

CONTACT

POLICY DEPARTMENT

MARIA CILENTI

212.382.6655 | mcilenti@nycbar.org

ELIZABETH KOCIENDA

212.382.4788 | ekocienda@nycbar.org

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

Int. 1104-2018

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

A LOCAL LAW to amend the administrative code of the city of New York, in relation to expanding the right to counsel for tenants.

THIS BILL IS APPROVED

There are currently two bills pending before the New York City Council related to expanding the landmark right to counsel (“RTC”) in eviction cases in New York City. Int. 1529 requires the Office of Civil Justice coordinator to work with community groups to educate tenants of their rights in housing court,¹ while Int. 1104-2018 (a) increases the RTC’s income eligibility level from 200 percent to 400 percent of the federal poverty level, and (b) expands the types of eviction cases covered by RTC. While the New York City Bar Association supports both bills, this memorandum focuses on Int. 1104-2018.

I. BACKGROUND

Evictions have devastating consequences for both individuals and their communities. As the supply of affordable rental homes has failed to keep pace with ever increasing demand, more and more Americans—including New Yorkers—are becoming tenants.² A nationwide trend of increasing rents and stagnant income has yielded more tenants spending an ever increasing share of their income on housing costs.³ In 2016, approximately 2.3 million eviction cases were filed

¹ 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. (All links in this report were last visited Feb. 21, 2020).

² Heidi Schultheis and Caitlin Rooney, *A Right to Counsel Is a Right to a Fighting Chance*, Center for American Progress (Oct. 2, 2019), <https://www.americanprogress.org/issues/poverty/reports/2019/10/02/475263/right-counsel-right-fighting-chance/>.

³ *Id.*

nationwide and almost 900,000 of these resulted in an eviction.⁴ A recent study from New York University found that evictions cause a significant and persistent increase in the risk of homelessness, increase emergency room use and increase the risk of mental health hospitalizations.⁵ New York City has not been immune to these nationwide trends nor has it been spared the consequences of rising evictions. In the backdrop of this nationwide epidemic, and in the context of a citywide grassroots movement, RTC was born.

In August 2017, New York City Mayor Bill de Blasio signed Int. 214-B into law, which created a right to counsel in eviction cases in New York City. RTC provides free legal representation to tenants in eviction proceedings for households whose income falls below 200 percent of the federal poverty level and charges the Civil Justice Coordinator of the Office of Civil Justice (“OCJ”) with implementing the program, with the goal of achieving representation for all eligible tenants by 2022.⁶ To accomplish this goal, the OCJ has partnered with nonprofit legal services organizations throughout New York City, including Legal Services NYC, Neighborhood Defender Services of Harlem, Bronx Defenders, Legal Aid Society, Urban Justice Center, Brooklyn Defender Services, among others.⁷

The right to counsel in eviction cases in New York City is an essential component of the de Blasio Administration’s “prevention-first” strategy to address homelessness and housing instability for New Yorkers.⁸ “Providing quality [legal] representation and counsel for thousands of the City’s low-income tenants facing eviction and displacement is a key component of [the Administration’s] civil legal services programs, and the cornerstone of [their] tenant legal services is [the right to counsel].”⁹ This groundbreaking advancement of tenants’ rights is a cost-effective and commonsense response to the myriad of issues rooted in the City’s ever-rising housing costs.

The first iteration of the right to counsel covers all New Yorkers with household incomes at or below 200 percent of the federal poverty level.¹⁰ The 2019 federal poverty level income level equates to \$12,490 for individuals and \$25,750 for a family of four. New Yorkers who make less than \$24,980 and four-member households earning less than \$51,500 qualify for representation under the law. At present, RTC covers tenants facing an eviction proceeding in New York City housing court as well as New York City Housing Authority (“NYCHA”) administrative proceedings. Today, RTC is in effect in approximately 25 zip codes.

⁴ *Id.*

⁵ Robert Collinson and Davin Reed, *The Effects of Evictions on Low-Income Households* (Dec. 2018) at 30-31, https://www.law.nyu.edu/sites/default/files/upload_documents/evictions_collinson_reed.pdf.

⁶ Testimony of Jordan Dressler at 4.

⁷ *Id.* at 2-4

⁸ *Id.* at 1.

⁹ *Id.* at 3.

¹⁰ *Id.* at 4.

Once RTC is fully implemented, OCJ estimates that a total of 400,000 New Yorkers in 125,000 households will avail themselves of this law.¹¹

II. ONE YEAR OF THE RIGHT TO COUNSEL IN EVICTION CASES IN NEW YORK CITY

In the two years since New York became the first city in the country to create a right to counsel in eviction cases in New York City, the effort has transformed the playing field for low-income New Yorkers.

