITY AND PARTNER WITH PROVIDERS ON SOLUTIONS TO THIS PROBLEM WHILE STAFFING CHALLENGES PERSIST

With the lifting of pandemic-related stays and NYC's tremendous housing affordability crisis, the demand for eviction defense legal services far outstrips the capacity of the attorneys currently working at legal services providers. Without additional support and intervention, providers are left in an untenable position wherein staff are overworked and overwhelmed, leading to high attorney attrition rates. And tenants, in need of representation to protect their fundamental rights, are left without the high-quality legal services Right to Counsel envisioned. A sustainable Right to Counsel program will expand the capacity of legal services providers to meet the need for representation, will incorporate practices to train and mentor advocates who are engaging in this work, and will include regular conversations with legal services providers to respond to new and emerging issues that may be impacting the provision of services as envisioned by Right to Counsel.

(a) OCJ should partner with stakeholders to address the crisis of tenants with eviction cases not being provided with right to counsel and regularly convene stakeholders to discuss emerging issues.

We know that the community's needs shift and change over time. A pressing community need is that tenants facing eviction are not all being provided with lawyers to represent them. The challenges in provider capacity caused by the rapid expansion of the program to all zip codes are further exacerbated by Office of Court Administration's (OCA) refusal to slow down the calendaring of new eviction cases to match the providers' capacity to represent vulnerable

tenants in housing cases.⁹ There were thousands of active eviction cases pending in Housing Court as of March 16, 2020 when OCA suspended evictions statewide (the statewide Covid eviction moratorium). With the end of the moratorium, thousands of low-income unrepresented tenants and occupants were served with notices of eviction and as a result started appearing in Housing Courts to stop their evictions. The number of residential evictions has risen each month since the end of the moratorium.¹⁰ According to the most recent reports, once the various eviction moratoria ended on January 15, 2022, the Housing court returned to business as usual. As landlords filed new eviction proceedings, and old proceedings were re-calendared, the Right to Counsel law assumed an even greater importance for low-income New Yorkers. Elected officials, legal services providers, and more importantly the tenants in need of these services have called on OCA to decrease the calendars during this time.¹¹ These requests have been ignored by OCA and new cases are proceeding at breakneck speed with tenants going unrepresented. We call on OCJ to partner with providers to ask OCA to slow down calendaring cases to match providers capacity and to adjourn cases to allow tenants to connect with counsel.

We hope that OCJ convenes stakeholders regularly to discuss emerging issues and develop and implement responses that align with community needs and provider capacity. OCJ, agencies, courts, and providers, all must work together to ensure the success of Right to Counsel. Working together will lead to better outcomes for our communities, and for the long-term success of the Right to Counsel program.

(b) OCJ should commit resources to creating a systematic pipeline to recruit new advocates to become Right to Counsel practitioners

In addition to providing funding and ensuring adequate time for training, OCJ should work with legal services providers to create an effective pipeline to harness the passion of new advocates of all backgrounds about the importance, promise, and career opportunities within Right to Counsel. Similar to training, OCJ should incorporate into Right to Counsel programming the funding and time to enable providers collectively to recruit and train advocates dedicated to engaging in this work. Developing a pipeline will expand program capacity and ensure ongoing services as Right to Counsel continues to grow to meet its full potential. At some point, this pipeline may start as early as high school, but there is a lot more that OCJ in partnership with legal services providers could be doing now to foster more interest in Right to Counsel among current law students. For example, multi-provider panels could present to law schools students

⁹ See, [NYC Led The Way On Right To Counsel For People Facing Eviction, Now Its Program is Struggling](#) by Roshan Abraham November 20, 2022 Next City available at: [NYC Led The Way On Right To Counsel For People Facing Eviction. Now Its Program Is Struggling. \(nextcity.org\)](#) (accessed on 2/24/2023).

¹⁰ See, [NYC Eviction Rate Continues to Rise Since Ban was Lifted, as Homelessness Surges](#) by David Brand January 18, 2023 Gothamist available at: [NYC eviction rate continues to rise since ban was lifted, as homelessness surges - Gothamist](#) (accessed 2/24/2023).

¹¹ See, [Courts and Other Officials Must Act Now to Protect Right to Counsel in Eviction Proceedings](#) by Shaun Abreu & Diana Ayala, March 27, 2022 Gotham Gazette available at: [Courts and Other Officials Must Act Now to Protect Right to Counsel in Eviction Proceedings \(gothamgazette.com\)](#) (accessed 1/25/2023).

nationally and locally on what it's like to be a Right to Counsel attorney. There could be presentations to law school public interest student groups, CLE programming, and job fairs. Law schools can be encouraged to create more housing clinics. There are a number of touchpoints to engage law students in New York City and beyond at every stage of their law school career, so they are eager to become Right to Counsel attorneys upon graduation. In the future, programming could be geared to college and even high school students, which could involve volunteer opportunities at legal services providers that could also expand provider capacity. A strong focus on law school pipeline efforts now would mean that whenever there was a vacancy at a Right to Counsel legal services provider, there would be a solid number of law graduates or soon-to-graduate 3Ls who were already primed to apply and ready to commit themselves to the important work of Right to Counsel.

(c) OCJ should commit resources to providing new Right to Counsel advocates with a comprehensive training institute leveraging the knowledge and expertise of the legal services provider community

Staffing alone isn't enough. We also need focused strategies to train up attorneys joining in this practice. New attorneys are critical to the continued success of Right to Counsel, but OCJ must begin committing resources to ensuring these new attorneys have an efficient introduction to the practice of housing law so that they can rapidly become powerful advocates in the fight for housing justice. OCJ should work with and provide additional resources to the legal services provider community to create a comprehensive training program for newly hired Right to Counsel practitioners. Incorporating training as an essential part of the Right to Counsel program must, at the same time, recognize that caseload standards cannot and should not be the same for new attorneys to this practice who are going through this training period.

Working collectively through OCJ's convening, the legal services provider community, which is replete with numerous Housing Court practitioners who are genuine experts in every domain of housing law, could efficiently create a comprehensive training institute that would take new attorneys and law graduates from inexperienced to practice-ready. The Housing Justice Leadership Institute, which started in 2019 as a partnership between the Sargent Shriver Center for Poverty Law and New York Law School, has successfully trained multiple cohorts of new and experienced supervising attorneys in both the hard and soft skills of being an effective Right to Counsel supervisor. There is tremendous promise that a similar program could be created for the newest Right to Counsel attorneys.

All the legal services providers currently commit a substantial amount of time and effort each creating its own training programs for new staff members, but these trainings take place contemporaneously with new staff members being expected to attend intake and take on complicated cases for representation. The long-term impact of failing to adjust caseload and intake expectations for newer staff means that it takes even longer to equip staff with the tools

necessary to take on complex matters and is a contributing factor to ongoing attrition. Prioritizing training would redound to the benefit of all: (1) legal services providers would be able to handle more cases more efficiently; (2) clients would be better served and obtain improved outcomes in their cases; (3) new attorneys would feel more confident, effective, and fulfilled in their work, fostering improved retention; (4) the experts in each domain of housing law in the provider community would be able to share their expertise broadly and prepare new attorneys for the complex and novel legal issues that will arise in their cases, (5) new attorneys would be primed to engage in successful motion practice resulting in judges issuing a range of new decisions that would advance the jurisprudence in a manner aligned with housing justice principles.

III. OCJ SHOULD PARTNER WITH PROVIDERS TO CREATE A PROGRAM THAT MINIMIZES AND ADDRESSES ATTORNEY ATTRITION

Legal Services providers are currently scrambling to fill vacancies and to attract dedicated and qualified attorneys to the practice. Attracting qualified candidates requires a housing practice that pays a living wage, provides training, mentorship, and support for staff, avoids burnout, and allows for a meaningful work-life balance for practitioners. The mass exodus of public defenders due to low pay and burnout over the last year was chronicled by the New York Times in an article published in June 2022.¹² According to the article, public defenders, including housing attorneys, are often overworked and under compensated with their salaries well below the salaries of City lawyers and prosecutors.

Acknowledging and responding to the unprecedented attrition that all Right to Counsel providers have experienced is necessary to ensure the sustainability and success of this program. Providers are experiencing inordinately high attrition rates and are competing against one another to hire from a very small pool of applicants.

This increase in attrition is in line with that felt across the legal service field throughout this pandemic time, but is further exacerbated by the lack of funding and structural support afforded to advocates tasked with implementing this new and groundbreaking program. Staffing structures for the Right to Counsel program must enable providers to hire additional staff, beyond what was initially conceived, to provide adequate time for training, supervision, and client engagement outside of court: so that staff who join this program are able to sustain this practice.

