



**Written Testimony of the New York City Bar Association  
in Support of Int. 214-A**

**September 26, 2016  
Committee on Courts and Legal Services  
New York City Council Chambers  
New York, N.Y.**

**By: John S. Kiernan, President**

Chairperson Lancman and members of the Committee on Courts and Legal Services, thank you for providing the New York City Bar Association with the opportunity to testify before you today on Int. 214-A. My name is John Kiernan and I am the President of the New York City Bar Association. The City Bar is a membership organization of over 24,000 members, including lawyers, law students and academics holding positions in the private, nonprofit and public sectors. Through our 160 committees, we call upon our members' expertise to address legal and public policy issues, including access to justice and right to counsel issues. My testimony for the City Bar today is informed by the work of our Pro Bono and Legal Services Committee and our Housing Court Committee. The Committees' memorandum in support of the bill is attached to this written testimony.

Let me start by saying that the City Bar applauds the Council's significant and game-changing commitment to addressing and serving the civil legal services needs of low-income New Yorkers, particularly including people who cannot afford a lawyer when facing the threat of eviction. We acknowledge and appreciate the Council's understanding of how important it is to support a fair civil justice system in this City. For its part, the City Bar has long supported the allocation of public resources to provision of free civil legal services to people who otherwise face deprivation of essentials of life, often by court orders, without the legal assistance they need. Pro bono legal representation – as laudable as it is - cannot come close to filling this justice gap. We supported the creation of the Office of Civil Justice in 2015, and we wholly support its mission to ensure that civil legal services are funded and provided in the most efficient and effective ways possible to those most in need. From its inception, the Office has appropriately recognized housing-related civil legal services needs as a central priority of its work. This prioritization comports with the Citywide consensus we believe is emerging in support of providing low-income tenants with counsel in Housing Court.

Passage of Int. 214-A - requiring the Office of Civil Justice to establish a program for the provision of legal counsel for tenants living at or below 200% of the federal income poverty line who are subject to eviction, ejectment or foreclosure proceedings - will build on, expand and make permanent the City's existing commitment to fund legal representation for low-income tenants. Early results from the City's increased funding for these representations look very promising, and align with intuition about the expected positive effects of providing tenants with

legal representation. With passage of this bill, the City has an opportunity to keep the momentum going, ensure the program's long-term success, alter – perhaps permanently - the legal landscape of landlord-tenant relations in low-income tenancies, and allow the City to preserve affordable housing by ensuring that tenants properly raise their defenses both before and during court proceedings and, in doing so, avoid unwarranted displacement from their homes.

Direct measurement of the impact of providing free civil legal services is so difficult and susceptible to confounding variables that almost all assessments of these impacts end up feeling like a combination of observers' intuitions, subjective feelings of clients and somewhat selective-seeming, manipulable and incompletely understood statistics. As just one example, the impressive inaugural report by the New York City Office of Civil Justice released a few weeks ago collected some highly relevant-seeming information about effects, but expressly reserved for its next iteration a more rigorous evaluation of how much and how well its legal services programs work.

But even with all of the data shortcomings, the directional indications discernible from the limited data appear to be consistent, powerful and aligned with what intuitions would expect. The Office of Civil Justice reported results of a study suggesting that tenants facing the threat of eviction are four times likelier to avoid eviction if they have a lawyer than if they don't. While it would feel uncertain to extrapolate from that limited study to a prediction about the exact number of cases in which low-income tenants would avoid eviction if they all had lawyers, that 4x success rate seems consistent with reasonable expectations. Tenants can readily be overwhelmed by the eviction process, often do not know their rights, usually do not know what mechanisms and programs exist to protect them against eviction, and often do not fully understand what is happening to them. Lawyers know how to help them. Landlords demonstrate their own recognition of the central importance of having a lawyer for eviction cases every day, through application of the law of demonstrated preferences: over 99% of landlord plaintiffs in eviction cases are represented by counsel.