Tenant representation in housing court has drastically increased. In FY 2013, one percent of tenants were represented by counsel; in FY 2018, 30 percent of tenants had an attorney in Housing Court.¹² As the law continues to expand throughout the City, tenant representation continues to rise. The NYC Office of Civil Justice found that during the last quarter of FY 2018, 56 percent of tenants in RTC zip codes were represented by counsel in eviction proceedings. In conjunction, the number of eviction cases in Housing Court continues to fall. In 2018, there were approximately 29,000 fewer eviction proceedings filed than in 2013. Housing Courts have also reported an increase in pretrial motions and a corresponding decrease in emergency orders to show cause.¹³ These trends demonstrate an increase in substantive litigation, undoubtedly a welcome result of RTC. Some landlord attorneys have lauded the benefits of RTC in terms of easing case management, reaching quicker solutions and facilitating repairs.¹⁴

Importantly, this law ensures that more New Yorkers remain in their homes. For those New Yorkers represented by an Office of Civil Justice-funded attorney in FY 2018, 84 percent were able to prevent eviction. RTC has helped drive the consistent recent declines in eviction filings, warrants of eviction and executed evictions in New York City.

As reported by Roger Juan Maldonado, President of the New York City Bar Association in his remarks for the Chief Judge’s Statewide 2019 Civil Legal Services Hearing, after only two years of RTC, “[t]enants have a greater sense that they are being treated with dignity and respect. The behavior of judges and opposing counsel is changing as the expectation changes that the litigation will require hearing from both sides in an equal manner. . . . Simply put, it is a game-changer.”¹⁵

¹¹ *Id.*

¹² Oksana Mironova, *NYC Right to Counsel: First year results and potential for expansion*, Community Service Society (Mar. 25, 2019) (“First Year Results”) at 1, <https://www.cssny.org/publications/entry/nyc-right-to-counsel-first-year-results-and-potential-for-expansion>.

¹³ Testimony of Jordan Dressler at 4-5.

¹⁴ Eddie Small, *Inside the Fight to Revamp Right to Counsel*, The Real Deal, New York (May 13, 2019) <https://therealdeal.com/2019/05/13/inside-the-fight-to-revamp-right-to-counsel/>.

¹⁵ Roger Juan Maldonado, Remarks for the Chief Judge’s Statewide 2019 Civil Legal Services Hearing, New York City Bar Association (Sept. 23, 2019) at 4, <https://s3.amazonaws.com/documents.nycbar.org/files/2019566-MaldonadoCivilLegalServicesFundingTestimony.FINAL.pdf>.

III. INT. 1104-2018

On September 12, 2018, the City Council introduced Int. 1104-2018, entitled “A local Law to amend the administrative code of the city of New York, in relation to expanding the right to counsel for tenants.”¹⁶ It seeks to double RTC’s income threshold to 400 percent of the federal poverty guidelines, to ensure that all tenants in need receive legal assistance during an eviction proceeding. Int. 1104-2018 also expands the types of cases covered beyond just those in housing court to cover all proceedings where ejection, eviction or termination of residence may result. To date, 35 of the City Council’s 51 members and the Public Advocate have sponsored the bill.¹⁷

Int. 1104-2018 is central to the Administration’s goals of reducing evictions and combatting homelessness in the City as it ensures *all* needy New Yorkers facing eviction have access to quality representation.

IV. INCREASING INCOME ELIGIBILITY

As stated above, RTC only covers New Yorkers whose yearly earnings are below 200 percent of the federal poverty level.¹⁸ When accounting for the astronomical cost of living in New York City, the insufficiency of the current levels are revealed. According to estimates by the United States Department of Housing and Urban Development (“HUD”), an individual New Yorker who earns less than \$58,450 and a family of four that makes less than \$83,450 qualify as “low income,” and one who earns less than \$36,550 and a four-person family that makes less than \$52,150 qualify as “very low income.”¹⁹ As City Council Member Mark D. Levine explained, “[t]he federal poverty level is totally out of whack with the reality on the ground in New York City. With the skyrocketing cost of living here, more and more people above 200% of the federal line are in fact facing enormous economic struggles. We need to expand the right to counsel law to reflect that.”²⁰

Int. 1104-2018 seeks to increase the number of struggling New Yorkers who have access to the substantial benefits of RTC by raising the income eligibility level from 200 percent of the federal poverty level to 400 percent of the same. This will expand coverage from individuals with incomes of \$24,980 to \$49,960 and four-member households with incomes of \$51,500 to \$103,000. These new levels will now include most individuals and all four-member households classified by HUD as “low income” as well as single New Yorkers working full-time earning the

¹⁶ Int. 1104-2018, The New York City Council Legislative Research Center, <https://legistar.council.nyc.gov/LegislationDetail.aspx?ID=3673428&GUID=4205F42E-82F7-4976-8BF7-035AE2B5B16D&Options=ID%7cText%7c&Search=>.

