



NEW YORK  
CITY BAR

**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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NOVEMBER 18, 2021**

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 as well as the current president who sits *ex-officio*, 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, has been guaranteed legal representation. Since New York City passed this landmark legislation, thirteen additional localities have adopted the right to Counsel, including Newark, San Francisco, Cleveland, Philadelphia, Boulder and Baltimore, as well as the states of Washington, Maryland and Connecticut.

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 homes of New York City's low-income households are entitled to be treated with dignity and respect. It is helping to preserve low-

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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 is helping 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. During the pandemic, it has saved lives as well as homes by assuring that tenants have been able to avail themselves of pandemic-related protections against eviction as well as pre-existing rights. The City is to be applauded for leading the state and 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 the following principles from our observations and discussions that we believe are important for guiding the successful implementation of the law:

- Ensuring that the system affords tenants with 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.
- Ensuring well designed court processes, adequate court facilities, and judges who have transitioned successfully from the traditional model of a pro se court to the new model in which disputes are resolved by represented parties with civility and decorum.
- Ensuring sufficient resources to enable civil legal services organizations (“Legal Services Organizations”) to provide effective legal representation, with adequate compensation, support, supervision and training, as well as sufficient flexibility to offer deliver services to particular geographic communities, people with special needs and people who are simultaneously facing legal proceedings in family court, criminal court and other forums.
- Ensuring effective systems for information sharing on a range of levels, most importantly to educate tenants so they can avail themselves of this new right, but also to connect the court, community organizations, Legal Services Organizations, and all provider organizations.
- Ensuring full deployment of technology to streamline the flow of information, and to make appropriate and relevant information readily available to the court, litigants, and legal representatives.

- Ensuring prioritization 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 an unprecedented 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 are at risk of housing instability or rent shortfalls. New York State's eviction moratorium will end on January 15, 2022.

Statewide, unemployment remained high during the course of the pandemic reaching 14.5% by May of 2020. Federally enhanced unemployment insurance, which helped many to stabilize their finances during the early pandemic period expired in July 2021. A recent analysis prepared by Neil Steinkamp of Stout, a member of the Task Force, estimates that over 1.1 million households in New York State--a number that has likely grown since the time of the study -- cannot pay rent, and that these rent shortfalls, which began in mid-March 2020, have aggregated at a rate of over \$875 million per month. New York State has earmarked approximately \$1.2 billion through the Emergency Rental Assistance Program ("ERAP") to aid tenants who fell behind on rent but problems persist. For example, the funds have been slow in reaching many low-income New Yorkers because of language barriers, access to technology, or technical glitches in software.

As of August 2021, Office of Temporary and Disability Assistance reported payments to approximately 7,072 households. Yet, the Princeton University Eviction Lab reports that approximately 75,000 eviction cases have been filed in New York City alone since the start of the pandemic. The civil right to counsel's assurance of attorney representation will be critical to the defense of tenants across the state with pending eviction cases.

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 whose communities in our City 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 in the beginning of 2022. And, as the New York State Office of Court Administration (“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 sufficient additional; remedial measures aren’t taken.

Thankfully, there is a wide consensus about the importance of counsel for tenants and for New York City 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, so important not only to families but also to the current and future stability of neighborhoods in our City, 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 in a way that is most responsive to the needs of the community. We believe that no one should be evicted into a pandemic, and certainly not 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:

1. Support statewide RTC which covers any case that could result in a tenant losing their home, that requires the courts, judges and landlords to ensure that tenants know about their right to counsel and how to use it, and that requires the courts to adjourn cases until tenants have had time to retain and consult with their RTC attorney.

2. Increase the City’s outreach and awareness of RTC: During this crisis, it is more important than ever for the City to initiate an aggressive public outreach and awareness campaign. We understand that the City’s outreach plans were on hold as cases were paused and we applaud the City's rollout of a paid media to raise awareness about Right to Counsel. However, in May 2020, the Hunter College Department of Urban Planning Studio released a report which indicates that 61 percent of eligible tenants in New York City’s housing courts did not know about their right to counsel prior to arriving in court (interviews took place between October 2019 and mid-February 2020). Unless tenants are aware of their right to counsel before they receive court papers, many could believe they have no chance of winning a case on their own and saving their homes, especially if they have been unable to pay rent in this economic and public health crisis.
  - a. We urge the City to ensure that the paid media campaign provides information in multiple languages across all the chosen platforms and media sources, and that these platforms and sources include local, community media outlets and that the media campaign is sustained and supported on a regular basis.
  - b. We also urge the City to implement and adequately fund Local Law 53 to engage community organizations in the outreach effort so that tenants know their rights and can protect their homes.
3. Implement a uniform process to provide the RTC and ensure that cases are calendared based on the capacity of Legal Services Organizations. The Task Force recommends that the Office of Civil Justice (“OCJ”) coordinate the assignment of counsel in eviction cases with the OCA to calendar cases in a volume that matches the capacity of RTC Legal Services Organizations. The Task Force further recommends that OCJ ensure adequate funding for the RTC Legal Services Organizations so that there are enough attorneys and support staff to meet the need.
4. Full and Adequate Representation in Evictions. The Task Force recognizes that social workers, paralegals, public benefits advocates, mental health professionals, and other service providers in addition to housing attorneys are necessary to ensure that tenants receive full and adequate representation to prevent evictions. The Task Force recommends that the City fund RTC legal services at a level that enables RTC Legal Services Organizations to use multi-role teams to provide holistic RTC representation.

5. Preserve Current Programs. The Task Force urges the City to preserve all funding sources supporting housing-related legal services. When RTC was first passed we presented the City with a list of principles for implementation. The Task Force recommends that the City maintain funding for existing programs providing affirmative litigation, building-wide work, or population-specific legal services. This includes funding for affirmative cases including, but not limited to, needed repairs and preventing harassment, for individual tenants and groups of tenants. The necessity of RTC funding for these cases was made clear during the course of the pandemic. Many families on the brink of eviction continue to face landlord harassment and live in dangerous and unhealthy conditions. These conditions often include mold, rats, mice, cockroaches, and other pests, which are common causes and triggers of the types of respiratory conditions that make COVID-19 especially dangerous.

One final note. The Task Force recognizes the City's significant change of position in adopting the formulation "right to counsel" to describe the RTC program. This phrase is more-easily understood than "universal access." This shift to plain language has been important in enabling the public, and tenants, in particular, to understand their rights. More fundamentally, tenants and their allies fought hard to win the right to counsel and that right is being replicated around the country. The City is to be applauded for taking this step that helps to underline the importance of the right by educating the public about the right.

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.

\* The Task Force gratefully acknowledges the assistance of New York Law School students Carly Gartenberg and Joseph Rochman in preparing this testimony.