



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

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

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**By Andrew Scherer
Task Force on the Civil Right to Counsel Co-Chair
November 12, 2019**

This testimony is presented on behalf of the New York City Bar Association's Civil Right to Counsel Task Force (the "Task Force"). The Task Force was formed in the spring of 2018 to advocate for the most effective implementation of NYC's newly established right to counsel in eviction cases, to support the extension of that right to other jurisdictions and to advocate for the extension of the right to counsel in other civil matters where fundamental human needs are at stake. New York Law School Professor Andrew Scherer and Alison King, Pro Bono Counsel at Arnold & Porter, are the Task Force Co-Chairs. The Task Force includes the 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 right to counsel program.

New York City's passage of legislation guaranteeing a right to counsel for low income tenants was a monumental step toward equal justice. For the first time anywhere in the United States, a tenant who faces loss of her home, displacement from her community and the threat of homelessness in a court of law, will be guaranteed legal representation. 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 homes of New York City's low-income households are entitled to be treated with dignity and respect. It has the potential, done right, to preserve low-income housing, stabilize low-income communities, stem the displacement of low-income households, and reduce the incidence of homelessness and its concomitant human and governmental costs. It has the potential to transform the culture and nature of the Housing Court to a more balanced forum with greater civility and deeper attention to legal rights and principles. The City is to be applauded for adopting this measure, for enthusiastically moving forward with the massive undertaking of implementation and for engaging in ongoing dialogue with key stakeholders.

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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:

1. Visiting Housing Court in each of the 5 boroughs and observing court proceedings and facilities. While there, we have been noting signage and accommodations that would alert tenants to their right, assist them in finding and communicating with their lawyers and provide space for confidential attorney/client communications. We have been exploring the logistics and systems being set up for qualifying for the program (including interactions with HRA). We have also been meeting with the Chief Administrative Judge in each borough, and meeting with legal services providers in the courthouse.

2. 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 right to counsel part, the NYC Civil Justice Coordinator, and representatives from the NYC Criminal Justice Coordinator's office (to discuss the conditions of the Housing Courts).

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. It is our intention to share these observations with you not in the nature of a formal report, but as a way to communicate areas that require further attention, consideration and discussion by all of us. Certain common principles are emerging from our observations and discussions. These include:

- Language should not be a barrier to justice, but in Housing Courts in every borough there are not enough interpreters to meet the need of the tenants. Some Court staff and the landlord attorneys have indicated, in their interaction with RTC Staff, that they do not recognize the need and claim they aren't necessary. We disagree. The Task Force recommends that funding be made available to create a system that will provide necessary interpreters for the tenants.
- There is insufficient information made available to the tenants about the right to counsel and where to find the legal services lawyers. There is insufficient signage in the Court house and

no consistent and effective method of communication to tenants in the Court. In Queens, tenants are directed to the legal services lawyers only after

that have filed their answer. Tenants in the Bronx are referred to the third floor of the courthouse generally without details about for whom they are supposed to look. There are often too many people in the hallway on the third floor and it is difficult to identify the tenant lawyers specifically. Some Parts are run efficiently and go out of their way to make an announcement to all about the right to counsel process but others do not. The Task Force recommends that there be legible and informative signage in the Court house, better communication in the Parts about the right to counsel, and more concrete directions provided to tenants about how to determine if they are eligible and where in the courthouse to find the legal service providers.

- There is also insufficient information being provided to the legal services providers. The Court in Staten Island is the only one to provide a list of all the eligible tenants the night before. This lack of information lends itself to chaos in the other courthouses, with each organization attempting to gather the information they need from the courtrooms and to connect with their potential clients to provide advice and service. The Task Force recommends that all of the Courts follow Staten Island's practice of providing the tenant information the day before.
- Further, this lack of information about the right to counsel allows the inequities of the Housing Courts in the past to continue and can undermine the right. More specifically, clients typically want to get out of the Court as soon as possible, so they agree to deals and enter into stipulations before they know they have a right to counsel. If the tenant lawyers were to have the physical file in their hands, before the Court does, as it happens in Staten Island, this would protect the clients because no stipulations can be entered until the client speaks with the tenant lawyers. The Task Force would go further and recommend that the Courts and HRA provide a mechanism that would allow the lawyers to meet with the tenants before their hearing date.
- Space in the courthouses is an issue and will only continue to get worse as the roll out happens. The Staten Island, Bronx, and Brooklyn court houses do not have enough space for the lawyers to be able to have confidential conversations. There are far too many people in the small physical space of the Court. In Staten Island, the attorneys for the tenants share space with the attorney for the landlords, making it impossible to have confidential conversation. The Manhattan court provides an unused courtroom which does allow for confidential conversations, but it has immediate maintenance needs, for example, the roof leaks. The Task Force recommends that HRA and the Courts consider connecting eligible potential clients to the legal services organizations before requiring the tenant to go to Court to be represented.

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