



**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**

**By Alison King and Andrew Scherer,
Task Force on the Civil Right to Counsel Co-Chairs**

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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 two immediate past Presidents 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. Since New York City passed this landmark legislation, five additional localities have adopted the right to Counsel, including Newark, San Francisco, Cleveland, Philadelphia and, by public referendum this past election day, Boulder. The Baltimore City Council passed right to counsel legislation just days ago and the bill is awaiting the Mayor's signature.

The right to counsel for tenants in New York City is 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

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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, promote the stability in the households of thousands of children, whose development depends on it, 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 leading the nation by adopting this measure, for enthusiastically moving forward with the massive undertaking of implementation and for engaging in ongoing dialogue with key stakeholders.

At our Task Force meetings, we have developed certain common principles from our observations and discussions. These include:

- The need to have a system in place that allows tenants to obtain legal assistance prior to the start of the eviction process. This will enable tenants to avoid waiving important rights and maximize their ability to protect their homes, as well as reduce the burden on the court of unnecessary filings.
- The need to have well designed court processes, adequate court facilities, and Housing Court Judges prepared to accommodate the shift from a primarily pro se court to a court equipped to resolve litigation between represented parties and a court marked by civility and decorum.
- The need to have sufficient resources to assure that the legal services organizations ("Legal Services Organizations") are able to provide effective legal representation, including adequate compensation, support, supervision and training to the staff attorneys for the 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

Legal Services Organizations; 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.

These principles are more important now than ever before. This is an unprecedented moment, with profound implications for the right to counsel. New York is in the midst of a deepening and dire housing crisis as a result of the COVID-19 pandemic. A staggering number of New Yorkers have lost their jobs, some permanently, and over 1.4 million households in New York State currently face a risk of housing instability or rent shortfalls. Statewide, unemployment was 14.5% by May of 2020 and has remained high throughout the pandemic. Federally enhanced unemployment insurance, which helped many to stabilize their finances during the early pandemic period expired in July. A recent analysis prepared by Neil Steinkamp of Stout, a member of our task force, estimates that over 1.1 million households in New York State cannot pay rent and these rent shortfalls, which began in mid-March, are aggregating at a rate of over \$875 million per month. Neither the federal nor state government has adopted meaningful measures to address this crisis, so tenants are facing an astounding number of eviction proceedings and consequent evictions.

The impact of this potential avalanche of eviction cases and resulting judgments will fall most heavily on people of color, people with disabilities, seniors, veterans and low-income New Yorkers who constitute the vast majority of respondents in eviction cases and who are the most critically affected by the COVID-19 pandemic.

Measures have been taken to address this crisis, but they have not been sufficient. The New York City Housing Court has been subject to a series of Executive and Administrative Orders that halted evictions and halted filings for a time. State and federal moratoria on evictions, the Tenant Safe Harbor Act and the Emergency Rent Relief Act have established some additional protections. The Housing Court administration has put in place yet additional notice requirements and other procedures to avert defaults and delay court appearances,

particularly for unrepresented tenants. However, many of these protections are slated to expire by the beginning of the year. And, as OCA continues to monitor COVID-19, the question of when courts will fully resume in-person operations remains uncertain, although virtual court operations are continuing. Either way, courts are already overwhelmed by hundreds of thousands of pre-pandemic, pending cases, and will be further compromised with an exponential increase in cases if remedial measures aren't taken.

Thankfully, there is a wide consensus about the importance of counsel for tenants at a time like this. The City, our Legal Services Organizations, and our courts have worked hard to transform themselves almost overnight in an effort to keep all of the stakeholders safe from the pandemic, and to extend the right to counsel to, for the moment at least, all tenants who are appearing in eviction cases. These measures are to be applauded.

The Task Force hopes to be a supportive and positive voice for how best to navigate the current crisis and the post-COVID 19 realities that are the most responsive to the needs of the community and provide access to justice and the right to counsel for tenants. We believe that no one should be evicted into a pandemic without counsel. This is especially true with the added complications and confusions of ever-changing federal, state and local laws, policies, executive and administrative orders. We offer these comments and suggestions:

- We are thankful that the Office of Civil Justice (“OCJ”) is currently providing counsel to all eligible tenants in NYC during the pandemic and not only to those eligible because they live in certain zip codes. We wholeheartedly support the City Council bill (Intro 2050) providing the right to counsel to all eligible tenants in NYC now and after the pandemic rather than returning to the zip code phasing approach.
- We encourage the Office of Court Administration (“OCA”), OCJ, and the Legal Services Organizations to continue to explore the use of technology as a means of providing information and notice to eligible tenants. The online tool for emergency HP actions is an example of all of the stakeholders working together to improve court procedures to include the use of technology. The use of 3-1-1 as a legal services hotline for housing matters is a good and appropriate means of communicating to the public. We are also encouraged that OCA is also moving swiftly to more broadly utilize electronic filing. These measures are

already having a significant positive impact. However, we caution all of the parties to think carefully about the “digital divide” barriers to technology that exist in the city’s low-income communities and to refrain from expanding that divide in ways that compromise due process.

- We appreciate the efforts to extend timeframes and to provide additional notices to tenants of the availability of counsel and to encourage appearances rather than default. We suggest that OCJ, OCA and Legal Services Organizations continue broadening their methods of providing notice of the right to counsel. We commend the OCA for Justice Marks’ June 18, 2020 memorandum that requires all notices of petition to include a phone number connecting the tenant to Housing Court Answers, as well as the efforts of Legal Services Organizations, OCJ and OCA to reach out to individuals who failed to appear at the first hearing to provide further notice. 20,000 cases have been filed since June 20th that are currently suspended by administrative order. We recommend that more outreach be done to provide actual notice to the tenants.

Underlying all of our recommendations is a need for tenants to be able to seek and have access to legal counsel before the courts become involved. There may be other remedies available prior to court, such as the tenant obtaining public benefits to which they are entitled but of which they were not aware, in order to resolve the issue and not necessitate the court’s intervention. To make that possible, there will need to be a more effective education campaign to advise the public that counsel is available, and to reach out for counsel’s assistance early in the process. The public education of tenants and landlords should be done through as many channels of communication as possible. We believe this should include news and social media outreach in partnership with the Right to Counsel Coalition, the Housing Justice for All Coalition, Legal Services Organizations, community groups, tenant organizers and houses of worship.

One final note. We have noticed, and appreciate the fact that, in the last year or so city officials have been increasingly using the phrase, “right to counsel,” a more-easily understood phrase rather than the confusing and opaque phrase, “universal access.” This shift, while small, is symbolic and important. Tenants and their allies fought hard to win the right to counsel and that right is now being replicated around the country.

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.

* Mr. Cooper passed away in November of 2020. Mr. Cooper was one of the great lawyers and great friends of his generation. This testimony is dedicated to his memory. We are forever thankful for his important voice on this Task Force.