The Office of Civil Justice also reported significant-sounding statistics relating to changes in eviction patterns linked temporally to the New York City's increased commitment to the provision of legal services. From 2013-15, a period when the City has dramatically scaled up its resource allocations to legal representation of tenants facing eviction proceedings, marshals' evictions fell from more than 28,000 to about 22,000, or nearly 24 percent. At the same time, warrants of eviction – which often lead to departures from homes before a marshal shows up to force the tenant out immediately – fell by more than 21,000, from almost 133,000 to a little below 112,000. If you apply the finding of the Office of Civil Justice that each warrant of eviction applies on average to 3 people living in an apartment<sup>1</sup>, these results suggest an impact of 63,000 fewer people targeted by warrants of eviction in 2015 than in 2013 following two years of phased-in significant increases in legal services – a medium-sized city of people not ordered to leave their homes.

Providing a lawyer to a tenant facing eviction not only increases the likelihood that the tenant will be able to avoid eviction, thereby reducing displacement, disruption and homelessness, but also appears to be highly cost-effective. We are here today along with

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<sup>1</sup> *Id.* at p. 1 (“The average anti-eviction legal services client is 43 years old and resides in a household of three.”).

representatives of the firm of Stout, Risius & Ross, Inc., who have pursued an independent inquiry commissioned by the City Bar.<sup>2</sup> Their analysis indicates that even without regard to the profound humanitarian benefits of eviction protection that prevents homelessness, the projected savings in shelter costs and other direct costs of homelessness alone resulting from eviction prevention through provision of free legal services would be materially higher than the cost of providing those free legal services. That is because sheltering an evicted family costs about \$44,000 on average, more than 20 times the average cost of legal representation. When the other advantages of eviction prevention aside from direct shelter costs (including the immense human costs of any eviction) are factored in, the cost-effectiveness of eviction prevention becomes difficult to dispute.

I will leave the more detailed discussion of the SRR Report to the panelists from SRR, but I would like to draw the Council's attention to some of the benefits identified in the Report because they provide a fuller picture of what this bill can accomplish. Based on studies of the increased prospect for eviction avoidance associated with legal representation, the report estimates that representation would have reduced shelter entries by more than 5,200 families in 2014. Beyond direct shelter costs, SRR noted the difficulties faced by children living in shelters, from school disruption to emotional trauma to health problems, and the difficulties faced by families if eviction impacts the primary wage earner's ability to maintain employment. Many of these costs also attach to the tens of thousands of evictions each year that do not lead to shelter, but displace people in their living arrangements, dislocate families and overcrowd the homes of families that try to accommodate evicted loved ones. The humanitarian costs of homelessness provide powerful reason to support this bill.

One unquantifiable benefit identified in the SRR Report lines up precisely with the initial findings of the Office of Civil Justice Report. SRR reasonably posits that providing universal representation to low-income tenants will, in time, reduce the number of eviction cases filed because landlords will file fewer unmeritorious cases, thereby reducing the burdens on Housing Court. Early results from the Office of Civil Justice seem to bear out that conclusion, as we've seen both warrants of eviction and marshals' evictions reduce dramatically as tenant representation has increased. This aligns with our belief that it is possible – and appropriate - to alter the legal landscape in essentials-of-life cases by leveling the playing field and ensuring that a previously largely unrepresented group can present their legal arguments and explore all options available to them.

The City Council and the Mayor have been true leaders in this area. New York City's move to pass this bill will set an example for all U.S cities, and could have historic significance. The City Bar strongly supports taking this important step.

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<sup>2</sup> Stout, Risius & Ross, Inc., "The Financial Cost and Benefits of Establishing a Right to Counsel in Eviction Proceedings Under Intro 214-A," (March 16, 2016), *available at* [http://www2.nycbar.org/pdf/report/uploads/SRR\\_Report\\_Financial\\_Cost\\_and\\_Benefits\\_of\\_Establishing\\_a\\_Right\\_to\\_Counsel\\_in\\_Eviction\\_Proceedings.pdf](http://www2.nycbar.org/pdf/report/uploads/SRR_Report_Financial_Cost_and_Benefits_of_Establishing_a_Right_to_Counsel_in_Eviction_Proceedings.pdf).

