



CONTACT

POLICY DEPARTMENT

MARIA CILENTI

212.382.6655 | mcilenti@nycbar.org

ELIZABETH KOCIENDA

212.382.4788 | ekocienda@nycbar.org

**TESTIMONY OF THE NEW YORK CITY BAR ASSOCIATION
BEFORE THE NEW YORK CITY OFFICE OF CIVIL JUSTICE**

**BY ROGER MALDONADO
PRESIDENT OF THE CITY BAR
AND ALISON KING AND ANDREW SCHERER
CO-CHAIRS OF THE TASK FORCE ON THE CIVIL RIGHT TO COUNSEL**

November 15, 2018

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

New York City’s passage last summer of legislation guaranteeing a right to counsel for low income tenants was a monumental step toward equal justice. For the first time anywhere in the United States, a tenant who faces a legal action that could result in the loss of her home and displacement from her community, will be guaranteed legal representation. This new right is already leveling the playing field in Housing Court, giving people a fighting chance to assert their legal rights, and sending a message that the lives and the homes in New York City’s low-income neighborhoods are entitled to be treated with dignity and respect. It has the potential, done right, to preserve low-income housing, stabilize low-income communities, stem the displacement of low-income households, and reduce the incidence of homelessness and its concomitant human and governmental costs. It has the potential to transform the culture and nature of the Housing Court to a more balanced forum with greater civility and deeper attention to legal rights and principles. We applaud the City for responding to calls to adopt this groundbreaking measure, for enthusiastically moving forward with the massive undertaking of implementation, and for engaging in ongoing dialogue with key stakeholders.

The Task Force hopes to be a supportive and positive voice for an effective program. To that end, the Task Force is at this point gathering information on the early stages of implementation of RTC by:

- Visiting Housing Court in each of the 5 boroughs and observing court proceedings and facilities. While there, we have been noting a lack of signage and accommodations that would alert tenants to their right to counsel and assist them in finding and communicating with their lawyers. There is a distinct lack of space for confidential attorney/client communications in most of the boroughs (Queens is the notable exception). We have been exploring the logistics and systems being set up to determine who qualifies for the program (including interactions with NYC Human Resources Administration). We have also been meeting with the Chief Administrative Judge in each borough, and meeting with legal services providers in the courthouse.
- Inviting the relevant stakeholders for informal discussions with the Task Force. Thus far, we have invited or had presentations by representatives of the legal services providers that are participating in the program, the Supervising Judge of the NYC Housing Court, one of the Housing Court Judges assigned to a RTC part, and the NYC Civil Justice Coordinator.

At our Task Force meetings, we have been brainstorming about both short-term, low resource interventions to facilitate implementation and long-term measures that will be needed for the success of the program. Certain common principles are emerging from our observations and discussions. These include:

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

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

The Task Force is not yet ready to make specific recommendations. However, our observations and discussions thus far have led the Task Force to develop a list of specific concerns and issues that we expect to be able to address with specific recommendations. Issues we are considering thus far include:

- Identifying and supporting specific recommendations relating to the RTC as identified in the January 2018 Report to the Chief Judge by the Special Commission on the Future of the New York City Housing Court;¹
- Supporting the recently introduced amendments to the RTC law that would extend full representation coverage to tenants with households up to 400% of federal poverty guidelines, to administrative hearings that are dispositive on tenure, and to appeals;
- Addressing ethical issues implicated when opposing counsel speak to unrepresented tenants, particularly when they know those tenants have a right to counsel;
- Reviewing the implementation of an e-filing system;
- In conjunction with the City Bar's Professional Responsibility Committee, considering revisions to Rule 8.4 of the New York Rules of Professional Conduct to make it as broad as the ABA model rule on anti-discrimination;
- Supporting an increase in bilingual support and interpreters;
- Proposing particular accommodations for individuals with disabilities;
- Creating an online system through which all tenants can access information and services; and
- Evaluating the data collection efforts being done in connection with the roll-out so as to increase our understanding of the impact this right has on low-income communities.

Since New York City adopted its groundbreaking RTC legislation a little over a year ago, a number of jurisdictions around the country have similarly moved toward a right to counsel in eviction cases. San Francisco has adopted a Right to Counsel Law that guarantees representation to all tenants facing eviction, regardless of income. Public officials and advocates in Newark, Philadelphia, Washington DC, Cleveland and some states are in various stages of drafting

¹ http://ww2.nycourts.gov/sites/default/files/document/files/2018-06/housingreport2018_0.pdf

legislation and building a movement for a right to counsel. New York City is poised to become a model of excellence for the nation in the implementation of this long-overdue and enormously important right, and our Task Force stands ready to take an active role in helping achieve that goal.

TASK FORCE ON THE CIVIL RIGHT TO COUNSEL

Co-Chairs

Alison King, Pro Bono Counsel, Arnold & Porter
Andrew Scherer, Policy Director, Impact Center for Public Interest Law, New York Law School

Secretary

Erin Meyer, Pro Bono Counsel, Proskauer

Members

Deborah Archer, Professor, NYU Law School
Amy Barasch, Executive Director, Her Justice; Liaison to the City Bar Pro Bono and Legal Services Committee
Mary Lu Bilek, Dean, CUNY School of Law
Ellen Chapnick, Dean Emerita for Social Justice Initiatives (Ret.), Columbia Law School
Maria Cilenti, Senior Policy Counsel, New York City Bar Association
Michael Cooper, Of Counsel, Sullivan & Cromwell
Hon. Fern Fisher (Ret.), Professor, Hofstra Law School
Ayanna Fortson, Director of Housing, National Urban League
Hon. Allan Gropper (Ret.), Adjunct Professor, Fordham Law School
Rene Kathawala, Pro Bono Counsel, Orrick
Glen Lau Kee, Partner, Lau-Kee Law Group
John Kiernan, Partner, Debevoise; former President of the New York City Bar Association
Hon. Joan Lobis (Ret.)
Lorena Lopez, Tenant Organizer, Catholic Migration Services
Jennifer March, Executive Director, Citizens Committee for Children
David Udell, Executive Director, National Center for Access to Justice at Fordham Law School
Carmen Vega-Rivera, Tenant Leader, Community Action for Safe Apartments
Sara Wagner, Assistant Director, Local 237 Legal Services Plan; Liaison to the City Bar Housing Court Committee

Ex Officio

Roger Maldonado, Partner, Smith Gambrell & Russell, and President of the New York City Bar Association

Advisory

Vicki Been, Faculty Director, NYU Furman Center
Andrew Fyfe, Head of Evaluation, United Nations Capital Development Fund
David Jones, President, Community Service Society of New York
Hon. Jonathan Lippman (Ret.), Of Counsel, Latham & Watkins
Robert Sheehan, Of Counsel, Skadden