

NYC OFFICE OF CIVIL JUSTICES' PROGRAMS TO PROVIDE UNIVERSAL ACCESS TO
LEGAL SERVICES FOR TENANTS FACING EVICTION HEARING

March 27, 2023

JOINT TESTIMONY ON RIGHT TO COUNSEL BY BROOKLYN LEGAL SERVICES
CORPORATION A, NEW YORK LEGAL ASSISTANCE GROUP, LEGAL SERVICES
NYC, THE LEGAL AID SOCIETY AND MOBILIZATION FOR JUSTICE

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BROOKLYN LEGAL SERVICES CORPORATION A

Brooklyn Legal Services Corporation A (Brooklyn A) advances social and economic justice and community empowerment through innovative, collaborative, neighborhood-based legal representation and advocacy. We represent low- and moderate-income individuals and families throughout New York City. Our clients live in rapidly-gentrifying neighborhoods where many residents and small business owners have been displaced or are facing displacement and harassment. For over half a century, Brooklyn A has provided high-quality, low-barrier neighborhood-based legal services to individuals, families, nonprofit community-based organizations, community development corporations, coalitions, and small business owners, interested in developing and sustaining vibrant, healthy communities. Our Preserving Affordable Housing Program uses legal and advocacy strategies to preserve and protect affordable housing, prevent evictions, combat tenant harassment and discrimination, and ensure that working families, individuals, older adults and others live in stable environments and within their financial means.

An Example of Our Work:

We represented Tenant A in a nonprimary holdover proceeding where the tenant resided with her aunt for five years. Her aunt unfortunately passed away and we presented a succession defense. We prevailed after a three day trial where the court found that the relationship was more like a mother-daughter relationship, that the parties commingled their finances and that she lived in the apartment for the prerequisite two years.

NEW YORK LEGAL ASSISTANCE GROUP

New York Legal Assistance Group (NYLAG) uses the power of the law to help New Yorkers experiencing poverty or in crisis combat economic, racial, and social injustice. We address

emerging and urgent needs with comprehensive, free civil legal services, financial empowerment, impact litigation, policy advocacy, and community partnerships. We aim to disrupt systemic racism by serving clients, whose legal and financial crises are often rooted in racial inequality. Our Tenants' Rights Unit (TRU) fights for housing justice: fair, safe, and affordable housing for adults and families so that they can stay in their communities and thrive.

An Example of Our Work:

Tenant L came to our NYCHA HP Action Clinic at the Red Hook Community Justice Center for help drafting her petition. During our interview, we discovered she also had a complicated non-payment proceeding in Housing Court and a pending administrative rent grievance, both of which were currently unrepresented and would not have gone through any Right to Counsel intake process. She retained us on all three matters, we were able to get the erroneous non-payment proceeding dismissed, and are working closely with her to resolve her rent grievance and get her much-needed repairs.

LEGAL SERVICES NYC

Legal Services NYC (LSNYC) fights poverty and seeks racial, social, and economic justice for low-income New Yorkers. LSNYC is the largest civil legal services provider in the country, with an over 50-year history and deep roots in all of the communities we serve. Our staff members assist more than 110,000 low-income New Yorkers each year and, along with other legal services organizations in the City, LSNYC's housing practice is at the forefront of the fight to prevent evictions, preserve affordable housing, and uphold tenants' rights. Legal Services NYC is also a proud member of the Right to Counsel NYC Coalition, a tenant and organizer led coalition of tenant organizing, advocacy and legal services organizations, which fought for the right to counsel for NYC tenants facing eviction and which is working to ensure just implementation of the right to counsel law.

An Example of Our Work:

JW, who is a single mother with a disabled child living in a rent-regulated apartment in Harlem, came to us with over \$20,000 in arrears and no way to afford the rent. JW could not work due to her health and had only minimal unemployment income when we met her. We assisted her so that she received Emergency Rental Assistance (ERAP) of \$11,333. We applied for Family Homelessness and Eviction Prevention Supplement (FHEPS) on her behalf which paid another \$9,643 of the arrears, and provided an increased shelter payment so that the ongoing rent is affordable. We further assisted the household so that the minor, disabled child now receives Supplemental Security Income (SSI) of \$725/month and the family receives \$459/month in Supplemental Nutrition Assistance Program (SNAP or Food Stamps), as well as medical coverage. Repairs and a renewal lease were also obtained for the client. The arrears were fully resolved, and the proceeding was discontinued.

