



NEW YORK
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WRITTEN TESTIMONY OF SUSAN J. KOHLMANN
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Thank you for the opportunity to submit written testimony on the topic of New York City's Right to Counsel Law and current challenges.

Thousands of tenants are going unrepresented in the New York City Housing Court in contravention of our City's landmark Right to Counsel Law¹, which was designed to provide tenants facing eviction access to free legal representation and advice. This is not only an issue of access to justice but, given the vastly disproportionate rate of eviction proceedings brought against people of color, an issue of racial justice in our courts. It is incumbent upon all stakeholders to come together to institute policies that assure that those who are entitled to counsel are provided counsel.

New York City's 2017 Right to Counsel (RTC) Law was a much-needed reform to an unacceptably chaotic, imbalanced, and unjust system prevailing in the Housing Court. As former Secretary of Homeland Security Jeh Johnson stated in his 2020 *Equal Justice in the New York State Courts* report², the Housing Court had a "cattle call" culture in which settlements were largely produced via slapdash negotiations in hallways outside the courtroom. The system consistently disadvantaged unrepresented litigants with eviction filings and default judgments at unacceptable levels.

When RTC went into effect, drastically reducing the number of unrepresented litigants, the numbers of evictions, court filings and default judgments went down. During the COVID-19 pandemic, Housing Court shut its doors and an eviction moratorium halted evictions. When the moratorium was lifted in January 2022, the Housing Court was

¹ NYC Eviction Crisis Monitor, <https://www.righttocounselnyc.org/nycrisismonitor> (All websites last accessed on March 27, 2023).

² <https://www.nycourts.gov/whatsnew/pdf/SpecialAdviserEqualJusticeReport.pdf>

About the Association

The mission of the New York City Bar Association, which was founded in 1870 and has over 23,000 members, is to equip and mobilize a diverse legal profession to practice with excellence, promote reform of the law, and uphold the rule of law and access to justice in support of a fair society and the public interest in our community, our nation, and throughout the world.

flooded with eviction cases and since then, cases have been permitted to move forward without counsel being provided for tenants who are entitled to representation. Now, a little over a year later, New York City's program for providing RTC in eviction proceedings is faltering - tenants facing eviction once again are largely unrepresented, and legal services providers have reported that Housing Court operations are sliding back to the system of chaos and one-sided-justice that RTC sought to address.

As Secretary Johnson highlighted in the 2020 Equal Justice report, the breakdown in Housing Court has serious implications for racial justice in New York's courts. The vast majority of litigants appearing in the Housing Court are Black and Latinx. The chaotic and imbalanced conditions of Housing Court therefore disproportionately impact those communities, and signal that the court system does not work for them and is not meant to work for them. When this happens, trust is diminished and the efficacy and reputation of the courts is diminished along with it.

But we know that RTC can be an antidote. A guarantee of high-quality legal representation prevents evictions and says that those who have the least deserve the same measure of justice as those who have the most. New York City recognized that fact when it codified into law a guarantee of counsel for tenants facing eviction, and it must find a way to protect that right today. The City needs to be a consistent and visible champion of RTC, vis-à-vis both the public and the court system.

In Housing Court, RTC must be preserved and the backsliding must be reversed. Much of the immediate problem would dissipate if the Office of Court Administration (OCA) would take a more flexible approach to the Housing Court calendar. There are common-sense measures that will combat the seeming randomness in calendaring and that can expedite settlement and funding. For example, pre-pandemic cases with two attorneys should be scheduled first, followed by adjourned new cases that have two attorneys. Motion parts need to refer tenants to legal services providers at all stages of the proceeding, not just at the first court date.

OCA should also adjust appearances so that attorneys who are engaged virtually are not required to appear physically. The courts' response to the COVID-19 pandemic has made virtual proceedings part of the norm, which is a welcome change. But the reality in the Housing Court, with some cases scheduled remote and some mandatory in-person, is that lawyers often do remote proceedings from the courthouse hallways on their way to in-person proceedings. Requests for virtual proceedings to accommodate a disability are not routinely honored. The Court should explore the possibility of having remote/in-person days and times, and accounting for remote conflicts as well as in-person ones.

RTC must be viewed as a right worth protecting, rather than as an obstacle to be overcome. We must recognize that there can be no meaningful court operations in Housing Court without RTC. That means, in addition to arranging calendaring and appearance practices to accommodate RTC, the courts must also adjourn cases to give RTC attorneys sufficient time to establish the attorney-client relationship and research and investigate complex cases. Anything less is not meaningful right to counsel.

The City should also ensure that RTC work is sufficiently funded so that legal services providers have the staff they need to provide meaningful representation of tenants facing eviction. These are cases where one's home is at stake and where the laws are complex. The Office of Civil Justice should work with all stakeholders to address this crisis and find solutions. In addition, tenant information and outreach efforts should be supported because RTC works best when tenants know about legal representation as early in the process as possible. The whole idea behind the RTC law was to level the playing field in Housing Court and give tenants a chance to assert their legal rights – this guidepost has not changed.

Justice for all litigants in New York City's Housing Court depends on our ability to preserve the right to counsel. We must act quickly and collaboratively to stop the backsliding and move toward a Housing Court that works for everyone.

Thank you for considering this testimony from the New York City Bar Association. If we can be of any further assistance, please contact Maria Cilenti, Senior Policy Counsel, at mcilenti@nycbar.org or 212.382.6655.