¹² See, Hundreds Have Left N.Y. Public Defender Offices Over Low Pay by Jonah E. Bromwich New York Times, June 9, 2022 available at: [Hundreds Have Left N.Y. Public Defender Offices Over Low Pay - The New York Times \(nytimes.com\)](https://www.nytimes.com/2022/06/09/nyregion/public-defender-offices-low-pay.html) (accessed 2/24/2023)

High attrition rates impact remaining staff's sustainability as well. When a staff attorney with an active full caseload resigns, the capacity of the remaining staff shrinks because the departing attorneys' have a full caseload of ongoing and active cases, which must be redistributed among staff who are already at or near capacity. Remaining staff are then forced to familiarize themselves with the factual background and procedural history of the reassigned cases, leaching time and capacity to take on new client matters, and causing additional strain for staff that contributes to further attrition.

The most direct way to correct the compounding effects of attrition is to fund the Right to Counsel program sufficiently to enable providers to hire more staff attorneys than were initially considered and to structure the program in a manner that ensures manageable caseloads for attorneys with varying levels of housing experience.

IV. CONCLUSION

As we move through the many stages of this housing and health 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 Brooklyn Legal Services Corporation A, New York Legal Assistance Group, Legal Services NYC and The Legal Aid Society, we thank you for your continued support, and again for the invitation to share our recommendations with you today.



Friday February 24, 2023

**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: Andrew Ashbrook (Supervising Attorney, Right to Counsel Team, Civil Action Practice), Jerome Frierson (Housing Director, Civil Action Practice), Siya Hegde (Housing Policy Counsel, Civil Action Practice), and Rosa Jaffe-Geffner (Director of Social Work, Civil Action Practice)

I. INTRODUCTION

The Bronx Defenders (“BxD”)¹ thanks Ms. Raniece Medley and her colleagues at the Office of Civil Justice (“OCJ”) for holding this critical hearing and providing us with the opportunity to testify.

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 low-income tenants who are disproportionately Black and Brown-identifying from the threat of eviction and other forms of housing displacement. In the Bronx where the homelessness and affordable housing crisis has reached unprecedented levels, as evidenced, in part, by it containing the highest concentration of eviction cases statewide during the COVID-19 pandemic, many Bronx tenants have seen a dimming scope of upward mobility.² To this effect, it is essential that OCJ’s continued implementation of the Universal Access to Legal Services Program under the Right to Counsel

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 informs our innovative initiatives to bring about real and lasting change.

² See James Barron, *What Has Led to the Exodus of Black Families?* N.Y.T. (Feb. 6, 2023), <https://www.nytimes.com/2023/02/06/nyregion/what-has-led-to-the-exodus-of-black-families.html?searchResultPosition=1>.

(“RTC”) law works to prevent future displacement of poor tenants of color in communities like the Bronx where many of them have lived in their communities for decades while providing critical healthcare and social services to the city as essential workers.³ 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 to Legal Services Program. Our Housing Right to Counsel team has expanded in size, expertise, and leadership over the past five 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.

Furthermore, while we respectfully submit these comments to highlight our Bronx-specific experiences as a legal service provider, their messaging and substantive recommendations align with the joint testimony of our partners in the Right to Counsel NYC Coalition and Leap Coalition.⁴

II. RECOGNIZING & FUNDING THE HOLISTIC EXPERTISE OF CIVIL DEFENDERS IN THE UNIVERSAL ACCESS TO LEGAL SERVICES PROGRAM SO AS TO REFLECT THE TRUE COST OF HIGH QUALITY, ROBUST LEGAL SERVICES

A. OCJ should fund all roles necessary to represent tenants holistically.

Since the inception of the RTC’s Universal Access Program in 2017, CAP’s civil advocacy model has expanded in ways that continue to transform holistic civil representation. Our benefits specialists and civil legal advocates, social workers, team administrators, and housing attorneys are all integral to our direct service representation of Bronx clients.

Benefits specialists and civil legal advocates are particularly vital in our housing advocacy. They frequently interface with the Human Resources Administration (“HRA”), Department of Social Services (“DSS”), Department of Homeless Services (“DHS”), and various community-based Homebase providers to ensure accuracy in our clients’ welfare budgeting, eligibility of housing rental subsidies (i.e., CityFHEPS, FHEPS, Cash Assistance, etc.),

³ See generally N.Y.C. OFF. COMPTROLLER, “New York City’s Frontline Workers,” (March 2020), <https://comptroller.nyc.gov/reports/new-york-citys-frontline-workers/> (providing detailed, demographic profiles of non-governmental frontline workers in New York City, with 17 percent living in the Bronx and 32 percent of workers from the healthcare industry identifying as Black); see also Winnie Hu & Nate Schweber, *When Rich New Yorkers Fled, These Workers Kept the City Running*, N.Y.T. (June 16, 2020), <https://www.nytimes.com/2020/06/16/nyregion/mount-hope-bronx-coronavirus-essential-workers.html> (“The sheer number of essential workers in Mount Hope [Bronx] who cannot work from home is most likely why it was the only neighborhood in the city where the total number of commuting trips actually increased during the height of the pandemic, when New York came to a virtual standstill.”).

⁴ 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.

processing and review of One-Shot Deal applications for emergency rental assistance, and recertification of Section 8 subsidies and Public Assistance cases. Their contact with these city agencies and their escalation strategies advocating for swift and timely decisions on various applications have supported (and reduced) attorneys' workloads, as well as provided an invaluable skillset and expertise that is distinct and complimentary to the work our attorneys do. They have also contributed to a showing of diligent efforts that have proven valuable in post-judgment and other litigation processes. This support is especially necessary as tenants have higher arrears and city agencies are under increase stress and staff shortages.

In the past year, for example, our benefits team was able to escalate a one-shot deal application for at least one client who was originally approved for less than the full amount of his arrears. Had our benefits advocate not intervened, the client would have likely faced eviction as the insufficient approval of the One-Shot Deal would have left him unable to apply for other benefits and cause the remainder of the arrears to accrue further.

The growing contributions of social work into our advocacy model over the past three years has also immensely benefited countless vulnerable clients with mental illnesses. While New York City grapples with how to house homeless individuals with serious mental illnesses, our social work team works to prevent individuals with serious mental illnesses from being evicted. Our social work team advocates for the eviction prevention of clients with mental illnesses by connecting them to supportive housing, collaborating with Adult Protective Services and the Department of Social Services' Disability Affairs Unit, providing clinical expertise in nuisance holdover cases, and putting forward housing reasonable accommodation requests for disabled clients. 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 of their circumstances. During post-pandemic times, where mental health needs throughout the City continue to be present at an elevated rate, social work brings a trauma-informed lens and approach to representation under the Universal Access to Legal Services program.

As of recently, our social work team diligently collaborated with one of our housing attorneys to provide rehousing resources for a client with serious mental health concerns who had no legal defenses in her housing court case. Our social work team was able to connect to the client's clinician and obtain the appropriate clinical documentation to submit for a supportive housing application, which was approved by HRA, and worked to identify supportive housing providers with vacancies. While the waitlists to occupy a supportive housing vacancy were too long for the life of the housing court case, the social work team was able to pivot to enroll the support of Adult Protective Services. Social work prompted Adult Protective Services to open a case for the client, allowing the client who was originally ineligible for CFHEPs to obtain rental assistance and connect to an Adult Protective Service housing specialist to identify market-rate housing for the voucher. Through social work's knowledge of our City's mental health system alongside with their clinical understanding, they were able divert the client from becoming street-homeless and directly connect them to the resources they needed.

Additionally, our growing housing policy advocacy efforts have strengthened partnerships within housing coalition and campaign spaces across the city and state. Upon

conducting an in-depth, comprehensive assessment of housing issues our clients frequently face, CAP has played a more active and supportive role in legislative spaces while integrating a holistic perspective across our public testimony, press content, bill agendas, public education efforts, and briefing platforms across City Council and our state Assembly and Senate bodies. In the past year alone, CAP has been consulted by the RTC NYC Coalition, as just one example, in memorandums of support for bill sponsors in its Statewide RTC campaign, proposed bill amendments in its Clean Hands campaign, conducted legal research relating to the eviction moratorium and policy solutions to address the eviction crisis, and participated in town hall and lobbying collaborations, amongst various other movement building, systemic advocacy initiatives that amplify our clients' experiences in housing court and other administrative fora.

Our work's intersectional, holistic value is reinforced by our collaborations with our colleagues who represent Bronx clients across criminal, family, and immigration court systems and legal processes. The breadth and depth of this multidisciplinary organizational expertise allows us to support and inform tenants seamlessly beyond just their eviction matters--this includes advocacy relating to those who may have criminal legal system involvement, those whose children may have been removed by the Administration for Children's Services ("ACS"), or, among other case scenarios, those who face deportation proceedings on the basis of being non-citizens. 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.