THE LEGAL AID SOCIETY

The Legal Aid Society (LAS), the nation's oldest and largest not-for-profit legal services organization, was founded in 1876 to provide free legal representation to marginalized New York City families and individuals. The Legal Aid Society's legal program operates three major practices – Civil, Criminal and Juvenile Rights – and through a network of borough, neighborhood, and courthouse offices provides comprehensive legal services in all five boroughs of New York City for clients who cannot afford to pay for private counsel. Each year, the Society handles more than 250,000 cases and legal matters for clients, taking on more cases for more clients than any other legal services organization in the United States.

Our Civil Practice works to improve the lives of low-income New Yorkers by helping vulnerable families and individuals to obtain and maintain the basic necessities of life - housing, health care, food and self-sufficiency. We serve as a “one-stop” legal resource for clients with a broad variety of legal problems, ranging, among others, from government benefits and access to health care, to immigration and domestic violence. Our depth and breadth of experience is unmatched in the legal profession and gives the Society a unique capacity to go beyond any one individual case to create more equitable outcomes for individuals, and broader, more powerful systemic change at a societal level.

Our work has always taken an explicit racial and social equity lens and the current health and housing crisis has further focused our efforts to advocate for the needs of New York's marginalized communities.

An Example of Our Work:

Starting in April 2021, LAS represented a 71 year old Bronx resident in an eviction proceeding, and ultimately helped her obtain succession rights to a Mitchell-Lama co-op apartment where she had lived for over 20 years. Despite paying her rent and complying with the rules of the co-op for nearly 10 years after the death of her brother, who was prior the tenant of record for the apartment. Proving that the Client had the right to succeed to her brother's tenancy was a challenge because although she was the primary caregiver for her brother for two years leading up to his death, she was unable to work and therefore did not file taxes, and she did not have the documents she would need to prove the claim.

LAS assisted found alternative ways to prove her succession claim by laboriously gathering the necessary supporting documentation, and helping her to file a Mitchell-Lama Succession Application. Through our assistance, the Client's succession claim was approved, and the holdover case in housing court was discontinued in December 2022. The Client now has a lease in her name, and since she resides in a rent-regulated Mitchell-Lama apartment, she should be able to live there for the rest of her life if she so desires.

MOBILIZATION FOR JUSTICE

Celebrating its 60th anniversary in 2023, Mobilization for Justice’s mission is to achieve justice for all. MFJ prioritizes the needs of people who are low-income, disenfranchised, or have disabilities as they struggle to overcome the effects of social injustice and systemic racism. We provide the highest-quality free, direct civil legal assistance, conduct community education and build partnerships, engage in policy advocacy, and bring impact litigation. MFJ has a staff of more than 165 attorneys, paralegals, social workers, and support staff. It is a diverse, unionized, and collegial workplace where staff share the organization’s mission to achieve social justice. MFJ’s housing practice is honored to engage in Right to Counsel/Universal Access work in the Bronx and Manhattan, where we deploy a wide array of litigation and advocacy strategies to prevent eviction and to protect tenants’ rights.

An Example of Our Work:

Tenant P defaulted in a non-payment proceeding, likely because the landlord failed to properly serve her with the petition, whereupon the Manhattan Housing Court awarded monetary and possessory judgments against Tenant P. On February 14, 2023, Tenant P and her family – including two minor children, the youngest of whom was 8 years old – were forcibly evicted from their home and later entered the shelter system. That same day, MFJ was serving as the Manhattan Right to Counsel provider on intake duty in the courthouse. Even though post-eviction cases do not fall within the defined ambit of RTC intake, the judge sent Tenant P to consult with MFJ after she filed a *pro se* order to show cause.

Despite having a full caseload and parental leave close on the horizon, the MFJ attorney who conducted the in-court intake offered to represent Tenant P and immediately began advocacy efforts, including making three court appearances in short succession and submitting a one-shot deal application to HRA. On March 2, 2023, HRA approved Tenant P for a one-shot deal for the full amount of rental arrears. The MFJ attorney then went to HRA, picked up the checks, and hand-delivered them to the landlord’s office. After receipt of the checks, however, the landlord refused to restore Tenant P and her family to possession of their apartment and tried to extort an additional \$4,000 from Tenant P, claiming for the first time that she owed legal and marshal fees. MFJ’s attorney then filed an affirmation and a memorandum of law to supplement Tenant P’s *pro se* order to show cause and appeared in court for argument. In a written decision issued the next morning, the Court rejected the landlord’s extrajudicial claim for additional monies and ordered that the landlord “shall restore [Tenant P] to possession forthwith and provide [Tenant P] with keys for the subject premises forthwith.” Tenant P and her family left the shelter system and regained possession of their apartment on March 7, 2023.