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**REPORT ON LEGISLATION BY THE  
PRO BONO AND LEGAL SERVICES COMMITTEE AND  
HOUSING COURT COMMITTEE**

**Int. 0214A-2014** Council Members Levine, Gibson, Barron, Chin, Dickens, Eugene, Ferreras-Copeland, Johnson, Lander, Mendez, Wills, Treyger, Rodriguez, Kallos, Koslowitz, King, Rosenthal, Cornegy, Cohen, Reynoso, Torres, Levin, Palma, Richards, Espinal, Miller, Mealy, Gentile, Maisel, Koo, Van Bramer, Cumbo, Williams, Constantinides, Rose, Menchaca, Dromm, Crowley, Lancman, Salamanca, Cabrera, Grodenchik, and the Public Advocate (Ms. James)

A Local Law to amend the administrative code of the city of New York, in relation to providing legal counsel for low-income eligible tenants who are subject to eviction, ejection or foreclosure proceedings.

**THIS BILL IS APPROVED**

The Pro Bono and Legal Services Committee and Housing Court Committee (the Committees) of the New York City Bar Association support the enactment of Int. 0214A-2014, which seeks to provide all tenant-respondents in Housing Court, or in other courts where litigants are defending against ejection or foreclosure proceedings, and who qualify financially with a right to counsel. The bill will result in a significant cost savings to the New York City government (or at least be cost neutral) because more people would not be left homeless as a result of the absence of representation in Housing Court or other courts where such proceedings take place.

**GENERAL BACKGROUND REGARDING THE CURRENT LEGAL LANDSCAPE  
AND THE RIGHT TO COUNSEL**

It has long been recognized that less than twenty percent (20%) of low-income people in New York City (and the United States as a whole) have access to legal counsel in civil cases. This statistic has been recognized by the Task Force to Expand Access to Civil Legal Services established by New York State's former Chief Justice, the Honorable Jonathan Lippman:

[A]t best, 20 percent of low-income New Yorkers have a lawyer to assist them in responding to matters involving life's most basic necessities, such as food, shelter, clothing, health care, subsistence income, education, and family safety and stability. As a result,

Office of Court Administration data shows that some 2.3 million litigants in civil matters in courts in every region of New York State are unrepresented, and most of these unrepresented New Yorkers are low-income families and individuals. ... The Task Force has documented that when New Yorkers appear in civil matters in court without representation, litigation and other costs are higher and the opportunity to resolve disputes without litigation or to settle cases expeditiously is lost.<sup>1</sup>

The lack of legal representation dramatically affects the ability of low-income people to effectively navigate the court system and obtain successful outcomes.<sup>2</sup> Represented parties benefit from statistically more favorable results in Housing Court, among other fora.<sup>3</sup> And, in New York City Housing Court, the vast majority of litigants without representation are racial minorities.<sup>4</sup>

Therefore, the access to justice gap is disproportionately affecting those who are already most vulnerable in our society, with the fewest resources to vindicate their fundamental human rights.

Further aggravating this problem is the fact that a significant percentage of people who are unrepresented in fact qualify for governmentally funded legal representation but do not receive it due to the limited resources of the legal services organizations representing low income people.<sup>5</sup> And, it must be noted that many low-income people in need of assistance are ineligible for services because they do not meet the extremely low threshold for legal services eligibility.<sup>6</sup>

In recent years New York City has recognized the importance of civil legal services and has worked to narrow the justice gap for low-income residents. Increased funding for legal services and the creation of the Office of Civil Justice, which will oversee and evaluate the provision of free or low-cost legal services, have been significant steps in the right direction

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<sup>1</sup> TASK FORCE TO EXPAND ACCESS TO CIVIL LEGAL SERVS. IN N.Y., *Report to the Chief Judge of the State of New York 2* (2013), available at [http://www.nycourts.gov/IP/access-civil-legal-services/PDF/CLS-TaskForceReport\\_2013.pdf](http://www.nycourts.gov/IP/access-civil-legal-services/PDF/CLS-TaskForceReport_2013.pdf); see, also LEGAL SERVS. CORP., *Documenting the Justice Gap in America: The Current Unmet Civil Needs of Low Income Americans 1* (2009), available at [http://www.lsc.gov/sites/default/files/LSC/pdfs/documenting\\_the\\_justice\\_gap\\_in\\_america\\_2009.pdf](http://www.lsc.gov/sites/default/files/LSC/pdfs/documenting_the_justice_gap_in_america_2009.pdf).