Moreover, our civil practice is not the only one that benefits from city funding in recognition of our holistic defense model. In fact, every other major city contract with BxD provides additional revenue for holistic representations across the wider ambit of our organization's work. For example, the Mayor's Office of Criminal Justice ("MOCJ") pays for social workers and other holistic advocates within BxD's family and criminal defense contracts, while the City Council funds social workers and immigration civil legal advocates on BxD's New York Immigrant Family Unit Project ("NYIFUP") contract. We are not required to cut back on our attorney staff in each of those practices in order for holistic lawyers and advocates to remain compensated. OCJ is an outlier amongst our city agencies in not providing this additional revenue for holistic services.

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 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. It should

also 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, policy counsel and advocates, and other civil legal service providers. The City must recognize the collective benefit of legal as well as non-legal services that offices like ours provide in-house, taking into account the merits of holistic implementation of the Universal Access Program that address causes and long-term consequences of housing court involvement.

B. OCJ should minimize attorney attrition by funding and building a sustainable program to effectuate RTC.

The Bronx has remained one of the hardest hit regions of the city and state of New York in terms of COVID-19 death rates and its number of residents threatened with eviction. Since the start of the pandemic, city landlords have commenced an estimated total of 60,720 residential eviction filings, of which Bronx landlords are responsible for nearly 35 percent—the highest proportion of active pandemic eviction cases out of any city borough.⁶ Many more pending cases were filed before the pandemic. In addition to this, it is increasingly difficult to attract talent to our offices given the high cost of living in the City, rising rates of inflation, and the lack of a competitive salary. Considering this staggering data and confluence of factors, RTC contracts must be structured to create a sustainable program that compensates for the training and retention of talented, and dedicated staff and supervisors to defend the rights of not only low-income tenants in the Bronx but throughout New York City.

During the pandemic, OCJ has rightfully led the expansion of the RTC in housing court to all zip codes across the Bronx and New York City, as required by law. As RTC advocates, we support this expansion. However, rapid expansion without building a sustainable program with sufficient funding has led to legal services organizations not being able to retain staff we currently have nor fully staff our offices in order to represent the increased number of *pro se* litigants seeking assistance. Our organizations have become increasingly unable to sustain the Universal Access to Legal Services program with the level of resources that are currently allocated to us, as the funding received is not enough to finance the true cost of RTC's implementation. Without adequate funding, we are not able to hire or retain enough attorneys with supervisory expertise or experienced attorneys, and cannot afford to hire the requisite social workers, paralegals, and professional staff who are crucial to providing holistic services to our clients. Without this support, our attorneys—who, on average, have substantially less experience of our colleagues representing clients in criminal cases—will struggle to provide the quality of representation that our clients deserve.

BxD firmly believes that every client is entitled to as much strategic litigation as their case demands. Our litigation teams, which include attorneys, legal advocates, benefits specialists, social workers, and other professional staff will not compromise on delivering the highest quality of legal services to our clients. Yet, burnout is a trend we have observed across legal services providers. This is due to the everchanging goal posts of the program, the high volume of calendars and case assignments, the lack of case standards and inadequate pay to name a few. This has depressed the number of participating attorneys. For these reasons, we are seeing high rates of attrition and difficulty filling open positions for this demanding work. Many RTC

attorneys are overburdened with high caseloads, and a high turnover rate because of those caseloads. This disrupts the overall volume of cases we can handle individually. Instead of tackling new cases, we must often reassign older cases to colleagues, and spend our already limited resources on recruiting and training new advocates. To address this, we need to ensure a sustainable foundation for newer attorneys and law graduates handling Housing Court cases, so that they remain at legal services agencies longer than it takes to train them. Relatedly, we need to create better support systems and ensure retention more senior staff attorneys and those with supervisory expertise.

As reported by the RTC NYC Coalition’s data metrics through the Right’s implementation, “84 percent of tenants represented in Housing Court by RTC lawyers were able to remain in their homes.” It is abundantly clear that the RTC program has played a significant role in leveling the playing field for low-income tenants who are able to retain attorneys. Tenants that have the benefit of a fully staffed office create better outcomes and prevent future evictions, thereby saving the city money and ensuring stability for thousands of families. At this critical inflection point in the history of the RTC program, OCJ must take action. In order to ensure the resiliency and sustainability of the RTC program, OCJ must partner with BxD and legal services agencies across NYC to ensure that our staff members are able maintain reasonable caseloads and are adequately compensated.

III. SUPPORTING PROVIDERS’ CAPACITY BY INVESTING IN CRITICAL CITY AGENCIES THAT PROVIDE RESOURCES FOR EMERGENCY RENTAL ASSISTANCE AND OTHER HOUSING-RELATED SUPPORT SERVICES

In the aftermath of the eviction moratorium’s expiration, and still amidst the COVID-19 pandemic, city agencies have faced critical vacancies that have had a direct and consequential impact legal service providers’ capacity to deliver advocacy services under the RTC law. A recently released report by the Office of the Comptroller revealed that twenty-six (26) out of thirty-five (35) agencies have vacancy rates that exceed 10 percent, with the Commission on Human Rights (“CCHR”) ranked the second-highest at 28.2 percent and the Department of Social Services (“DSS”) ranked the eighth-highest at 20 percent.⁵ In the case of the latter, staffing shortages and vacancies have caused enormous delays in voucher and subsidy processing for our clients who await time-sensitive decisions on their Cash Assistance and One-Shot Deal applications. For many applicants, these delays have required attorneys and advocates to frequently follow-up with staff in DSS’ Rental Assistance Unit, and, in some cases, required multiple attempts to re-submit documentation and applications. And for those clients who are struggling to find permanent housing using their CityFHEPS, FHEPS, Section 8, or other types of government-issued subsidies, the CCHR’s particularly higher vacancy rate poses a significant barrier in its capacity to investigate frequent source of income discrimination complaints.

The role of attorneys and advocates under the RTC’s model is not limited to the systems and procedures of housing courts. Quite to the contrary, its success is contingent in large part on our partnership with city agencies and the resources that they are equipped to provide our clients

⁵ See N.Y.C. OFF. COMPTROLLER, “Title Vacant: Addressing Critical Vacancies in NYC Government Agencies,” 1, 4 (Dec. 2022), <https://comptroller.nyc.gov/wp-content/uploads/documents/Title-Vacant-Addressing-Critical-Vacancies-in-NYC-Government-Agencies.pdf>.

on a case-by-case basis. Amidst the Bronx's affordable housing and eviction crises, our particular client demographic at The Bronx Defenders has seen significantly higher averages of lower amounts averaged at the start of the pandemic.⁶ Tens of thousands of unemployed Bronx residents have still 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. A large number of our clients who are also Section 8 recipients and/or live as public residents of the New York City Housing Authority ("NYCHA") have remained deprioritized and not received any ERAP funds thus far. And effective January 20, 2023, the Office of Temporary Disability Assistance ("OTDA") closed the ERAP application portal altogether such that no additional ERAP applications would be considered due to funding depletion. Although OTDA has still not made any indication of additional funds that could be made available to re-open the portal many of our clients who have benefitted from the statutory stay on their eviction cases are nevertheless in limbo awaiting an eligibility determination.

Even though we are a smaller base of practitioners in relation to other Bronx legal service providers, the evolving function of Bronx Housing Court as a "stipulation mill" where the vast majority of our clients enter into final judgment stipulations for excessively high rental arrears has increased our reliance on community-based organizations as well as DSS agencies to process subsidy and emergency rental assistance applications at a much higher rate. Despite the large number of New Yorkers who are facing homelessness, the uncertainty of obtaining sufficient rental assistance from the state due to the depleted status of ERAP and the fast pace of eviction proceedings that demand a more robust legal and social services infrastructure are demonstrable of how working tenants are ineligible for our services and fall through the cracks because of the lack of capacity to support the RTC program.

As such, for the RTC law to be robustly implemented, OCJ should work with other city agencies- including those under DSS-to prioritize the staffing operations of agencies like these, in addition to supporting the work of various community-based organizations, that legal service providers and our clients at risk of eviction continue to heavily rely on. Instead, the Mayor's preliminary budget has placed rental assistance and public assistance on the "chopping block"—the public assistance budget for DSS is slated to decrease from \$2.7 to \$2.3 billion, with an additional \$20 million projected to be cut from rental assistance programs administered by the Department of Housing Preservation and Development ("HPD").⁷ These proposed measures, if enacted, would further undermine the efficacy of the RTC law and place an even higher strain on

⁶ See Press Release, NYU Furman Center, More of New York City's Low-Income Renters Facing "Extreme" Arrears Over \$10,000 (May 26, 2021), <https://furmancenter.org/news/press-release/more-of-new-york-citys-low-income-renters-facing-extreme-arrears-over-10000> (sharing that from 2019 to 2020, the "share of low-income households facing any rent arrears increased by about 5 percentage points, and the average amount owed by a household in arrears also spiked from \$2,073 to \$3,435, a 66 percent increase); see also CHIP, "Survey: Rent-Regulated Tenants Owe \$1.1 Billion In Arrears," (Accessed Feb. 22, 2023), <https://furmancenter.org/news/press-release/more-of-new-york-citys-low-income-renters-facing-extreme-arrears-over-10000> ("The average renter in arrears owes about \$6,173.21 according to CHIP's survey.").