INTRODUCTION

It is critical for low-income people to have legal representation in housing proceedings.¹ In New York City 68.1% of households are renters.² The negative consequences of evictions on poor people are well documented.³ Evictions compound financial difficulties, contribute to poor health, disrupt families, and increase the risk of homelessness.⁴ Tenants who have an attorney in an eviction proceeding are less likely to be subject to a possessory judgment, the money judgments in these cases are less than in cases when the tenant is unrepresented, and these tenants are less likely to have a warrant of eviction issued against them.⁵ Additionally, tenants who are represented by attorneys are almost guaranteed to remain housed.⁶

Prior to the Right to Counsel (RTC), 1% of tenants facing eviction had a lawyer compared to the more than 95% of landlords who were represented in eviction proceedings⁷— tenants faced David and Goliath odds as their cases proceeded. After the RTC law was passed in 2017, representation increased exponentially for tenants in eviction proceedings from 1% in 2013 to 30% in 2018.⁸ By 2019, legal representation in RTC zip codes had grown to 62%, with 84% of tenants who received RTC representation avoiding eviction.⁹

Concrete and quantifiable numbers illustrate how RTC saves money by reducing the number of housing insecure as compared to taxpayer dollars spent to shelter the same population. The shelter system is an extremely costly remedy for addressing housing insecurity – in Fiscal Year 2022, the average daily number of households /individuals in the New York City shelter system equaled approximately 27,000,¹⁰ costing the City and State approximately \$1.7 billion.¹¹

¹ See, The Effects of Legal Representation on Tenant Outcomes in Housing Court: Evidence from New York City's Universal Access Program, by Michael T. Cassidy and Janet Curre, NBER Working Paper March 2022, at pg. 3 Revised July 2022 available at: https://www.nber.org/system/files/working_papers/w29836/w29836.pdf (accessed 2/24/2023).

² Id. at 5.

³ Id. at 3.

⁴ Id.

⁵ Id.

⁶ See, Universal Access to Legal Services: A Report on Year One of Implementation in New York City Prepared by the Office of Civil Justice Fall 2018, page 27, available at:

<https://www1.nyc.gov/assets/hra/downloads/pdf/services/civiljustice/OCJ-UA-2018-Report.pdf>(accessed 2/24/2023)

⁷ See, A Right to Counsel in Eviction: Lessons from New York City by Brian Bieretz December 31, 2019, available at: <https://housingmatters.urban.org/articles/right-counsel-eviction-lessons-new-york-city> (last accessed 2/24/2023).

⁸ See Universal Access to Legal Services: A Report on Year One of Implementation in New York City Prepared by the Office of Civil Justice Fall 2018, page 34 available at:

<https://www1.nyc.gov/assets/hra/downloads/pdf/services/civiljustice/OCJ-UA-2018-Report.pdf>(accessed 2/24/2023)

⁹ See, Right to Counsel and Stronger Rent Laws Helped Reduce Evictions in 2019 by Oksana Mironova February 24, 2020, CSS, available at:

<https://www.cssny.org/news/entry/right-to-counsel-and-stronger-rent-laws-helped-reduce-evictions-in-2019>(accessed 3/19/23).

¹⁰ See, New York City By The Numbers. Prepared by the Independent Budget Office March 2023, available at: <https://www.ibo.nyc.ny.us/iboreports/how-have-city-costs-changed-with-shifts-in-state-and-federal-support-for-homeless-shelters-march-2023.html> (accessed 3/19/23).

¹¹ Id.

The need for RTC funding is significantly less than the nearly \$2 billion spent on sheltering the unhoused. Money spent on RTC significantly offsets the need to spend money on shelters.

While the Right to Counsel has had an immeasurable impact on individuals facing eviction and is essential to maintain, there is also no question that the Right to Counsel program and the various stakeholders tasked with its implementation face significant challenges. These challenges include: the expansion of right to counsel beyond the “zip-code approach,” the end of the various pandemic-related eviction moratoriums, Housing Court’s steady and increasing calendaring of eviction cases, inadequate funding for the program, and high rates of attrition by housing practitioners and staff at the various agencies. These interrelated factors leave large percentages of tenants across the city without the right to counsel in their eviction proceedings.

We thank the Council for holding this hearing to consider how NYC can ensure the best possible continued implementation of this groundbreaking initiative. All eyes are on us as the first jurisdiction to pass this landmark legislation—our success and failures will serve as a road map for other jurisdictions seeking to implement the right to counsel in eviction proceedings.

As a legal services provider community, we are committed to ensuring that the Right to Counsel realizes its full potential for preventing homelessness and displacement of low-income and vulnerable New Yorkers, building tenant power and balancing the scales of justice by making housing court a place where tenants can achieve just outcomes in their housing cases. In that spirit, and drawing on lessons learned from 5 years of RTC implementation, we offer this testimony to provide feedback and recommendations about this historic program.