<sup>2</sup> *Id.* at 2.

<sup>3</sup> Russell Engler, *Connecting Self-Representation to Civil Gideon: What Existing Data Reveal About When Counsel is Most Needed*, 37 FORDHAM URB. L.J. 37, 46-51 (2010).

<sup>4</sup> See TASK FORCE TO EXPAND ACCESS TO CIVIL LEGAL SERVS. IN N.Y., *Report to the Chief Judge of the State of New York 11-12* (2010), available at <http://www.nycourts.gov/ip/access-civil-legal-services/PDF/CLS-TaskForceREPORT.pdf>.

<sup>5</sup> See LSC, *Documenting the Justice Gap*, *supra*, at 1-2, 11 (finding that “roughly one-half of the people who seek help from LSC-funded legal aid providers,” such as Legal Services NYC, “are being denied service because of insufficient program resources”).

<sup>6</sup> LSC-funded services are presumptively available to those at or below 125 percent of the federal poverty line but in many if not most cases are available to those at or below 200 percent of the federal poverty level. See 45 C.F.R. pt. 1611. In 2014, this cutoff translates to no more than \$47,700 in gross income for a family of four.

towards increasing access. The benefits of having counsel in housing cases are particularly compelling. As displayed in the Office of Civil Justice 2016 Annual Report, the number of tenants facing an eviction case that are represented by attorneys jumped from only 1% in 2013 to 27% in 2016 while residential evictions by city marshals declined 24% in 2015 compared to 2013.<sup>7</sup> The report and its supporting data show very promising early signs that having counsel can help someone to stay in her home. “Both experimental and observational studies have found that represented tenants generally are less likely to be evicted and more likely to obtain other benefits (such as rent abatements or repairs) than non-represented tenants.”<sup>8</sup> Additionally, the report states that orders to show cause were down 14% in 2015.<sup>9</sup> It stands to reason, and is demonstrated from other studies cited in the report, that defaults and judgments would also be reduced. Ultimately, this will lessen the administrative burden on court staff, and, with less cases returning on default, result in more time that judges and court attorneys could spend on the merits of a case.

Importantly, the evidence also shows that by providing a right to counsel in eviction cases, the New York City Council would potentially reduce costs associated with evictions and homelessness by millions, if not tens of millions of dollars on an annual basis. A study done on behalf of the City Bar found that, contrary to analyses by the City’s Independent Budget Office (IBO) and City Council’s Finance Department, providing free legal counsel to low-income tenants facing eviction would actually save the city hundreds of millions of dollars.<sup>10</sup> The study

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<sup>7</sup> NYC Office of Civil Justice 2016 Annual Report, June 2016, *available at* [http://www1.nyc.gov/assets/hra/downloads/pdf/services/civiljustice/OCJ%202016%20Annual%20Report%20FINAL\\_08\\_29\\_2016.pdf](http://www1.nyc.gov/assets/hra/downloads/pdf/services/civiljustice/OCJ%202016%20Annual%20Report%20FINAL_08_29_2016.pdf). At the same time, warrants of eviction – which often lead to departures from homes before a marshal shows up to force the tenant out immediately – fell by more than 21,000, from almost 133,000 to a little below 112,000.

<sup>8</sup> *Id.* at p 44.

<sup>9</sup> *Id.* at p 2.