¹⁷ *Id.*

¹⁸ First Year Results at 1.

¹⁹ Ameena Walker, *Make less than \$58,450? You may qualify for low income housing*, Curbed New York (May 17, 2018), <https://ny.curbed.com/2018/5/17/17361580/nyc-affordable-housing-requirements-income-limits>.

²⁰ Jake Sporn, “*Right to Counsel*” Leaders Call for Expansion of Landmark Tenants’ Rights Law, Mark Levine (June 8, 2018), http://www.marklevine.nyc/right_to_counsel_leaders_call_for_expansion_of_landmark_tenants_rights_law.

\$15 minimum wage.²¹ By one estimate, this expansion may help between 55,000 and 70,000 households facing evictions in Housing Court.²²

These moderate-income New Yorkers are predominantly working in healthcare, education, social services, retail, and hospitality,²³ and are almost as likely to experience a housing hardship as low-income tenants.²⁴ Moreover, moderate-income tenants receive considerably less public assistance than low-income New Yorkers.²⁵ This is a vulnerable population filled with hard-working New Yorkers who form the backbone of the City's labor pool. By increasing the income eligibility threshold, Intro 1104-2018 will ensure that the vast majority of vulnerable New Yorkers facing eviction will have a powerful legal ally in their fight to level the playing field and stay in their home. This equates to more stable families and neighborhoods as well as a reduction in the negative externalities imposed upon the City by evicted tenants.

V. EXPAND THE LAW TO COVER MORE EVICTION CASES

Int. 0214-B only covered eviction cases that occur in the City's housing courts and NYCHA administrative proceedings. While this includes the majority of eviction cases, it excludes other notable proceedings that can ultimately result in tenant evictions. This rather glaring omission places hundreds of at-risk tenants in danger of losing their home solely because of the forum where their eviction is brought. To rectify this wrong, Int. 1104-2018 expands RTC to all cases that could possibly result in an eviction. Specifically, it would cover (1) administrative hearings, (2) NY Supreme Court ejectment cases, and (3) appeals. With this expansion, tenants' access to an attorney will no longer be determined by the type of case brought.

The Right to Counsel NYC Coalition estimates that there are approximately 1,400 housing court appeals filed every year and approximately 400 are litigated to a decision. With the increase in successful outcomes for tenants resulting from RTC, landlords are filing more appeals. Without an attorney at the appeal level, tenants must navigate a complicated, intricate, and novel appeal process on their own. This puts them in a highly unfavorable position and may erase all the hard-fought victories achieved at the trial level. This gap in coverage severely undermines the success of RTC by allowing landlords to take advantage of unrepresented tenants during the appeals process.

By expanding RTC to include moderate-income New Yorkers and all eviction forums, the City Council can ensure that all vulnerable tenants facing eviction will have the right to an attorney in their fight to keep their home.

Reissued March 2020

²¹ Right to Counsel, Power to Organize, NYC Coalition.

²² First Year Results at 1.

²³ *Id.*

²⁴ *Id.*

²⁵ *Id.*

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

Morgan Manley
Associate, Smith, Gambrell & Russell, LLP

Members

Deborah Archer
Professor, NYU Law School

Martin Needleman
*Liaison to the 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

Marjorie Cohen
Family Attorney, Urban Justice
Center; *Liaison to the Family Court
Committee*

Michael Cooper
Of Counsel, Sullivan & Cromwell

Hon. Fern Fisher (Ret.)
Professor, Hofstra Law School

Ayanna Fortson
Director of Housing, National
Urban League

Glenna Goldis
Staff Counsel at NYC Department
of Consumer Affairs; *Liaison to the
Civil Court Committee*

Hon. Allan Gropper (Ret.)
Adjunct Professor, Fordham
Law School

Rene Kathawala
Pro Bono Counsel, Orrick

John Kiernan
Partner, Debevoise

Glenn Lau-Kee
Partner, Lau-Kee Law Group

Hon. Joan Lobis (Ret.)

Lorena Lopez
Tenant Organizer, Catholic
Migration Services

Jennifer March
Executive Director, Citizens
Committee for Children

Joseph Rosenberg
Executive Director, Catholic
Community Relations Council of
New York, Inc.

Neil Steinkamp
Managing Director, Stout Risius
Ross, LLC

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
Housing Court Committee*

Ex Officio

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

Advisory

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

HOUSING COURT COMMITTEE

Sara Wagner, Chair

* 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.