I. RECENT CHALLENGES IN THE IMPLEMENTATION OF RTC

As we work together to sustain and strengthen the RTC program, it is worth reviewing the last few years of how the program has functioned during the height of the devastating COVID-19 pandemic. The pandemic resulted not just in nearly 20,000 deaths during the initial few months of the crisis, it resulted in unprecedented levels of unemployment, under-employment and economic distress. Those economic effects of the pandemic crisis inevitably resulted in a massive wave of housing instability in NYC. To meet the challenges posed by the crisis, especially for low-income, elderly and disabled New Yorkers, the legal services community in coordination with OCJ accelerated the roll-out of the RTC program Citywide during the course of 2020 and 2021. This sudden full implementation of the program without the necessary funding and resources, coupled with the wide-ranging changes in state law that came into effect in June 2019 which greatly increased the complexity of eviction defense law and practice, and the eventual end of the various pandemic eviction moratoriums has led to tremendous strain on the RTC program and on RTC stakeholders.

(a) Rapid Citywide Expansion of RTC

The RTC law enacted in 2017 provided for the program to be phased-in in all parts of NYC over a five-year period, starting with coverage for tenants in only a few ZIP codes in each borough. Before the pandemic struck NYC, as of early 2020, the RTC program and the legal services providers participating in the program were expected to provide representation to tenants in only 25 out of the City's 180 ZIP Codes.¹² The rush to implement the RTC program Citywide and expand its coverage to all ZIP Codes was necessary in the face of the housing instability caused by the pandemic; however, the swift pace of the expansion and lack of a concomitant increase in funding made it extremely difficult for the legal services providers to hire, train and retain the staff needed to meet the increased demand for services.

(b) The Housing Stability and Tenant Protection Act (HSTPA) of 2019

On June 14, 2019, New York State enacted landmark legislation called the Housing Stability and Tenant Protection Act (HSTPA) which enacted wide-ranging reforms and changes to the rights and protections of tenants across the state. Many parts of the HSTPA only became fully effective only as of the fall of 2019. At the time the pandemic struck NYC, the RTC legal services providers across NYC were only just beginning to grapple with the effects of the HSTPA and to re-train their eviction defense attorneys to account for the sweeping changes to the law that resulted from the legislation. There is no question that the HSTPA has greatly increased the complexity of the already labor-intensive nature of eviction defense practice, particularly in terms of the availability of legal defenses and motion practice required to adequately represent tenants in eviction proceedings.¹³

(c) Wave of New Eviction Filings Following the End of the Pandemic Eviction Moratoria

As a result of the pandemic crisis, New York City and state authorities implemented a series of overlapping eviction moratoria starting on March 16, 2020. The first moratorium was implemented by the state Judiciary. That moratorium was followed and superseded by the Governor's eviction moratorium, implemented by Executive Orders. Finally, the state Legislature enacted an eviction moratorium law in December 2020, and the Emergency Rental Assistance Program (ERAP) law in April 2021. The state eviction moratorium law lapsed in January 2022, and the ERAP law and its limited eviction moratorium protection is nearing its end. The number of residential eviction filings have increased during the last two years, as each of these eviction

¹² Cassidy, Michael T. and Janet Curre. The Effects of Legal Representation on Tenant Outcomes in Housing Court: Evidence from New York City's Universal Access Program. NBER Working Paper March 2022 (revised July 2022). Page 9. https://www.nber.org/system/files/working_papers/w29836/w29836.pdf (accessed 3/23/2023).

¹³ Braudy, Erica and Kim Hawkins. "Power and Possibility in the Era of Right to Counsel, Robust Rent Laws & COVID-19." *Georgetown Journal on Poverty Law and Policy* 28: 134-141.

moratoria lapsed.¹⁴ The increased number of eviction filings inevitably led to increased demand for RTC legal services Citywide, especially for low-income tenants. However, RTC providers have not had sufficient funding and resources in the face of this increased need for representation in eviction proceedings.

II. FUNDING LEVELS MUST REFLECT THE TRUE COST OF PROVIDING HIGH QUALITY, HOLISTIC LEGAL SERVICES

As we are anticipating a Request for Proposal/RFX to be released shortly that will provide right to counsel funding for the next 3 years, starting in Fiscal Year 2025, it is crucial that this RFX provide funding at a level sufficient for Legal Services Providers to provide high quality, holistic services. There has to be sufficient funding to meet the demand for representation in the new cases being filed and the backlog of eviction defense cases pending without representation.