⁷ See Manon Vergerio & Jessica Valencia, *Opinion: Mayor's Budget Slashes Vital Funding in the Face of Humanitarian Crisis*, CITY LIMITS (Feb. 8, 2023), <https://citylimits.org/2023/02/08/opinion-mayors-budget-slashes-vital-funding-in-the-face-of-humanitarian-crisis/>.

Department of Homeless Services (“DHS”) capacity. As is, the city’s shelter system has recurrently tallied a record-high number of homeless adults.⁸

**IV. CONTINUING TO BUILD COHESION AMONGST
LEGAL SERVICE PROVIDERS AND TENANT ORGANIZERS BY INVESTING IN
KNOW-YOUR-RIGHTS OPPORTUNITIES AND BY IMPLEMENTING LOCAL LAW
53 AND ALLOCATING FUNDING**

The implementation of RTC 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 RTC 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 and clinics, public education outreach, press content, and various actions demanding the enforcement of the RTC law has reinforced law’s far-reaching impact. Increasing funding to tenant organizers by implementing Local Law 53—a law that was passed by the City Council in May of 2021—would embolden tenants to have agency over their housing cases, and demand essential services from their landlords (i.e., repairs, rent abatements, etc.) to which they are legally entitled prior to and/or irrespective of a new eviction filing. Tenants are often unable to obtain these services without relationships to tenant organizers, mutual aid organizations, or other community resources advocating for their right to adequate housing.

The advocacy made possible by the RTC 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 fully fund tenant and community organizations’ outreach and public awareness efforts in order to encourage tenants’ participation in the RTC movement immediately. In doing so, it should publicly announce its timeline for releasing the Request For Proposals (“RFP”) for FY 2024, outlining how the \$3.57 million that was preserved in its budget will be allocated. As such, OCJ’s resources must continue to build cohesion between these community-based organizations, grassroots organizers, and legal service providers so that the law’s impact is achieved to the fullest extent possible.

⁸ See Chau Lam, *Number of homeless adults in NYC shelters sets new record by the day*, GOTHAMIST (Oct. 6, 2022), <https://gothamist.com/news/number-of-homeless-adults-in-nyc-shelters-sets-new-record-by-the-day>.

CONCLUSION

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. The growing number of vulnerable tenants at risk of eviction who require zealous, robust representation has contributed to higher-than-average caseloads and high attrition rates across legal service practices like ours. Furthermore, OCJ must demonstrate an investment in the city's social service agencies so that they can deliver prompt services and avoid future staffing challenges and proposed budgetary cuts.

Thank you again for giving BxD the opportunity to testify and submit additional written comments for this hearing.



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:

**Conor Bednarski
CAMBA Legal Services**

February 24, 2023

Hello everyone. Thank you for this opportunity to testify about the Universal Access program. My name is Conor Bednarski 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 even 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 carrying on this program; our partners for working with us; 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. The agency's hard work 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, as well as the unquantifiable human help the program and its participants, like CAMBA Legal Services, have provided. These things continue to be true. However, today we want to highlight new challenges that have arisen.

This past year, CAMBA Legal Services has continued to assist our fellow New Yorkers with housing issues amid record inflation, a nation and city-wide affordability crisis, the continued fallout of the COVID-19 pandemic and the lifting of many pandemic protections. The pandemic resulted in hardships that would have culminated in more homelessness were it not for this program, which expanded across the City to help nearly everyone facing eviction in Housing Court. With the help of the Office of Court Administration, Housing Court Judges, and their staff, Universal Access helped create a process to ensure that everyone facing eviction knows their rights, avoids unnecessary eviction, and preserves their tenancies. However, in the last year we have faced the intense challenge of adapting this process to the much faster pace of a world that is rushing to move past the pandemic while leaving some of our most vulnerable New Yorkers behind. The reality is that some of the gains of Universal Access have been diminished by the strain of increased cases.

Between 2021 and today we have gone from being able to take on almost every eligible case to being forced to turn income-eligible people away. As much as we would like to represent everyone, we maintain a vigorous standard of quality representation so that this program can continue to provide a meaningful access to justice to those who we represent. In New York City, over 16,000 tenants are going without representation, and 4,235 tenants have been evicted since the expiration of COVID-19 Hardship Declarations on January 15, 2022. Many of these tenants are income-eligible for representation, but providers do not have the capacity to take all of these cases while still maintaining quality

representation. In the face of higher filings, the Courts have sped up proceedings rather than slowed them down.

We are the ones doing this work. The toll created by seeing many of our clients face impossible situations is compounded by the reality that our limited capacity demands that we are unable to take every case. Triage in our practice is a necessary part of our work, but triage in our intake is devastating. We applaud forthcoming adjustments by the Court that reflect these challenges, but we caution that more will need to be done to expand access to justice after watching it retreat for the past year.

Our recommendations include the following:

- Reduce the volume of eviction cases on court calendars so that the number of new cases each day matches legal service provider capacity to provide full representation to all eligible tenants.
- Provide sufficient time between court dates to allow time for lawyers to complete essential work on each case, keeping in mind the current staffing shortages and work overload.
- Calendar new eviction cases only after all eligible tenants with currently pending cases have retained counsel for full representation.
- Increase funding for the program by at least \$70 million dollars to fully fund Local Law 136. The consensus within the legal services provider community is that the program is currently funded at about 70% of its current cost. The staff retention rates at CAMBA Legal Services and our sister provider organizations are proof of this.

- Expand access to include DHCR complaints, and improve tenant education around rent stabilization and DHCR. Many tenants lack the knowledge and ability to effectively challenge potentially illegal rent increases and fraudulent IAI's or MCI's to rent stabilized apartments. There should be increased outreach and tenant education so that rent stabilized tenants know how to protect their rights.

Additionally, for tenants who do file complaints with the DHCR, the procedure is very long. Increasing funding for providers to take DHCR complaints or for DHCR to hire more agents would reduce the burden on individual tenants to prosecute these cases, and more effectively push back on illegal rent increases.

While we are not presently funded for affirmative work, we ask that this measure be considered as it has the potential to drastically reduce the volume of cases filed in housing court while keeping landlords honest and accountable.

- Expand access to include HP Cases. We continue to see 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. Many landlords are hardworking, honest, and do not do such things, but some landlords still resort to these behaviors with the goal of driving tenants out of their housing. One tool to fight this 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 misdeeds. The very concept of HP actions can serve as a deterrent against harassment behavior

generally, but to properly serve as a deterrent, our clients must be able to bring and pursue such cases effectively. The complexity of the legal system discourages our clients from bringing HP actions themselves. 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. Jones to demonstrate how important and successful this program has been. We received her case at the beginning of 2022 and conducted intake over the phone. We discovered that in a pre-pandemic stipulation of settlement, the landlord's lawyers had deceived our client into surrendering her succession rights to a rent stabilized apartment in an agreement where our client would pay arrears that our client's mother accrued while previously occupying the apartment. After filing a motion to vacate that stipulation and threatening further litigation, we were able to enter into a new stipulation which would guarantee our client and her minor child the ability to stay in the apartment where they had lived for over 10 years. Our office advocated with charities and HRA to get the balance of the arrears covered, as well as get our client a housing voucher so that Ms. Jones preserved her tenancy, securing her housing for her and her minor child. Without the Universal Access program, she might not have been able to obtain representation and her family might have lost their home in the midst of the 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.

CMS Testimony on Right to Counsel Implementation

February 24, 2023

Catholic Migration Services (CMS), a not-for-profit legal services provider affiliated with Catholic Charities of Brooklyn and Queens and the Roman Catholic Diocese of Brooklyn, provides free legal services and Know Your Rights education to low-income individuals regardless of race, religion, ethnicity, national origin, or immigration status. We assist immigrants with immigration legal services, tenants in Queens with housing legal services, and low-wage workers with employment legal services.

As tenants and organizers in the CMS community, we have been in Queens Housing Court firsthand, and have been denied or witnessed other people being denied their Right to Counsel (RTC). To echo the message of the Right To Counsel NYC Coalition, of which CMS is part, the failure of the city to uphold and protect one of its most powerful tools to stop displacement, reduce homelessness and expand and uphold tenants' rights is simply outrageous.