<sup>10</sup> *The Financial Cost and Benefits of Establishing a Right to Counsel in Eviction Proceedings Under Intro. 214-A*, March 16, 2016, *available at* [http://www2.nycbar.org/pdf/report/uploads/SRR\\_Report\\_Financial\\_Cost\\_and\\_Benefits\\_of\\_Establishing\\_a\\_Right\\_to\\_Counsel\\_in\\_Eviction\\_Proceedings.pdf](http://www2.nycbar.org/pdf/report/uploads/SRR_Report_Financial_Cost_and_Benefits_of_Establishing_a_Right_to_Counsel_in_Eviction_Proceedings.pdf). The study was undertaken pro bono by the global financial advisory firm of Stout Risius Ross (SRR) on behalf of the Pro Bono and Legal Services Committee. The IBO and the Finance Department predicted that providing counsel to all tenants at 125% or lower of the poverty level would have a net cost of between \$100-\$203 million and \$66 million, respectively. In contrast, the SRR study uses a 200% of poverty income cutoff, meaning more tenants would be eligible, and still concludes that the City would have a net savings of \$320 million annually. Over \$251 million in savings would come from reducing shelter use, savings which the SRR study finds are underestimated in both the IBO and Finance Department reports. SRR projects that over 5,200 fewer families and over 1,100 fewer individuals will wind up in homeless shelters due to eviction if provided with counsel. SRR also identifies another significant area of savings that was unaddressed in the other reports: retaining affordable housing. By preserving an estimated 3,414 units of affordable housing that would otherwise be lost to eviction, the City will save an additional \$250 million. Finally, the SRR study calculates that \$9 million will be saved by avoiding certain City costs when evicted tenants become homeless, such as emergency room care and law enforcement. But even without the affordable housing or hospital/law enforcement savings, the SRR report concludes the City would still save \$52 million a year. *See also*, TASK FORCE TO EXPAND ACCESS TO CIVIL LEGAL SERVS. IN N.Y., *Report to the Chief Judge of the State of New York* 3 (2014) (“nationally recognized experts, commissioned by the Task Force on a pro bono basis over the past three years, have determined that investing in civil legal services provides substantial economic benefits to our State—specifically, more than six dollars for every one dollar of funding for civil legal services.”)

concluded that City would have a net savings of \$320 million annually. The cost savings results from the positive impact that lawyers would have for clients facing eviction, foreclosure or ejection. The study lists such potential savings as reduction in costs for education, juvenile justice and welfare services for homeless children as a result of eviction; welfare when jobs are lost due to eviction; enforcement of rent laws and regulations; and a reduction, over time, of the number of eviction cases brought as a result of providing a right to counsel. By obtaining more successful outcomes, and preventing many more individuals and families from entering the homeless shelter system which is very expensive, not to mention collateral economic savings, such as increased public school attendance due to families having stable living conditions, and the attendance-associated state reimbursements, New York City would receive a positive return on its investment in the right to counsel.<sup>11</sup>

While preventing evictions and saving city/taxpayer money is certainly important, a stable housing environment is highly correlated with children's better educational outcomes, a sense of belonging in the community at large, higher levels of employment, better mental and physical health, improved family relationships, lower crime, and a better support system.

Even with recent improvements, New York City (and the United States as a whole) is out of step with norms around the world relating to the right to counsel in cases where fundamental human rights, such as the right to shelter, are at stake. The United Nations Committee on the Elimination of Racial Discrimination (the “CERD Committee”) has expressed concern with the United States’ human rights record in this regard, calling particular attention to the “disproportionate impact that the lack of a generally recognized right to counsel in civil proceedings has on indigent persons belonging to racial, ethnic and national minorities, and calling on the United States to provide the resources to ensure these individuals have access to counsel where basic human needs are at issue.”<sup>12</sup> The CERD Committee has further elaborated these rights and has called for states to recognize a civil right to counsel and to implement measures to guarantee access to justice in civil matters. In General Recommendation No. 29, the CERD Committee recommended that States “[t]ake the necessary steps to secure equal access to the justice system for all members of descent-based communities, including by providing legal aid.”<sup>13</sup> The Committee also recommended that State Parties “[r]emove obstacles that prevent the enjoyment of economic, social and cultural rights by non-citizens, notably in the areas of ... housing.”<sup>14</sup>

Other international bodies have reached similar conclusions concerning the importance of civil legal representation to fundamental fairness and protection of human rights. For example, the United Nations Human Rights Committee, which oversees compliance with the International Covenant for Civil and Political Rights, has observed that “[a]ccess to administration of justice

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<sup>11</sup> *Id.*

<sup>12</sup> Comm. on the Elimination of Racial Discrimination, *Concluding Observations – United States of America*, ¶ 22, U.N. Doc. CERD/C/USA/CO/6 (May 8, 2008).

<sup>13</sup> CERD Comm., General Recommendation No. 29, Article 1, Paragraph 1, of the Convention (Descent), ¶ 5(u), U.N. Doc. A/57/18 at 111 (2002).