Finally, the City should also work with providers to ensure we have programs that recruit, train and retain the necessary staff across the program.

(a) Funding to match the true cost to providers

Our current funding is substantially and harmfully less than the cost of administering the Right to Counsel program. Providers report that the funding currently covers only 60-70% of the full costs of their provider contracts. While the funding has always been challenging, the gap in the amount of funding versus the cost to providers has grown exponentially as providers have seen a 24% increase in how many hours it takes to resolve a case since 2018, while increased administrative and training burdens mean that staff have fewer hours available to do casework. At the same time, providers are grappling with growing expenses including rent increases on our existing spaces and rising healthcare, salary, and pension costs.

Without additional funding, the provider community has been forced to manage these increased costs by delaying hiring after staff departures, forgoing necessary support staffing such as social workers, paralegals, process servers or administrative support, and forgoing investment necessary to create and manage a fully implemented Right to Counsel program. To mitigate shortfalls, providers have subsidized the program with other funding. Consequently, other legal needs of low-income New Yorkers are not being met because of the RTC funding gap. This is neither sustainable nor fair. We cannot expand and build out our physical spaces or fund adequate wraparound operational support including human resources, finance, grant management and IT until the provider community is funded to cover the full costs of administering the Right to Counsel program.

¹⁴ Brand, David. "NYC Eviction Rate Continues to Rise Since Ban was Lifted, as Homelessness Surges." Gothamist. January 18, 2023. <https://gothamist.com/news/nyc-eviction-rate-continues-to-rise-since-ban-was-lifted-as-homelessness-surges> (accessed 3/23/2023).

(b) Funding to match the actual demand for services

While the case rate needs to be increased, we also need to ensure that there is enough funding to provide full legal representation to all tenants facing eviction proceedings. This means not only matching the anticipated number of new filings, but also ensuring there is funding to cover the backlog of cases that are pending where tenants do not have attorneys. Currently, the overall RTC program is based on a number of units of service that falls significantly short of this need. Continuing to underfund these needs undermines RTC and leaves people facing eviction without counsel.

(c) Funding to provide sufficient staffing and comprehensive legal and social services

i. Sufficient staffing

The funding must allow providers to hire and retain sufficient numbers of attorneys such that attorney caseloads can be maintained at a level where attorneys are not overburdened and where tenants can receive the best possible legal representation. Particularly because our practices rely on a regular influx of inexperienced attorneys to fill openings in a complex and rapidly changing area of law, these numbers also need to take into account the reduced caseloads that new attorneys are able to handle in their first year of practice.

Funding also needs to allow providers to hire enough attorneys to address the challenges that arise in our practice from the unprecedented rates of attrition and leaves. When existing staff take extended parental, medical or other leave, routinely lasting six months or more, their caseloads must be absorbed by the existing staff who are already operating at capacity. The same is true for the caseloads of staff who leave the organization. The funding should grow to allow providers to have more staff on hand to absorb these cases.

Further, legal service providers lack sufficient funding to provide salaries that will continue to attract and retain Right to Counsel attorneys.

ii. Funding for paralegal, social work and other support staff

The funding provided must take into account not just the cost of attorneys, but also the necessary staffing to provide holistic and high-quality services. Paralegals are crucial to engaging in public benefits advocacy and this need is growing as providers experience enormous hurdles and delays in trying to obtain FHEPS or other HRA benefits for our client. Because our clients come to us in crisis and may have underlying mental health, economic, social or age-related challenges, having social workers on staff is crucial to adequately serve our clients and support our attorneys in handling the enormous stress of clients facing eviction or other challenges. In the absence of paralegals, attorneys who are already overburdened are tasked with assisting clients in need with their public benefits advocacy, and, in the absence of licensed social workers, the same attorneys are also tasked with managing clients in crisis without necessary support or training in crisis

management. Moreover, working in an office where an attorney does not have other support needed to do the work such as investigators, process servers and administrative help increases the burden and stress on our attorneys, and does not allow them the time necessary to do the legal work on their cases.

iii. Sufficient funding to attract and retain experienced supervisors

The majority of attorneys entering the Right to Counsel practice are recent law graduates. Unlike private law firms where new attorneys may not work directly with a client or enter a courtroom for years, new Right to Counsel attorneys must immediately dive into all aspects of litigation including directly working with clients, researching and drafting legal papers, negotiating with opposing counsel, and handling all court appearances up to and including trials. This requires extensive supervision at every level to ensure high quality legal work on behalf of tenants.

