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**TASK FORCE ON THE CIVIL RIGHT TO COUNSEL
BEFORE THE NEW YORK CITY OFFICE OF CIVIL JUSTICE**

FEBRUARY 28, 2024

TESTIMONY OF THE NEW YORK CITY BAR ASSOCIATION

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 New York City’s newly enacted legislation providing for a right to counsel in eviction cases (RTC), to support the expansion 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. The Task Force Co-Chairs are Alison King, Pro Bono Counsel at Kirkland and Ellis, New York Law School Professor Andrew Scherer, and Sara Wagner, Associate Director of Teamsters Local 237 Legal Services Plan. Membership includes the two 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 relevant City Bar committees. By design, the Task Force does not include representatives of organizations with an immediate stake in the RTC program.

New York City’s passage of legislation guaranteeing a right to counsel for low-income tenants facing eviction proceedings was a monumental step toward equal justice, one that was decades in the making. For the first time anywhere in the United States, tenants facing legal proceedings that could lead to loss of their homes, displacement from their communities and the threat of homelessness were guaranteed representation by an attorney. Since New York City passed this landmark legislation, seventeen additional localities have adopted their own RTC laws, including Newark, San Francisco, Cleveland, Philadelphia, Boulder and Baltimore, as well as the states of Washington, Maryland, Delaware and Connecticut.

The right to counsel for tenants in New York City has been an enormous success. Actual evictions and eviction filings have been significantly reduced. Over 83% of represented tenants are able to remain in their homes. RTC is leveling the playing field in Housing Court, giving people a fighting chance to assert their legal rights, and sending a message that New York City’s low-income tenants are entitled to be treated with dignity and respect. RTC preserves affordable housing, stabilizes low-income communities, stems displacement, promotes family stability, and reduces the incidence of homelessness among low-income New Yorkers together with concomitant human and governmental costs. And RTC is transforming the culture in Housing

About the Association

The mission of the New York City Bar Association, which was founded in 1870 and has 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.

Court, to a more balanced forum with greater civility and deeper attention to legal rights and principles. During the pandemic, RTC saved lives as well as homes, as attorneys funded by the City assured that tenants were able to avail themselves of pandemic-related protections against eviction as well as pre-existing rights. New York City is to be applauded for leading the nation in adopting this measure, for enthusiastically moving forward with the massive undertaking of its implementation, and for engaging in ongoing dialogue with key stakeholders to further ensure its success.

Yet at present the promise of the right to counsel is far from being fully realized. As advocates predicted, when New York State lifted its COVID eviction moratorium in January 2022, New York City's Housing Courts were flooded with eviction cases. Legal services providers' staffing and resources were not sufficient to meet the onslaught in need for representation. Despite stakeholders' efforts to right the ship after the tidal wave of eviction proceedings, New York City's RTC program is still struggling. Simply put, there are not enough attorneys available to meet the need, with the result that thousands of tenants are going unrepresented. And legal services providers report that Housing Court operations are sliding back to the system of chaos and one-sided-justice that RTC sought to end. This crisis is not simply an issue of access to justice: given the vastly disproportionate rate of eviction proceedings brought against people of color, it is an issue of racial justice as well.

The Task Force's goal is to be a supportive and positive voice for implementation of RTC in a manner that is the most responsive to the needs of the community, with the bedrock understanding that no one no one should be evicted or face an eviction proceeding without counsel. The Task Force is currently undertaking an assessment of RTC implementation, looking at both its successes and challenges. Members have met with a range of stakeholders, including, earlier this month, with New York City Human Resources Administration (HRA) leadership. When this work is complete, the Task Force will issue a report on its findings, with detailed recommendations for measures and approaches to assure the most effective full implementation of RTC. In the interim, however, the Task Force urges HRA's Office of Civil Justice (OCJ), which is tasked with RTC implementation, to take two immediate steps.

First: OCJ is currently considering responses from legal services providers to its request for qualifications for the next round of funding. The Task Force strongly urges OCJ to ensure that this funding be increased in order that RTC's underlying goals be met. Providers must have sufficient funding to hire and retain enough attorneys and support staff to provide the highest quality legal representation to meet the needs of eligible clients. Funding must be sufficient to ensure that caseloads are manageable and employee compensation is at a level that will support recruitment and retention of qualified candidates. The Task Force urges the City to fund RTC legal services sufficiently to enable service providers to use multi-role teams (which, in addition to attorneys, would include social workers, paralegals, public benefits advocates and mental health professionals) to provide holistic RTC representation, and to compensate those team members adequately. In addition, the Task Force urges OCJ to maintain funding for existing programs that provide affirmative litigation, building-wide work, or population-specific legal services.

Second: The City should support, and urge the New York State Legislature to pass and the Governor to sign, the state-wide Right to Counsel bill (S06678A/A07570A).¹ Besides providing for a right to counsel to tenants in all parts of the state, this legislation would improve upon the NYC law in key respects and would greatly assist OCJ with effective implementation of the NYC program and averting evictions. The proposed legislation would:

- cover any case that could result in tenants losing their homes, no matter the legal forum. Administrative hearings, appeals, affirmative litigation, would all be covered, and more,
- require courts, judges, and landlords to ensure that tenants know about their right to counsel and how to use it, and
- require courts to adjourn cases until tenants have had time to retain and consult with their RTC attorney.

One final note. The Task Force has long supported the term “right to counsel” to describe the RTC program. We greatly appreciate that OCJ has adopted this term and shifted away from the confusing and opaque phrase “universal access.” This small gesture is important: tenants and their allies fought hard to win the *right* to counsel, and RTC has inspired a movement to replicate this right in jurisdictions across 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 in any way. We look forward to continuing these important discussions.

Task Force on the Civil Right to Counsel

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Alison McKinnell King
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¹ See *Report in Support of Creating a Statewide Right to Counsel in Eviction Proceedings*, NEW YORK CITY BAR ASSOCIATION, May 25, 2022, https://www.nycbar.org/reports/report-in-support-of-creating-a-statewide-right-to-counsel-in-eviction-proceedings/?back=1#_ftn6 (Website last accessed on February 27, 2024) (supporting the legislation while leaving to the legislative debate the question of whether tenants should meet an income eligibility cap prior to receiving counsel).

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