Since the expiration of the eviction protections in January 2022, over 14,000 tenants have been facing their eviction in court alone, Denying tenants RTC impacts poor tenants of color the most. We are all well aware of the capacity challenges the legal services organizations face, the backlog of cases due to COVID that the court started moving forward last year and the pressure from the landlords to move cases forward. However we don't accept the logic that cases have to move forward at a rate that outpaces justice for tenants and denies them their rights under NYC law.

We understand that one of the challenges you face is that we need the *state housing* court to willingly implement a *city* law---they can't be required to do it without state legislation. However, pre-COVID the courts were adjusting calendars and implementing different rules to uphold RTC, like signage, notice in court papers, judges making announcements, in close collaboration and in part due to pressure from the Office of Civil Justice. OCJ under this administration has shown no political will to demand that OCA does more to defend and uphold RTC.

But you can and must. We, at the Right to Counsel NYC Coalition, have been urging the courts to take action since the beginning of 2022. We are calling on the courts to:

- Issue an administrative order to mandate that all eviction cases where a tenant is eligible for RTC shall be administratively stayed until the tenant has had an opportunity to meaningfully meet with and retain a right to counsel attorney.
- Calendar new eviction cases *only after* all eligible tenants with currently pending cases have retained counsel for full representation.
- Reduce the volume of eviction cases on court calendars so that the number of new cases each day matches legal service provider capacity to provide full representation to all eligible tenants.
- Provide sufficient time between court dates to allow time for lawyers to complete essential work on each case, keeping in mind the current staffing shortages and work overload.

In addition, the city needs to Fund RTC in two critical ways:

First, in May of 2021 the city passed Local Law 53, which ties tenant organizing to Right to Counsel. The intent of Local Law 53 is clear - to fund trusted tenant organizing groups working in low-income communities of color to lead outreach and education efforts through community meetings, workshops, Tenant Association meetings, and more. This is the vital work of tenant organizers, and ensuring that tenants are informed of Right to Counsel and supported prior to an eviction case being filed. Tenants know about their rights and exercising them is a preventative and proactive measure.

We understand that HRA allocated \$3.6 million towards this bill, had drafted the Request for Proposal (RFP) and was going to release it in November of 2021 but it was never released. We understand you plan to release an RFP on this for FY 2024 for \$3.57 million. This RFP needs to be released NOW in order for tenant organizing groups to do their work to educate and organize tenants across NYC about their rights.

Second, Local Law 136 as it stands is not fully funded. While the city allocated \$166 million it simply isn't enough to cover the full cost of the work. The retention rates at the legal services organizations are proof of this. According to the provider community, RTC is currently funded at about 70% of its current cost, and that's not even accounting for what it would cost if we were to implement best practices with all of the support roles tenants need, fair salaries for legal services workers, and caseloads that ensure all tenants receive the best possible representation. This means that the city needs to increase the budget for RTC by at least \$70 million dollars to fund the law as it is now, while also looking to further increase the funding to achieve best practices and its full potential for tenants. In addition the city needs to set up a mechanism to monitor the cost---if cases go up the cost goes up and the city needs to proactively plan for this.

The Office of Civil Justice exists because of the tenant movement. The rights we won, that your office is tasked with upholding, save lives. We urge you to address this crisis with the seriousness and urgency it deserves.

Signed,

Lauren Springer, CMS Tenant Leader
Angelica Perea, CMS Tenant
Christos Bell, CMS Tenant
Nadine Sanders, CMS Tenant
Omar Cardoso, CMS Tenant
Roberto Schprejer, CMS Tenant
Lucy Farzana, CMS Tenant
Margarita Barns, CMS Tenant
Maria Aceno, CMS Tenant
Abraham Aguilar, CMS Tenant
Luis Aplaza, CMS Tenant
Ivette Salmon, CMS Tenant
Pedro Aguilar, CMS Tenant
Maria Arenas, CMS Tenant
Margarita Cuevas, CMS Tenant
José Arias, CMS Tenant
Virgilio Aspiroz, CMS Tenant
Dennis Barros, CMS Tenant

Olga Gil, CMS Tenant
Jennifer Lozano, CMS Tenant
Genoveva Gutierrez, CMS Tenant
Aarom Lozano, CMS Tenant
Willy Canales, CMS Tenant
Jorge Rincon, CMS Tenant
Magdalena Alvarez, CMS Tenant
Guadalupe Arcos, CMS Tenant
Gladys Beltran, CMS Tenant
Lidia Arroyo, CMS Tenant
Nerys Canales, CMS Tenant
Elsa Escala, CMS Tenant
Nancy Lombardi, CMS Tenant
Zara Tenant Coalition (ZTC)
Cristina Jeffers, ZTC
Nabila Elmansouri, ZTC
Flory Arce, ZTC
Gladys Perez, ZTC
Milagros Alfaro, ZTC
George Guerra, ZTC
Ludys Lopez, ZTC
94-25 57th Ave Tenant Association
88-05 171st Street Tenant Association
148-48 88th Ave Tenant Association
Sujoy Krishna, Tenant Counselor, Chhaya CDC
28-18 38th Ave Tenant Association
BRG Tenants United / BRG Inquilinos Unidos
Amy Collado, CMS Tenant Organizer
Bryan Fotino, Tenant Organizer at CMS and Right To Counsel NYC Coalition
Stephani Espinal, Tenant Organizer at CMS and Right To Counsel NYC Coalition



TESTIMONY FOR A HEARING ON:

Universal Access to Legal Counsel Program (5th Hearing)

PRESENTED BEFORE:

**OFFICE OF CIVIL JUSTICE
HUMAN RESOURCES ADMINISTRATION
CITY OF NEW YORK**

SUBMITTED BY:

REISY VELOZ
SENIOR PARALEGAL
MOBILIZATION FOR JUSTICE, INC.

February 23, 2023

MOBILIZATION FOR JUSTICE, INC.

100 William Street, 6th Floor,
New York, NY 10038
212-417-3700
www.mobilizationforjustice.org

I. Introduction

Mobilization for Justice, Inc. (“MFJ”) envisions a society in which there is equal justice for all. With that in mind, we believe that a holistic approach is necessary to disrupt systemic injustices that exacerbate the problems created by poverty. We believe that our role in this fight includes providing the highest quality of legal services, regardless of economic ability, through direct civil legal advocacy and by empowering members in our community through education. In building lasting change, we have a small social work program and focus on creating strong partnerships, fostering coalition work, and directing efforts toward impact litigation. We hold ourselves accountable by examining our data and assessing how we can better serve NYC residents.

MFJ is one of several front-facing legal services organizations that participates in the Universal Access to Counsel (“UAC”) program, and we pride ourselves in our zealous advocacy efforts to preserve the homes of vulnerable NYC tenants. We are grateful to partner with the Office of Civil Justice (“OCJ”) to promote this essential right to housing. Given that a large percentage of our residents are renters - currently 68.1%¹ - it is now more crucial than ever to examine the achievements of this program, as well as indicate the measures that are necessary to ensure we are successful in NYC’s fight against homelessness. History is our greatest teacher, and as such, we aim to provide input on some of the trends we have observed in our role as providers, and some recommendations that can make this program continue to be a model for the entire country.

II. MFJ’s Experiences With UAC.

In Housing Court, MFJ representatives welcome *pro-se* tenants with warmth, understanding that our potential clients are encountering a very stressful time in their lives. The conditions of our meeting are never ideal. During a recent iteration of this intake process, we met with one local hero - a NYC teacher. At the intake stage we introduced ourselves, explaining that we planned on asking them questions about who they are and what brings them to seek assistance. Upon hearing the question, the teacher broke down. They were terrified and explained that their worst nightmare is being homeless. In instances like that one, and almost instinctively, we are often forced to take pause away from the bureaucratic intake process, to remind the person that they are not alone, that it is okay for them to be scared, and that they have legal rights we will outline for them once we understand the facts of their unique case. Over the course of the fiscal year, we conduct thousands of these intakes, and double as legal advocates and counselors of a different type.

On the same day that we spoke with the teacher, another tenant explained that at the very first encounter, the landlord’s attorney did not bother to address him, told him he was an attorney and instructed him to ‘sign here.’ Upon hearing that, the tenant examined the paper and asked what he was signing. Feeling challenged, the landlord’s attorney told him to ‘stop wasting his time’ and threatened him with the judge. The landlord’s attorney then manufactured a scenario: presenting himself as the ‘good cop cutting the tenant a deal’ and the judge as the ‘bad cop waiting to evict him.’ ***This is why tenants interacting with our legal system need all the help they can get.*** It is why we were glad to have the opportunity to meet with this tenant during the UAC intake process, so he could learn more about his rights, and receive reassurance that he didn’t take the ‘bad deal.’ By simply challenging the landlord’s attorney, this tenant did an incredible job of self-advocating. This tenant spoke English, but in those same Housing Court hallways, we have seen and overheard

tenants with limited English proficiency be spoken to with this same power and authority by the landlord's counsel, rushing on to move along with their case.