However, attracting and retaining experienced supervisors remains a challenge across Right to Counsel legal service providers. Legal service providers lack sufficient funding to ensure appropriate supervisor to attorney ratios or provide competitive salaries, in some cases trailing experienced Law Department attorneys by more than twenty thousand dollars annually.

iv. Funding that takes into account staff training needs

High quality legal services require robust initial and ongoing training for all staff. Landlord-tenant law in New York City implicates complicated federal, state, and local laws and regulations. New attorneys must learn how to identify the type of rental housing at issue, the way the rent is set, and whether a tenant uses a subsidy to pay the rent to determine the respective rights and responsibilities of the parties. Resolving cases is also frequently dependent on an advocate's knowledge of numerous rent arrears and rent subsidy programs. Adequate training programs covering this material takes several weeks and must be offered repeatedly. Funding and caseload expectations for newly hired attorneys must take this into account.

Further, all staff must regularly attend updated training and other learning opportunities to keep pace with the rapidly changing legal landscape that is both the result of the Right to Counsel program itself and watershed changes in the law like the Housing Stability and Tenant Protection Act of 2019. Finally, most attorneys are never formally trained to be managers. When experienced attorneys are making the transition to supervisors, legal service providers must be able to provide them with development opportunities to ensure our on the ground staff receive appropriate supervision at all levels.

v. Funding to allow for affirmative litigation and community lawyering

Affirmative litigation and community lawyering are crucial tools that should be permitted and funded in an RTC practice. There are many contexts in which affirmative litigation is critical to preventing a tenant's eviction such as where a tenant is subject to housing discrimination by a landlord who won't accept their Section 8 voucher, making the apartment unaffordable, or where a tenant is subjected to deplorable housing conditions that results in a constructive eviction

because the tenant cannot occupy the apartment safely. While the Fiscal Year 2024 HPLP renewal contract, at an acute moment for preserving capacity for eviction defense representation, removed the ability of providers to take on this work unless the tenant is already subject to an eviction proceeding, the ability to address this need should be reinstated in the next contract.

Moreover, community lawyering – a collaborative approach employed by RTC Providers, clients, and community members to address and resolve collective concerns and empower community members to assert their legal rights – is an essential tool. Strong working relationships with key stakeholders in the communities that RTC Providers serve is imperative for the provision of holistic as well as integrated legal and social services. Inherent in fostering relationships within our clients’ communities is the idea that community members possess intimate knowledge of the issues impacting their neighborhoods. RTC Providers should be adequately funded so that they are able to have attorneys meet members of the community at neighborhood clinics, workshops, and similar settings. While in-court intake is an essential piece of the RTC law, the context is very different from meeting community members near their homes to hear and better understand the root causes of—and potential solutions to—housing instability. An absence of community lawyering ignores the unique needs of the populations served by RTC providers.

III. LEGAL SERVICES PROVIDERS NEED DEDICATED ADDITIONAL RESOURCES TO ENHANCE THE RIGHT TO COUNSEL ATTORNEY PIPELINE AND NEW-ATTORNEY TRAINING, WHICH WILL EXPAND PROVIDER CAPACITY

With the lifting of pandemic-related stays and NYC’s tremendous housing affordability crisis, the demand for eviction defense legal services far outstrips the capacity of the attorneys currently working at legal services providers. Without additional support and intervention, providers are left in an untenable position wherein staff are overworked and overwhelmed, leading to high attorney attrition rates. And tenants, in need of representation to protect their fundamental rights, are left without the high-quality legal services Right to Counsel envisioned. A sustainable Right to Counsel program will expand the capacity of legal services providers to meet the need for representation, will incorporate practices to train and mentor advocates who are engaging in this work, and will include regular conversations with legal services providers and stakeholders to respond to new and emerging issues that may be impacting the provision of services as envisioned by Right to Counsel.

(a) The City should partner with stakeholders to address the crisis of tenants with eviction cases not being provided with right to counsel and regularly convene stakeholders to discuss emerging issues.

We know that the community’s needs shift and change over time. A pressing community need is that tenants facing eviction are not all being provided with lawyers to represent them. The

challenges in provider capacity caused by the rapid expansion of the program to all zip codes are further exacerbated by Office of Court Administration's (OCA) refusal to slow down the calendaring of new eviction cases to match the providers' capacity to represent vulnerable tenants in housing cases.¹⁵ There were thousands of active eviction cases pending in Housing Court as of March 16, 2020 when OCA suspended evictions statewide (the statewide Covid eviction moratorium). With the end of the moratorium, thousands of low-income unrepresented tenants and occupants were served with notices of eviction and as a result started appearing in Housing Courts to stop their evictions. The number of residential evictions has risen each month since the end of the moratorium.¹⁶ According to the most recent reports, once the various eviction moratoria ended on January 15, 2022, the Housing court returned to business as usual. As landlords filed new eviction proceedings, and old proceedings were re-calendared, the Right to Counsel law assumed an even greater importance for low-income New Yorkers. Elected officials, legal services providers, and more importantly the tenants in need of these services have called on OCA to decrease the calendars during this time.¹⁷ These requests have been ignored by OCA and new cases are proceeding at breakneck speed with tenants going unrepresented. We call on OCJ and the City to partner with providers to ask OCA to slow down calendaring cases to match providers capacity and to adjourn cases to allow tenants to connect with counsel.