<sup>14</sup> CERD Comm., General Recommendation No. 30: Discrimination Against Non-Citizens, ¶ 7(29), U.N. Doc. A/59/18 at 93 (2004).

must effectively be guaranteed in all such cases to ensure that no individual is deprived, in procedural terms, of his/her right to claim justice .... The availability or absence of legal assistance often determines whether or not a person can access the relevant proceedings or participate in them in a meaningful way .... States are encouraged to provide free legal aid in [non-criminal cases], for individuals who do not have sufficient means to pay for it. In some cases, they may even be obliged to do so.”<sup>15</sup>

Numerous U.N. special rapporteurs and independent experts have likewise emphasized the importance of ensuring access to counsel in civil cases, particularly where counsel is necessary to secure basic human rights, and these sources have singled out housing in particular. The Special Rapporteur on Adequate Housing has noted that legal remedies are an important procedural protection against forced evictions but that such remedies are only effective where provision is made for the supply of legal representation.<sup>16</sup> The Special Rapporteur on Extreme Poverty has similarly commented that the “[l]ack of legal aid for civil matters can seriously prejudice the rights and interests of persons ... for example when they are unable to contest tenancy disputes [and] eviction decisions.”<sup>17</sup>

New York City (and the United States) are also out of step with international consensus. For example, the European Court of Human Rights has articulated the obligations of the state to provide counsel in civil cases. In 1979, the Court in *Airey v. Ireland* ruled that the right to a fair trial may demand that a state provide free legal assistance to those unable to obtain it when that assistance is necessary to provide effective access to the court.<sup>18</sup> Explaining its reasoning, the Court stated that the European Convention on Human Rights “is intended to guarantee not rights that are theoretical or illusory but rights that are practical and effective. This is particularly true of the right of access to the courts in view of the prominent place held in a democratic society by the right to a fair trial.”<sup>19</sup> The Court later expanded on this holding, emphasizing that legal aid may be required depending on the particular circumstances of a case, including “the importance of what is at stake for the applicant in the proceedings, the complexity of the relevant law and procedure and the applicant’s capacity to represent him or herself effectively.”<sup>20</sup> It surely cannot be disputed that the housing laws in New York City are complex, that the right to housing is as fundamental as any other right, and that individuals in Housing Court (or defending in other fora against ejection or foreclosure proceedings) without a lawyer are unable to represent themselves effectively as borne out by the statistics cited above.

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<sup>15</sup> Human Rights Comm., General Comment No. 32: Article 14, Right to Equality Before Courts and Tribunals and to a Fair Trial, ¶¶ 9-10, U.N. Doc. CCPR/C/GC/32 (Aug. 23, 2007).

<sup>16</sup> Human Rights Council, *Report of the Special Rapporteur on Adequate Housing as a Component of the Right to an Adequate Standard of Living, and on the Right to Non-Discrimination in this Context*, ¶ 69, U.N. Doc. A/HRC/22/46 (Dec. 24, 2012).

<sup>17</sup> Human Rights Council, *Special Rapporteur on Extreme Poverty and Human Rights*, Report of the Special Rapporteur on Extreme Poverty and Human Rights ¶ 62, U.N. Doc. A/67/278 (Aug. 9, 2012).

<sup>18</sup> 2 Eur. Ct. H.R. 305, ¶ 26 (1979).

<sup>19</sup> *Id.* at ¶ 24.

<sup>20</sup> See *Steel & Morris v. United Kingdom*, 22 Eur. Ct. H.R. 403 (2005).



## JUSTIFICATION

Against this background, the Committees endorse New York City Council Bill Int. No. 0214A-2014 as it provides access to counsel to the greatest number of people who are facing eviction or foreclosure. This bill applies generally to all individuals who are at or below 200% of the federal poverty level. Given the above analysis, it is clear that the right to counsel in Housing Court (and in other fora with respect to ejection or foreclosure proceedings) likely will deliver economic return, as well as dignity and hope to the clients, and correspondingly better results in the courtroom for these litigants seeking to retain their fundamental right to shelter.