Thankfully, through the City's funding of UAC, we have been able to interrupt the process by which landlords' attorneys were able to make a charade of due process rights, while coercing vulnerable tenants into signing stipulations that would, upon default, lead to an expeditious eviction. Right to Counsel works because it protects tenants - whose only crime is being poor and unable to afford an attorney - from incorrect rent charges, improper non-rent related proceedings, and a court system too overburdened to catch these errors. Unfortunately, with more and more tenants going unrepresented, there is a real risk of tenants signing stipulations that they do not understand.

III. Investing in Proper Staffing Ratios Will Save NYC Money and Conserve Our Holistic Legal Services Approach.

In keeping with the intention of the legislation behind the right to counsel, we believe it is our duty to provide insight into what has worked, and what we believe could make us the gold standard for a city eradicating homelessness.

- In our experience working with tenants facing eviction, tenants that have the benefit of a fully staffed office create better outcomes and prevent future evictions, thereby saving the city money and ensuring stability for thousands of families. During the initial phases of the Right to Counsel program, we serviced 25 zip codes. However, before the program could be fully rolled out, the zip code catchment area increased drastically to an *additional 155 zip codes*- this meant that the number of NYC tenants we were trying to represent was increased by 520%, while our staff size only increased by 83%, *six times under* what the tenants were used to and deserved. We engage in a holistic approach that considers all aspects of the problems that landed the tenant in Housing Court. In doing so, we have not only preserved tenancies; we have prevented future evictions through strategic case planning by taking the adequate time to examine all aspects, just like a private law firm would.
- Our clients are incredibly resilient, and we are fortunate to work with them. In turn, our attorneys, legal advocates, and essential staff will not compromise on delivering the highest quality of legal services to them. While the nature of anti-eviction work is stressful and can be emotionally taxing, our advocates are up for the challenge. Yet, a combination of the pace at which cases are moving in Housing Court and routinely explaining to tenants that we can't take their case due to capacity constraints, can make our colleagues feel defeated. This burnout is a trend we have observed across legal services, and to address it, we need to create better support systems for attorneys handling Housing Court cases, so that they remain at their organization longer than it takes to train them. This can be done by limiting the caseloads of attorneys so that they may continue to meet their professional and ethical obligations, while providing proper case support through paralegals and social workers. The creation of the OCA's case standard committee is indicative that we all agree that a healthy caseload is central to effectively challenging evictions.

- Another unfortunate trend has been high attrition rates among our staff. This can interrupt the volume of cases we can handle given that, instead of taking on new cases, we must reassign cases to colleagues, and spend our already limited resources on recruiting and training new advocates. Replacing employees is costly. Not only does the organization lose institutional knowledge and any advantageous relationships fostered by the departing employee - it must also use funds to recruit and train new advocates. If UAC is not adequately funded, the result will be more burnout due to diminishing capacity. As reported, “[f]or the third year in a row, 84 percent of tenants represented in Housing Court by RTC lawyers were able to remain in their homes.”² We have demonstrated that this program can work³ and that we can and have provided meaningful and system-challenging services. Therefore, the need for investment in housing attorneys and essential staff is clear.
- We are grateful for all the help our clients have received from the Human Resources Administration (“HRA”) and Homebase, but also understand the impediments those agencies have as they are experiencing understaffing. It is urgent that these agencies get the resources they need to expedite the processing of applications for benefits that will preserve homes and prevent more people from entering an overwhelmed shelter system. This is ever more apparent as cases are taking longer to be resolved in Housing Court, with the need for a more robust approach to rental assistance application processes.
- To combat future eviction cases, it is also imperative that we think creatively about empowering communities to understand their rights. And we must also preserve their trust by continuing to provide high quality legal services which consider their complex identities and go beyond the brief interaction in Housing Court. Providing adequate funding will inevitably have a ripple effect and create future leaders in vulnerable communities.

IV. Conclusion

Mobilization for Justice was founded as MFY Legal Services and became the model in pioneering legal services in the early sixties. We want to continue this tradition and be the leader of change, by ensuring that we preserve affordable housing, continue training future community leaders, and as a group with access to legal resources, contribute to complex litigation that challenge systemic inequities. By allocating adequate community resources, providing proper staffing ratios, and investing in our communities, we can address the present disparities. To do so, we need our partners - more than ever – to recognize the housing crisis that affects the landscape of New York City.

¹ See, State of renters and their homes, Prepared by NYU Furman Center, available at: <https://furmancenter.org/stateofthecity/view/state-of-renters-and-their-homes#:~:text=The%20share%20of%20New%20York,to%2068.1%25%2C%20respectively> (accessed on 02/17/2023).

² See, Right to counsel works: Why New York State's tenants need universal access to lawyers during evictions by Oksana Mironova, Community Service Society (March 7, 2022), available at: <https://www.cssny.org/news/entry/right-to-counsel-new-york-tenants-lawyers-evictions>

³Id.



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

**Emily Ponder Williams
Managing Attorney, Civil Defense Practice
February 24, 2023**

Introduction

I am Emily Ponder Williams, Managing Attorney of the Civil 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.

The Right to Counsel Preserves Homes and Communities

The tenant led movement in New York City paved the way nationally for the Right to Counsel in Housing Court. In the wake of New York City's 2017 Right to Counsel law, 3 states and 15 cities have followed suit. From 2017 through March 2020, more than 80% of tenants being assisted by a Right to Counsel attorney were able to remain in their homes. The Right to Counsel has also led to: 1) fewer eviction filings; 2) the development of tenant friendly case law; 3) the re-stabilization of illegally deregulated apartments; 4) increased tenant power to get necessary repairs in neglected apartments; and 5) increased community stability. The very presence of a dedicated and robust group of tenant's attorneys in Housing Court has helped eliminate many of the abhorrent historical practices and norms.

In the midst of the pandemic, NDS was retained through the Right to Counsel program by a young woman trying to escape foster care becoming a remaining family member in her recently deceased mother's NYCHA apartment. NYCHA cruelly took the position that when a child is removed by the State for safety reasons, they cease to be a member of the household. A decision was finally rendered, after years of litigating in both Housing Court and the Office of Impartial Hearings, that our client should be recognized as a Remaining Family Member and be allowed to return to her home. The Right to Counsel made it possible for this woman to obtain stability for the first time in her life, and to avoid certain homelessness.

Hundreds of Right to Counsel attorneys have fought vigorously for their clients from their homes during the COVID 19 pandemic and beyond. Facing the headwind of a judiciary insistent on keeping an eviction court operating during a public health crisis, Right to Counsel attorneys dutifully reacted to every new administrative order and judicial directive. When the city or state government haphazardly rolled out rent relief programs seemingly designed to never reach tenants most in need, Right to Counsel attorneys ushered tenants through labyrinthian applications, preventing countless evictions.

In short, the Right to Counsel works – when it works.

The Right to Counsel Is Under Threat

Unfortunately, over the last year, as the City exited the worst of the pandemic, over 14,000 tenants were denied their right to an attorney as they faced eviction. This was a direct result of the court system overtaxing the limited number of Right to Counsel attorneys funded by this program, and, unfortunately, this crisis does not appear to have an end in sight. Court calendars remain flooded and legal services providers and legal services providers across the City, including NDS, face ongoing challenges with hiring, recruiting and retaining staff as our programs remain underfunded. Simply put, providers cannot meet the enormous demand for representation in a way that is ethical, responsible, and true to the Right to Counsel.

For instance, next month, NDS will staff four Right to Counsel intake shifts where our office can expect to see anywhere between 50 and 100 tenants seeking legal representation. If an average of just 50 tenants from each shift were eligible for representation, that would mean each attorney on the NDS team would be assigned roughly 30 new clients in one month, added to caseloads that are already at maximum capacity.

And our attorneys *are* operating at maximum capacity. In addition to intake shifts and regular court appearances scheduled for March, our office is scheduled for trial in 9 cases. Adding 25 new cases to each attorneys' caseload would only ensure that we are unable to provide even the bare minimum representation to each client – much less a *meaningful* Right to Counsel. The math simply does not add up.

To be sure, a true Right to Counsel requires much more than merely appearing in court and filing pro forma legal papers; in addition to filing complex motions, engaging in discovery, and handling hearings and trials, in many cases, our representation requires us to work with various city and State agencies to obtain rental assistance and subsidies, resolve public benefits issues, and connect clients with social services. Often, this non-court advocacy is the key factor in deciding whether a tenant stays in their home. For example, in May of last year our office was able to secure over \$20,000 of rental assistance to prevent the eviction of a tenant from her home of over 20 years. Beyond the traditional legal work required by her housing court case, our office spent almost two years assisting the tenant with an Emergency Rental Assistance application, making three applications for an emergency arrears grant, and attending a fair hearing.

