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**REPORT ON LEGISLATION BY THE
TASK FORCE ON CIVIL RIGHT TO COUNSEL
AND THE HOUSING COURT COMMITTEE**

Int. 1529-2019

Council Members Levine, Gibson, Rosenthal, Cohen, Adams, Chin, Cornegy, Ayala, Powers, Reynoso, Levin, Rivera, Richards, Constantinides, Menchaca, Brannan, Torres, Ampry-Samuel, Lander, Rose, Perkins, Grodenchik, Van Bramer, Moya, Salamanca, Koslowitz, Rodriguez, Louis, Kallos, Cumbo, Lancman, Eugene, Treyger, Maisel, Cabrera, The Public Advocate (Mr. Williams)

A LOCAL LAW to amend the administrative code of the city of New York, in relation to requiring the office of the civil justice coordinator to collaborate with community groups in engaging and educating tenants of their rights in housing court

THIS BILL IS APPROVED

I. INTRODUCTION

A recent *New York Times* investigation showed how landlords “follow a standard playbook to push tenants out” to avoid affordable housing regulations.¹ Their tactics include buyouts, harassment, poor services, constant construction, and lawsuits in housing court.² Landlords in such proceedings rely on a team of attorneys who often mount questionable cases and process servers sometimes fail to notify tenants of the suit before judges order evictions.³ The *Times* found that approximately 232,000 cases were filed in 2017, mostly against tenants who allegedly did not pay back rent (although many had).⁴ When tenants had withheld rent, the *Times* found that often landlords had failed to perform much-needed repairs.⁵ Because the cost to file a housing court complaint is only \$45, large landlords can file thousands of cases each year and keep a cadre of

¹ Kim Barker, Jessica Silver-Greenberg, Grace Ashford & Sarah Cohen, *The Eviction Machine Churning Through New York City*, N.Y. Times (May 20, 2018), <https://www.nytimes.com/interactive/2018/05/20/nyregion/nyc-affordable-housing.html>. (All links in this report were last visited Feb. 21, 2020).

² *Id.*

³ *Id.*

⁴ *Id.*

⁵ *Id.*

lawyers on retainer, while tenants, historically without access to counsel, are left having to fight to save their homes without any legal support.⁶

In part to address the historical disparity in representation in housing court between landlords and tenants, in August of 2017, Mayor Bill de Blasio signed Intro 214-B to make legal services available to low-income tenants facing eviction in New York City housing court and public housing authority proceedings (the “Right to Counsel” Law).⁷ The Right to Counsel law provides free legal representation in eviction proceedings for residents whose household income falls below 200 percent of the federal poverty level⁸ and calls on the Civil Justice Coordinator (“Coordinator”) of the Office of the Civil Justice (the “OCJ”) to implement a program to achieve total representation for eligible tenants by 2022.⁹ Such representation comes from nonprofits across the five boroughs, including, among many others, Brooklyn Defender Services, the Bronx Defenders, The Legal Aid Society, Legal Services NYC and Neighborhood Defender Services of Harlem.¹⁰

The Coordinator anticipates that by fiscal year 2022, when the Right to Counsel Law is fully implemented, 400,000 residents in 125,000 households will take advantage of the Right to Counsel annually, which would cost \$166 million in annual funding in such year.¹¹ In fiscal year 2019, after the second phase of implementation, approximately 105,000 New Yorkers in 41,000 households took advantage of the OCJ’s legal services for tenants.¹² However, there still are many families that are eligible for the Right to Counsel, but don’t know about it, and therefore often don’t show up to court to fight their case. Substantial progress is necessary to achieve the goal of total representation for eligible tenants by 2022. This report is submitted in support of Int. 1529-2019, which provides for crucial community support and OCJ interaction necessary to obtain the goal of total representation for eligible tenants.

Int. 1529-2019 was referred to the New York City Council Committee on Housing and Buildings on April 18, 2019.¹³ Int. 1529-2019 requires the Coordinator to work with community

⁶ *Id.*

⁷ NYC Office of Civil Justice 2018 Annual Report at 14, https://www1.nyc.gov/assets/hra/downloads/pdf/final_2018_ojc_report_march_19_2019.pdf.

⁸ Testimony of Jordan Dressler, Civil Justice Coordinator Before the New York City Council’s Committee on the Justice System HRA’s Fiscal Year 2020 Executive Budget (May 22, 2019)(“Testimony of Jordan Dressler”) at 4, https://www1.nyc.gov/assets/hra/downloads/pdf/ocj_exec_fy20_testimony_final.pdf.

⁹ *Id.*

¹⁰ *Id.* at 3-4.

¹¹ *Id.* at 4.