We hope that the City and OCJ convenes stakeholders regularly to discuss emerging issues and develop and implement responses that align with community needs and provider capacity. OCJ, agencies, courts, and providers, all must work together to ensure the success of Right to Counsel. Working together will lead to better outcomes for our communities, and for the long-term success of the Right to Counsel program.

(b) The City should commit additional resources to create a systematic pipeline to recruit new advocates to become Right to Counsel practitioners

In addition to providing funding and ensuring adequate time for training, the City should provide resources so that it can work with legal services providers to create an effective pipeline to harness the passion of new advocates of all backgrounds about the importance, promise, and career opportunities within Right to Counsel. With these additional resources, OCJ should incorporate into Right to Counsel programming the funding and time to enable providers collectively to recruit and train advocates dedicated to engaging in this work. Developing a

¹⁵ See, [NYC Led The Way On Right To Counsel For People Facing Eviction. Now Its Program is Struggling](#) by Roshan Abraham November 20, 2022 Next City available at: [NYC Led The Way On Right To Counsel For People Facing Eviction. Now Its Program Is Struggling. \(nextcity.org\)](#) (accessed on 2/24/2023).

¹⁶ See, [NYC Eviction Rate Continues to Rise Since Ban was Lifted, as Homelessness Surges](#) by David Brand January 18, 2023 Gothamist available at: [NYC eviction rate continues to rise since ban was lifted, as homelessness surges - Gothamist](#) (accessed 2/24/2023).

¹⁷ See, [Courts and Other Officials Must Act Now to Protect Right to Counsel in Eviction Proceedings](#) by Shaun Abreu & Diana Ayala, March 27, 2022 Gotham Gazette available at: [Courts and Other Officials Must Act Now to Protect Right to Counsel in Eviction Proceedings \(gothamgazette.com\)](#) (accessed 1/25/2023).

pipeline will expand program capacity and ensure ongoing services as Right to Counsel continues to grow to meet its full potential. At some point, this pipeline may start as early as high school, but there is a lot more that OCJ in partnership with legal services providers could be doing now to foster more interest in Right to Counsel among current law students. For example, multi-provider panels could present to law schools students nationally and locally on what it's like to be a Right to Counsel attorney. There could be presentations to law school public interest student groups, CLE programming, and job fairs. Law schools can be encouraged to create more housing clinics. There are a number of touchpoints to engage law students in New York City and beyond at every stage of their law school career, so they are eager to become Right to Counsel attorneys upon graduation. In the future, programming could be geared to college and even high school students, which could involve volunteer opportunities at legal services providers that could also expand provider capacity. A strong focus on law school pipeline efforts now would mean that whenever there was a vacancy at a Right to Counsel legal services provider, there would be a solid number of law graduates or soon-to-graduate 3Ls who were already primed to apply and ready to commit themselves to the important work of Right to Counsel.

(c) The City should commit resources so that OCJ can provide new Right to Counsel advocates with a comprehensive training institute leveraging the knowledge and expertise of the legal services provider community

Staffing alone isn't enough. We also need focused strategies to train up attorneys joining in this practice. New attorneys are critical to the continued success of Right to Counsel, but the City must commit additional resources to OCJ to ensure these new attorneys have an efficient introduction to the practice of housing law so that they can rapidly become powerful advocates in the fight for housing justice. With these additional resources OCJ would work with and provide additional resources to the legal services provider community to create a comprehensive training program for newly hired Right to Counsel practitioners. Incorporating training as an essential part of the Right to Counsel program must, at the same time, recognize that caseload standards cannot and should not be the same for new attorneys to this practice who are going through this training period.

Working collectively through OCJ's convening, the legal services provider community, which is replete with numerous Housing Court practitioners who are genuine experts in every domain of housing law, could efficiently create a comprehensive training institute that would take new attorneys and law graduates from inexperienced to practice-ready. The Housing Justice Leadership Institute, which started in 2019 as a partnership between the Sargent Shriver Center for Poverty Law and New York Law School, has successfully trained multiple cohorts of new and experienced supervising attorneys in both the hard and soft skills of being an effective Right to Counsel supervisor. There is tremendous promise that a similar program could be created for the newest Right to Counsel attorneys.