By passing this legislation the New York City Council would be utilizing the financial criteria that the New York State Office of Court Administration uses to fund legal services in each county (*e.g.*, based on the proportion of the population living at or below 200% of the federal poverty line),<sup>21</sup> and how the Legal Services Corporation of America permits grantees, including those in New York City, to serve and count clients in many and even most cases.<sup>22</sup> Consistent with this framework, the Chief Judge's Task Force to Expand Access to Civil Legal Services has specifically recommended that government funded legal service cover all low-income individuals who are at or below 200 percent of the federal poverty level because it is virtually impossible for such individuals to otherwise access counsel.<sup>23</sup>

While the progress made in recent years as displayed in Office of Civil Justice 2016 Annual Report should be applauded, this success should not be seen as an alternative to an affirmative right to counsel in Housing Court. Rather the data makes the case that creating a right to counsel will ensure that New York's most vulnerable population has access to the proven best resource against unnecessary and unlawful evictions – a lawyer. By enacting this legislation, New York would stand as a model for other jurisdictions to fund right to counsel programs that are the only meaningful way to bridge the long-standing access to justice gulf. Perhaps most important, a right to counsel for low income tenants will help make one of the most critical parts of our system of justice, primarily the Housing Court, functional and something that we can be proud of.

Furthermore, for this right to counsel legislation to be meaningful it needs to be understood by all parties that (i) funding must be adequate to provide full representation, and (ii) representation must be provided by competent, experienced, qualified attorneys with workable caseloads and sufficient social services and related support to effectively achieve the ultimate goal of averting evictions and enabling tenants to pay and landlords to receive their legally due rents. It is our recommendation, therefore, that the delivery system for this representation be by approved, institutional, non-profit providers who demonstrate adequate experience and capacity for comprehensive support to clients in order to achieve these requisite goals, and that the

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<sup>21</sup> See <http://www.nycourts.gov/admin/bids/PDFs/JCLS-RFP-2013.pdf>.

<sup>22</sup> See 45 C.F.R. § 1611.5.

<sup>23</sup> See TASK FORCE TO EXPAND ACCESS TO CIVIL LEGAL SERVS. IN N.Y., *Report to the Chief Judge of the State of New York* 19 (2014) (recommending that “the most vulnerable families and individuals who receive funded civil legal assistance should continue to include those living” at or “below 200 percent of the federal poverty level”).

funding to implement this legislation be sufficient. Such representation is also expressly called for by New York’s Task Force to Expand Access to Civil Legal Services:

“[The] Task Force again concludes that the most urgent unmet legal needs for which the proposed funding should be directed are civil legal services in matters involving “the essentials of life”— [e.g.,] housing (including evictions, foreclosures, and homelessness) .... Moreover, the Task Force continues to recommend that prevention efforts and early intervention be prioritized, and continues to find that well-trained and seasoned experts are necessary to address the complex legal problems that low-income clients frequently face.”<sup>24</sup>

Finally, it must be noted that pro bono legal services should not be seen as a suitable replacement or alternative to legal aid services for the poor, including but not limited to the housing context. While the delivery of pro bono services over the last decade in particular has become more sophisticated and arguably more effective, given the rise of a specialized group of lawyers at large, private law firms running pro bono programs, studies continue to show that pro bono help offers only a scant fraction of the legal resources necessary to serve low-income clients in eviction proceedings (pro bono attorneys are generally not experts in housing court matters and do not have the training and experience to represent the clients in the difficult eviction and foreclosure cases), and that law firms with pro bono programs generally have conflict issues in representing tenants and defendants in foreclosure actions, given conflict issues.

Therefore, through this legislation, the City Council should encourage all private lawyers in New York City to devote more resources to low-income clients on a pro bono basis generally and in Housing Court cases other than eviction and foreclosure cases, including housing repair (“HP”) cases and Article 7A proceedings, the latter where an administrator is sought to be appointed to remedy hazardous housing conditions, long term neglect and/or harassment. In addition, pro bono resources could be devoted to clients who fall outside the 200% income limit that is included in the legislation.

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<sup>24</sup> TASK FORCE TO EXPAND ACCESS TO CIVIL LEGAL SERV. IN N.Y., *Report to the Chief Judge of the State of New York* 18-19 (2014) (emphasis added).