Right to Counsel Means More and Deserves More

Under the current circumstances, providers cannot provide this type of Right to Counsel – the kind that preserves homes and communities. To be sure, providers cannot provide *any* type of Right to Counsel to even the majority of eligible tenants without additional support. While NDS appreciates OCJ's efforts to engage with providers and the courts to acknowledge and address this crisis. However, more significant steps must be taken.

In particular, the program must be funded in a way that acknowledges the current hiring and retention challenges faced by all providers across the City. Adequate funding will allow for robust staff to support all aspects of the Right to Counsel work, attract high quality candidates, and reduce burnout – all of which contribute to the vacancies and limited capacity for providers. Currently, however, even as OCJ negotiates contract extensions, case rates remain stagnant while workflow is expected to increase. It is perplexing that legal services providers have unanimously demonstrated the inability to meet even current workflow expectations, yet OCJ expects more for less. We simply cannot attract and retain workforce without meeting increased salary demands and building out more program support to lighten the load demanded by carrying out a meaningful right to representation.

In order to provide a meaningful right to counsel to every tenant who qualifies, the City must recognize the need to fund the program accordingly and work with legal services providers to navigate the current staffing and caseload crisis.

Conclusion

The shortcomings of Right to Counsel are the result of the same racist, carceral, and discriminatory budgetary priorities which have plagued the City for decades. The current housing crisis is the result of deliberate policies to over-police and destabilize black and brown communities. Subsidizing real estate development with tax breaks, criminalizing poverty, and endlessly increasing the NYPD budget at the expense of social programs has reached its inevitable conclusion: rendering more and more New Yorkers without shelter from the cruel whims of the City's unaccountable police force.

The New York City Right to Counsel is at an inflection point. The program saves homes and prevents homelessness, but that success is not inevitable. The ability of advocates to continue to keep New Yorkers in their homes is directly dependent on the support and funding they receive from OCJ. New York City was a vanguard in establishing a Right to Counsel in Housing Court, only through increased funding and support can we prevent it from becoming a cautionary tale.

Budgets reflect values; New York City must shift its priorities from incarcerating its citizens to preserving their communities.

Office of Civil Justice Right to Counsel Virtual Hearing
February 24, 2023, 6-9PM

Testimony by:
Addrana Montgomery
Senior Staff Attorney, TakeRoot Justice

For over 20 years, TakeRoot Justice (formerly the Community Development Project at the Urban Justice Center) has provided legal assistance to and policy reform on behalf of low-income and working-class New Yorkers, on matters ranging from workers' rights and consumer justice to housing and tenants' rights. Having provided trainings, advice and representation to more than 8,000 New Yorkers just last year, as a movement-lawyering organization uniquely centering its work through an anti-oppression and anti-racist lens, TakeRoot Justice knows that social progress is always ignited at the grassroots level. We work closely with and receive policy directives from our community partners to expose structural biases and root out systems that perpetrate power imbalances, including from the employer to workers as well as the landowner to tenants.

I am privileged to be here today in my capacity as a tenants' justice legal practitioner with a background in human rights and over 10 years of experience working with and representing tenant associations throughout New York City. But I am also here in my capacity as a Brooklyn native raised by a single mother of three girls. I have lived in both public and rent stabilized housing throughout my life. I distinctly remember in the 1980s in my early teens accompanying my mother to Housing Court when she had fallen behind on rent from an unexpected medical or school expense or the demands of another emergency that her salary as a secretary couldn't weather. The fear and anxiety she experienced of having to take a day off from work was then magnified sitting in Brooklyn Housing Court, timidly waiting for her case to be heard alongside the other hundreds of mostly Black tenants swarming the hallways and courtrooms. Since we never had a lawyer of our own, we mistook the landlord's attorney's approach to us in the hallway as one of a court official. We were coerced into settlements that were always an unreasonable payment plan on my mother's salary. I distinctly remember the look of my mother feigning to the landlord's attorney that that she had means to make due on the payment plan, knowing good and well that as an average African American family that had migrated from the South in the 1950s, we had no access to generational wealth and didn't have family and friends from which we could borrow a few thousands of dollars – or even a couple hundred - at the drop of a hat. At the mercy of the landlord, I watched how these court appearances sucked the dignity out of my mother while the landlord attorney would walk away with the satisfaction that they got another index number to settle. My tenacious teenage self refused to accept that a system could be SO unfair to Black renters who were trying to live their lives and do their best. I vowed to one day to return to Brooklyn to redress these wrongs.

That's why decades later I was exhilarated to participate in the tenant movement's fight to pass the New York City Right to Counsel law. In 2017, landlord/tenant power dynamics began to shift palpably. In court I began to see more legal services attorneys accompanying tenants. and Awareness of tenant rights spread. Data began to show the eviction rate plummeting. As my own docket begin to fill with eviction cases during the Covid-19 pandemic, I shared with my mother (now retired outside the city), that the pendulum had finally swung: today, tenants threatened with eviction did not have to stand alone the way she did in the 1980s. They now had lawyers to help them assert their rights.

It is with a palpable sense of despair and anger, however, that I am here now to report to you that Right to Counsel is in a deep crisis. Since the Covid eviction moratorium ended in January 2022, TakeRoot Justice, along with the Right to Counsel NYC Coalition, has been calling on the courts to slow down the calendaring of new eviction cases to allow legal services providers time to provide meaningful representation. But the courts have not listened. Instead, they rushed to “clear inventory” (to use the official public wording of the Office of Court Administration), scheduling 60-70 cases per day per courtroom. Even judges know this rush relies on the assumption that most tenants will default or quickly settle without raising defenses or seeing a judge. Indeed, a former supervising judge of the Manhattan Housing Court recently said publicly that the worst part of the pandemic, in her experience, was that remote court appearances forced her to spend at least 15 minutes hearing each case, reducing the number of cases she could schedule each day. “Never again!” she vowed, pounding her fist on the lectern - never again should Housing Courts allow due process to slow down the eviction machine.

And the Housing Courts have obliged her. My colleagues and I have seen a runaway speed-up in our eviction defense caseload. On TakeRoot’s most recent intake day, there were over 100 new cases calendared for our 8-attorney office to assess. As we sat on benches in the hallway talking with desperate tenants, court staff interrupted and told us to speed it up – 8 minutes talking to each tenant was too long! My caseload has quickly become unsustainable. The quality of representation that each and every one of my clients deserves is not compatible with the courts’ demands for speed. I struggle with anger and depression from the workload and pressure. While I continue to slug it out, I am often thinking about my mother’s experiences at Housing Court decades ago, imagining our family’s relief if we had been eligible for a free lawyer, and then the nightmare of finding that we were only one of that lawyer’s dozens of cases.

Nevertheless, Housing Courts continue to deny tenants meaningful representation, and refuse to use their power to schedule eviction cases at a reasonable rate consistent with due process. There is NO REASON to return to pre-pandemic norm of calendaring more cases than the courts can actually hear. Prioritizing speed over justice is the antithesis of the RTC law.

Now on our intake days at Queens Housing Court, I have to tell single Black mothers, young Latino families, elderly South Asian couples, that there are not enough lawyers to represent them. As an African-American woman who decades ago experienced similar lack of counsel, the scene in the courtrooms and hallways is offensive and wrong. The courts overflow with thousands of mostly low-income tenants; judges openly assert their bias against tenants and their legal rights; and a mostly white, male landlord bar refuses to recognize the human lives behind each index number. The Right to Counsel program was meant to counter this disparate racist impact, not facilitate it. Instead, the courts’ insistence on prioritizing speed above all else is taking a toll on court workers, housing lawyers, and, most importantly, the hundreds of thousands of New Yorkers RTC was enacted to serve.

Please listen to our clarion call. We all know how eviction and housing instability directly correlate to poverty markers like homelessness, food insecurity, mental and physical distress, and criminality. You have the power to save the RTC law:

TakeRoot Justice and the Right to Counsel NYC Coalition urge you to support these much-needed actions by the Office of Court Administration:

- 1) **Issue an administrative order** to mandate that all eviction cases where a tenant is eligible for RTC shall be administratively stayed until the tenant has retained a right to counsel attorney.
- 2) **Don't calendar new eviction cases** until the backlog of eviction cases is addressed.
- 3) **Reduce the volume of eviction cases** on court calendars so that the number of new cases each day matches legal service provider capacity to provide full representation to all eligible tenants.
- 4) **Provide sufficient time** between court dates to allow time for lawyers to complete essential work on each case, keeping in mind the current staffing shortages and work overload.