All the legal services providers currently commit a substantial amount of time and effort each creating its own training programs for new staff members, but these trainings take place contemporaneously with new staff members being expected to attend intake and take on complicated cases for representation. The long-term impact of failing to adjust caseload and intake expectations for newer staff means that it takes even longer to equip staff with the tools necessary to take on complex matters and is a contributing factor to ongoing attrition.

Prioritizing training would redound to the benefit of all: (1) legal services providers would be able to handle more cases more efficiently; (2) clients would be better served and obtain improved outcomes in their cases; (3) new attorneys would feel more confident, effective, and fulfilled in their work, fostering improved retention; (4) the experts in each domain of housing law in the provider community would be able to share their expertise broadly and prepare new attorneys for the complex and novel legal issues that will arise in their cases, (5) new attorneys would be primed to engage in successful motion practice resulting in judges issuing a range of new decisions that would advance the jurisprudence in a manner aligned with housing justice principles.

IV. OFFICE OF CIVIL REPRESENTATION SHOULD PARTNER WITH PROVIDERS TO CREATE A PROGRAM THAT MINIMIZES AND ADDRESSES ATTORNEY ATTRITION

For any program providing legal services in eviction proceedings to be successful and sustainable, including both New York City's existing program and efforts being considered at the state level through A.1493/S.2721, there must be an understanding of the current growing issue of attorney attrition. Legal Services providers are currently scrambling to fill vacancies and to attract dedicated and qualified attorneys to the practice. Attracting qualified candidates requires a housing practice that pays a living wage, provides training, mentorship, and support for staff, avoids burnout, and allows for a meaningful work-life balance for practitioners. The mass exodus of public defenders due to low pay and burnout over the last year was chronicled by the New York Times in an article published in June 2022.¹⁸ According to the article, public defenders, including housing attorneys, are often overworked and under compensated with their salaries well below the salaries of City lawyers and prosecutors.

Acknowledging and responding to the unprecedented attrition that all Right to Counsel providers have experienced is necessary to ensure the sustainability and success of the city's program and to guarantee the sustainability of any program implemented at the state level. Providers are experiencing inordinately high attrition rates and are competing against one another to hire from a very small pool of applicants.

¹⁸ See, Hundreds Have Left N.Y. Public Defender Offices Over Low Pay by Jonah E. Bromwich New York Times, June 9, 2022 available at: [Hundreds Have Left N.Y. Public Defender Offices Over Low Pay - The New York Times \(nytimes.com\)](https://www.nytimes.com/2022/06/09/nyregion/public-defender-offices-low-pay.html) (accessed 2/24/2023)

This increase in attrition is in line with that felt across the legal service field throughout this pandemic period, but is further exacerbated by the lack of funding and structural support afforded to advocates tasked with implementing the city's new and groundbreaking program, and will be even more significant in the event of an expanded statewide program. Staffing structures must enable providers to hire sufficient staff to provide adequate time for training, supervision, and client engagement outside of court: so that staff who join this program are able to sustain this practice.

High attrition rates impact remaining staff's sustainability as well. When a staff attorney with an active full caseload resigns, the capacity of the remaining staff shrinks because the departing attorneys' have a full caseload of ongoing and active cases, which must be redistributed among staff who are already at or near capacity. Remaining staff are then forced to familiarize themselves with the factual background and procedural history of the reassigned cases, leaching time and capacity to take on new client matters, and causing additional strain for staff that contributes to further attrition.

The most direct way to mitigate the risk of attrition for the statewide program is to fund that expansion sufficiently to enable providers to hire enough staff attorneys and to structure the program in a manner that ensures manageable caseloads for attorneys with varying levels of housing experience.

V. CONCLUSION

As we move through the many stages of this housing and health crisis, we remain on the frontline of efforts to ensure that the needs of New York's marginalized communities are met. We will continue to make the case for justice and equity. As our clients undergo this unparalleled crisis, we stand right there beside them. On behalf of Brooklyn Legal Services Corporation A, New York Legal Assistance Group, Legal Services NYC, The Legal Aid Society, and Mobilization for Justice, we thank you for your continued support, and for allowing us to testify today.

If you want to learn more about RTC and the issues discussed in the testimony, we invite you to read the RTC Concept Paper authored by the Legal Services Providers which can be found at <https://docs.google.com/document/d/14Vtdi7vfdw67YbnlUtYq9OkXP9WE55sAx24ZTjbVv38/edit?usp=sharing> and is attached to the version of this testimony submitted on-line.