¹² Office of Civil Justice, NYC Human Resources Administration, *Universal Access to Legal Services: A Report on Year Two of Implementation in New York City*, (Fall 2019), at 2, https://www1.nyc.gov/assets/hra/downloads/pdf/services/civiljustice/OCJ_UA_Annual_Report_2019.pdf.

¹³ Int. 1529-2019, “Minutes of the Stated Meeting – April 18, 2019,” at 1533, available at <https://legistar.council.nyc.gov/LegislationDetail.aspx?ID=3923900&GUID=93564381-0704-43F3-9599-244BA2545155&Options=ID%7cText%7c&Search>. There are currently two bills pending before the City Council related to expanding RTC in eviction cases in New York City. Int. 1529-2019 and Int. 1104-2018, which (a) increases the RTC’s income eligibility level from 200 percent to 400 percent of the federal poverty level, and (b)

groups to educate tenants of their rights in housing court, and to create the necessary infrastructure within the communities to ensure that tenants take advantage of their rights.¹⁴ Such efforts include workshops and training for tenants, distribution of literature about housing rights, assisting tenants to form and maintain tenant associations, referring tenants to designated community groups, and “any other activity to engage, educate or inform tenants about their rights in housing court.”¹⁵ Specifically, “designated community groups” refer to nonprofits that can educate tenants on their rights.¹⁶ Additionally, the Coordinator would be required to publish an annual report on community outreach on tenants’ rights.¹⁷

II. BACKGROUND

In June 2015, Mayor Bill de Blasio signed City Council Int. 736-A, which amended the New York City Charter to create the OCJ under the Human Resources Administration/Department of Social Services.¹⁸ The Mayor created the OCJ to supervise New York City’s civil legal assistance for low-income residents and study the need for additional services.¹⁹ OCJ’s mission is to combat poverty, income inequality, and homelessness.²⁰ With the subsequent enactment of Intro 214-B, New York City became the country’s first city to mandate civil legal assistance for low-income tenants facing eviction in Housing Court and in New York City Housing Authority (“NYCHA”) proceedings.²¹

One of New York City’s primary tools to prevent homelessness in its “Turning the Tide on Homelessness” plan is prevention,²² which equitable eviction proceedings can facilitate. Until the passage of Intro 214-B, Housing Courts posed a particularly inequitable forum for low-income residents because most landlords enjoy legal representation, whereas most tenants are not represented.²³ Jordan Dressler, the currently serving Coordinator, has emphasized a “prevention-first” approach to address homelessness and housing instability for low-income residents.²⁴ In line with this approach, he announced that, of the fiscal year 2020 OCJ legal services budget of \$159.4 million,²⁵ \$128.3 million will go to legal services programs for tenants of which \$82.1 million will

expands the types of eviction cases covered by RTC. While the City Bar supports both bills, this memorandum focuses on Int. 1529-2019.

¹⁴ Int. No 1529-2019, *id.*

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ NYC Office of Civil Justice 2018 Annual Report at 3.

¹⁹ *Id.*

²⁰ *Id.*

²¹ *Id.*

²² *Turning the Tide on Homelessness in New York City*, (2017), http://www1.nyc.gov/assets/hra/downloads/pdf/news/publications/Turning_the_Tide_on_Homelessness.pdf.

²³ NYC Office of Civil Justice 2018 Annual Report at 13.

²⁴ Testimony of Jordan Dressler at 1.

²⁵ *Id.* at 2.

go towards eviction defense legal services and \$46.2 million for legal services to protect tenants, including combatting harassment.²⁶

III. ANALYSIS

Int. 1529-2019 aims to ensure that all eligible New Yorkers can take advantage of their right to free counsel in housing proceedings, thereby reducing the amount of evictions and the homeless population in New York City. This Memorandum demonstrates why the Coordinator's mandated contact with designated community groups and qualified tenant associations is necessary to maximize participation in the Right to Counsel Law and to eliminate the historical disparity in housing disputes between landlords and tenants.

a. The Many Obstacles of Low-Income Tenants Facing Eviction

A Housing Court judge may rule in favor of a litigant represented by counsel simply because attorneys better comprehend the complexity of a given case. Pro se litigants are less familiar with court procedure and may try to simply appeal to the judge based on their individual narrative as opposed to understanding the nuances of their lease or the applicable law. Furthermore, attorneys are repeat "players" in Housing Court and they can develop strategies based on familiarity with the courts and parties involved and specialized knowledge of substantive law to better serve their clients. Further, if the landlord's attorney knows that a tenant will not have representation in Housing Court, the attorney may take a more aggressive stance in settlement negotiations. Additionally, the landlord's attorney may try to approach an eligible tenant in the court hallway and intimidate and pressure the tenant to settle prior to the tenant being able to identify and meet with his or her representative. As such, tenants may settle with landlords before they even know that they are eligible for representation. Thus, the Coordinator must increase recruitment of community organizations who can ensure that more and hopefully all litigants in Housing Court who are eligible for Right to Counsel are informed and take advantage of that right.