Thank you.

[EXTERNAL] Hearing Comments

Rachel [REDACTED]

Fri 2/24/2023 6:22 PM

To: Civil Justice <civiljustice@hra.nyc.gov>

CAUTION: This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe. Use the Phish Alert Report button to report this email or forward suspected email to phish@hra.nyc.gov as an attachment.

Hello,

My name is Rachel [REDACTED]. I was born and raised in this city, and for most of my life I thought that this would be my home for the rest of my life. Unfortunately, it's become clear to me that the people who run this city, yourselves included, do not care about the hardworking people that made New York City the great place it was and I hope to leave when I can afford to.

This Monday 2/20, my brother was illegally evicted from the apartment he was subletting in the Lower East Side, just minutes from where we grew up. We had no support of any kind because all services were closed for the holiday and the police refused to take a report for the illegal eviction because they had facilitated it. On Tuesday, we went to Housing Court and obtained a signed order from the judge that would allow my brother access to the residence in order to collect some of his belongings, personally serve the person who evicted him, and retrieve his cat. The judge ordered that the police were to accompany him there, but instead they arrested him when the person he was subletting from filed a false report and refused to allow his girlfriend to serve the person.

After being in a holding cell for 6 hours, he was released at 2am. Since then, we have been desperately calling to get legal representation for his case earlier this morning. We spent full days trying and failing to gain representation because all housing lawyers are completely overwhelmed. We were unable to secure a housing attorney before our court date this morning.

The Right to Counsel program that this hearing is on is essentially a joke—though you wouldn't know it from the constant pats on the back officials give themselves for it existing. Of the tenants who qualify, less than 10% actually obtain representation. This is an absolute tragedy, and the fact that the city will not invest in this program that benefits the very people who make this city great, is beyond shameful. We are living through an affordability crisis in this city and allowing people

to be evicted at all, but especially without access to counsel is a stain on this administration and should embarrass each and every one of you who have the power to make this situation better. What do you think will happen when all the low income people in this city have been evicted? It's painfully clear that the current administration's priorities lie squarely with the real estate industry and further ballooning Mayor Adams' completely unearned level of ego. Landlords do not make this city. Working people do. The least we should be doing if allowing eviction cases to proceed is to make sure that tenants have the representation they need. Given the current cost of living in the city, an eviction could mean that the person or persons affected become homeless. Please don't pretend that the shelter system is anywhere close to a safe haven for those people as it is well documented that many of the city's shelters are in extreme disrepair and many are unsafe. In addition, it is very clear that the Adams administration has a special focus on abusing our homeless population. I've personally seen his NYPD thugs throw out the belongings of homeless New Yorkers and arrest them, and there is additional documented NYPD brutality towards those people.

I am calling on you to do your jobs and make sure this program is fully funded so that all New Yorkers that need representation in eviction cases have access to it. Legal workers are currently striking due to their overwhelming case loads and extremely low pay. The city had the funds to fix this, you just need the will do it.

Do the right thing.

Rachel 



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: February 24, 2023

TESTIMONY OF THE ASSOCIATION OF LEGAL AID ATTORNEYS (ALAA)

Presented by: Miles Dixon-Darling

Good evening. My name is Miles Dixon-Darling and I am a law graduate in tenant defense in the Brooklyn Neighborhood office of The Legal Aid Society. I am testifying on behalf of my labor union, The Association of Legal Aid Attorneys - Local 2325 of the United Auto Workers, otherwise known as ALAA. ALAA comprises a diverse group of attorneys, paralegals, investigators, social workers, and other workers at The Legal Aid Society, CAMBA Legal Services, New York Legal Assistance Group, Neighborhood Defender Services of Harlem, Catholic Migration Services, Bronx Defenders, and other legal services organizations who are dedicated to safeguarding the rights of tenants. I myself am one of the newest tenant advocates at The Legal Aid Society – I started in September. This testimony was prepared collaboratively by a cross-section of both junior and senior legal workers at ALAA's various member organizations. 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.

Our overarching goals as housing advocates are to eliminate evictions, end homelessness, and ensure tenants' homes are safe places to live. The Right to Counsel is vital to achieving those goals, and it's proven powerful: since RTC passed, evictions have plummeted, landlords have sued tenants less often, and almost 85% of tenants who had Right to Counsel stayed in their homes. We are proud to stand alongside the Right to Counsel Coalition in championing this historic piece of legislation and, more importantly, in demanding that OCJ take corrective action to uphold RTC.

This is a time of crisis for the Right to Counsel in housing court. I will be blunt: OCJ and the Courts are well on their way to destroying RTC by underfunding legal services organizations, pushing unmanageable caseloads on tenant attorneys, and allowing cases to be calendared at rates faster than our attorneys can take them. As a result, workers at ALAA organizations are leaving at unprecedented rates, and those who stay are often forced to take mental health leaves of absence due to the grueling and unhealthy demands of their work.

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. Because of all this, 14,000 tenants and counting have been denied their Right to Counsel.

OCJ, as the agency in charge of upholding the Right to Counsel, must stand up for tenants by ensuring that legal services organizations are funded at the actual cost of implementing RTC – which includes fair wages for attorneys, paralegals, social workers, investigators, organizers, and the entire team of workers who come together to uphold a tenants’ right to counsel. As it stands, our organizations are grossly underfunded and our staff are grossly underpaid, and staff are struggling to stay in this job they love with wages that are significantly below comparable positions in City government, significant student loan burdens, and untenable caseloads. I myself have struggled to support myself and my partner.

We join the Right to Counsel Coalition in demanding that OCJ fully fund the Right to Counsel. As the Right to Counsel Coalition has said in their testimony, the city needs to increase the budget for RTC by at least \$70 million dollars to fund the law as it is now, while also looking to further increase the funding to achieve best practices and its full potential for tenants. In addition the city needs to set up a mechanism to monitor the cost---if cases go up the cost goes up and the city needs to proactively plan for this. We also join the RTC Coalition in demanding that the city immediately issue the RFP to implement Local Law 53 so that tenant organizing groups can do their work to educate and organize tenants across NYC about their rights.

OCJ must also join ALAA, the Right to Counsel NYC Coalition, members of the City Council, and others in calling on the courts to reduce the volume of eviction cases on the calendars each day, administratively stay cases until eligible tenants obtain their RTC attorney and provide sufficient time between court dates to allow lawyers to fully investigate and litigate each case.

Court administrators have claimed that they are powerless to implement the above measures and have suggested that it would be a violation of due process to do so. We at ALAA, however, have seen first-hand that these claims are inconsistent with the way court calendaring actually works. Court calendars have fluctuated wildly over the years, especially during the pandemic, as the Courts have responded to various needs, priorities, and interests. For example, a second “HP part” – the part dedicated to repairs cases – was added last year and then taken away mere months later. If the Court can remove an entire court part dedicated to helping tenants enforce their repairs rights, it can certainly put fewer cases on the calendar each day in the “eviction” parts.

Moreover, the current calendaring of cases is overwhelming not just the Right to Counsel providers, but also the Courts themselves. Time and time again, we have heard judges complain that they have too many cases, they can’t get decisions out fast enough, that there aren’t enough clerks to upload court documents into the computers. There’s an easy solution for that: calendar fewer cases.

Finally, we ask that OCJ seek input directly from the unionized legal services workers – the very attorneys doing RTC work – while making decisions about the future implementation of

the Right to Counsel. Time and time again, OCJ has spoken to our bosses, but has refused to meet with us, the workers – even though we’re the ones on the ground carrying out Right to Counsel work. On January 19, ALAA, along with the Legal Services Staff Association and the National Organization of Legal Services Workers, sent a letter to OCJ and OCA which requested a meeting to discuss our concerns, and OCJ has not responded to our letter nor the request for a meeting.

That’s a shame, because we are the ones who understand all of the complexities that go into Right to Counsel work. Our clients need so much support to save their housing – paralegal support to help secure public benefits, social work support to navigate the traumas of housing insecurity, and legal support to ensure that tenants are protected from landlords looking to take advantage of them at every turn. Although RTC lawyers are defense attorneys, we affirmatively fight for tenants’ rights by challenging rent overcharges, obtaining much-needed repairs, securing the housing subsidies and other public benefits to which our clients are entitled, and combating tenant harassment. Every case requires a complex web of advocacy to ensure our clients are getting the comprehensive, zealous representation they deserve.

For that reason, we call on OCJ to engage the City’s legal services unions in meaningful conversation about how to get the Right to Counsel back on track. We also stand side by side with RTC in demanding that OCJ fully fund the Right to Counsel and advocate with the Courts for a system of calendaring cases that will ensure every eligible tenant receives a lawyer.