Low-income tenants generally lack the resources to effectively represent themselves in Housing Court. In addition to having to navigate discovery, depositions, and presenting evidence, tenants must also respond to eviction notices. Language and education barriers in addition to time and economic constraints could lead a tenant to ignore her eviction notice, which could result in displacement or homelessness. Low-income tenants, unlike experienced attorneys, also lack the ability to tackle unsettled issues of law, including those involving fraud.

Currently, there is insufficient information made available to eligible tenants about their right to counsel and where to find the legal services lawyers. Tenants currently are not sufficiently aware in advance of arriving at court of the rights and the nature of legal assistance available to them. For example, a survey described in a community group white paper found that 52% of tenants living in eligible zip codes of the Bronx did not know about the Right to Counsel Law until arriving at court.²⁷ When tenants arrive at court there is insufficient signage in the courts and no

²⁶ *Id.*

²⁷ *Tipping the Scales: Right to Counsel is the Moment For the Office of Court Administration To Transform Housing Courts*, A Report by CASA - New Settlement and the Northwest Bronx Community and Clergy Coalition, (Oct.

consistent and effective method of communication to tenants the rights that are available to them. Moreover, many eligible tenants experiencing eviction proceedings don't even make it to court because of lack of information and awareness of the process. Thus, many eligible tenants are not able to take advantage of their right to counsel.

b. Outreach Is Imperative to Enable Residents to Take Advantage of the Right to Counsel

Int. 1529-2019 mandates that the Coordinator take a more active role in connecting low-income tenants with legal counsel, including by supporting the development and maintenance of tenant associations and education initiatives regarding the Right to Counsel. If New York City intends to meet its 2022 goal of 100 percent representation of eligible tenants, the Coordinator will need to more directly partner with community groups to increase the number of eligible tenants who are represented by counsel in eviction hearings. As noted above, despite the availability of the right to legal services in eviction cases, significant numbers of eligible tenants have not shown up to court to fight their case and likely did not know that they had a right to an attorney. Thus, tenant associations, targeted marketing and education with respect to Right to Counsel and participation from the OCJ with respect to such associations, are all necessary to create equitable proceedings that directly affect New York City's rates of homelessness.

The above-described obstacles contribute to the continuance of the past inequities of the Housing Courts. Legislation that would allow for community education and outreach about Right to Counsel is pivotal in diminishing these obstacles and ensuring that the maximum number of eligible tenants take advantage of the program. Tenants must be better informed of their rights and the legal assistance that is available to them before arriving in court. The Coordinator's mandate to work with tenant associations is important because such associations are expected to be the most efficient forum for disseminating information to eligible tenants regarding their rights because tenants will be most receptive to individuals within the same communities.

Finally, Int. 1529-2019 accomplishes more than merely educating eligible tenants of the Right to Counsel before arriving at Housing Court for eviction proceedings. Tenant associations are expected to not only educate tenants of their rights in the event of eviction proceedings, but also to "level the playing field" between tenants and landlords prior to the commencement of eviction proceedings and to limit the ability of landlords to intimidate uninformed tenants with unwarranted threats of eviction proceedings. This type of assistance will help resolve landlord-tenant conflicts and reduce the number of court filings.

Supporting Int. 1529-2019 is particularly important given the positive impact that Right to Counsel has had in the short-term in preventing evictions or providing a reasonable path for litigants to find alternate housing in lieu of being evicted and facing the certainty of either living in a shelter or the streets. With these resources, tenants will be more likely to take advantage of

2019), at 4, <https://newsettlement.org/casa/wp-content/uploads/sites/7/2019/10/Report-Tipping-the-Scales-Right-to-Counsel-is-the-Moment-for-The-Office-of-Court-Administration-to-Transform-Housing-Courts.pdf>.

legal services that could be dispositive in a case that would otherwise overwhelm a pro se litigant who had to work two jobs or attend to familial responsibilities.

IV. CONCLUSION

Int. 1529-2019 allows New York City to maximize the chances that everyone who is eligible will avail themselves of the right to counsel in eviction proceedings because few residents may know who to call when they receive an eviction notice. While New York City has already seen a significant increase in representation thanks to the Right to Counsel, the Coordinator can improve on this progress with a mandate to work with community groups to educate indigent residents of their right to counsel. Int. 1529-2019 bolsters the right to counsel because more residents will know such a right exists. Thus, the “David versus Goliath” tension between tenants and better-resourced landlords in Housing Courts will be further equalized with passage of Int. 1529-2019. Consequently, tenants will be better able to prevent the crippling effects of homelessness and displacement.

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* Ms. Vega-Rivera passed away in December of 2019. This report is dedicated to her memory. We are forever thankful for her important voice on this Task Force. She will be missed.