

The Bronx Defenders

Redefining public defense

TESTIMONY OF THE BRONX DEFENDERS FOR THE OFFICE OF CIVIL JUSTICE'S HEARING ON UNIVERSAL ACCESS TO LEGAL SERVICES FOR TENANTS FACING EVICTION

November 12, 2019, 6:00 PM

The Bronx Defenders thanks the Office of Civil Justice for the opportunity to testify today.

The Bronx Defenders is a public defender non-profit that is radically transforming how low-income people in the Bronx are represented in the legal system, and, in doing so, is transforming the system itself. Our staff of over 350 includes interdisciplinary teams made up of criminal, civil, immigration, and family defense attorneys, as well as social workers, benefits specialists, legal advocates, parent advocates, investigators, and team administrators, who collaborate to provide holistic advocacy to address the causes and consequences of legal system involvement. Through this integrated team-based structure, we have pioneered a groundbreaking, nationally-recognized model of representation called holistic defense that achieves better outcomes for our clients. Each year, we defend more than 20,000 low-income Bronx residents in criminal, civil, child welfare, and immigration cases, and reach thousands more through our community intake, youth mentoring, and outreach programs. Through impact litigation, policy advocacy, and community organizing, we push for systemic reform at the local, state, and national level. We take what we learn from the clients and communities that we serve and launch innovative initiatives designed to bring about real and lasting change.

Within The Bronx Defenders' Civil Action Practice, our work focuses on defending tenants from eviction, so we are proud to be one of the legal services providers participating in the implementation of the right to counsel. It is from this perspective that we submit these comments and recommendations.

In addition to our comments, we support and incorporate the comments and recommendations submitted by the Right to Counsel NYC Coalition.

CONTINUING OBSTACLES TO EARLY LEGAL INTERVENTION

Many of the tenants that become our clients connect with us for the first time in the frenzy of a court hallway, with the stress of a court appearance and often without the necessary documents to allow for a meaningful assessment of their defenses. When tenants want lawyers,

their cases often get adjourned for further interviewing and investigation. Many tenants instead decide to go *pro se* because they prefer to immediately resolve their cases rather than wait for a lawyer to catch up on their situation.

For example, KL, a tenant in eviction proceedings, was in housing court for the first time. The courtroom was packed, she was forced to wait in the hallway and missed the announcement informing tenants about the right to counsel. It was late in the morning when she was finally referred to us by court personnel, who upon reviewing the agreement offered to her by the landlord's attorney, recommended that she speak to an attorney. After explaining that we would need to adjourn her case to investigate defenses, including a possible rent overcharge, KL opted to proceed on her own despite the pitfalls pointed out in the agreement proposed by landlord's attorney. For her, taking more time off work was simply not an option she could afford.

Recommendations

- The city should pass Intro 1529 to fund and support neighborhood-based community organizing groups to do outreach and education about the right to counsel in housing court.
- OCJ should support neighborhood community providers to open their doors to eligible tenants in advance of the first court date and develop a system for access to a lawyer pre-litigation.
- The city should hire a Central Coordinator who would be equipped and trained to connect tenants with legal service providers who are most convenient to the tenant and who have capacity to represent them *in advance of their first appearance*.
- OCJ should work closely with the Office of Court Administration (OCA) to make sure that tenants who file answers at the clerk's office are informed of their right to a lawyer and assisted in connecting with a legal services provider.
- OCJ should take a holistic approach to right to counsel and establish a system to inform individuals with active cases in criminal, family and immigration court of their rights to representation in housing court. OCJ should also notify agencies with multidisciplinary services with clients in housing court of their cases and allow for continued representation by those same agencies. This would encourage comprehensive, multidisciplinary representation.
- OCJ should take greater pains to communicate policy decisions in advance of implementation. The office has sometimes shared details of significant developments—like the addition of new zip codes—shortly before those changes went into effect. OCJ's second-year report was released just four days before today's hearing. Just as we cannot comment on a report released less than a week ago, so too do legal services providers

struggle to do the work of representing tenants when information is released on short notice.

EXPAND ELIGIBILITY UNDER RIGHT TO COUNSEL

The law, as is, is too restrictive with respect to who is currently eligible. The right to a lawyer is rolling out based on designated zip codes and is available only to those with household incomes at or below 200% of the federal poverty guidelines. Because of these restrictions, many people in need of a lawyer are falling through the cracks.

For example, AV faced eviction because police found drugs in the apartment she shares with her granddaughter. The District Attorney demanded that the landlord bring a holdover proceeding to evict her. Though AV was elderly and financially eligible for a free lawyer, she did not live in a qualifying zip code. The court referred her to the legal services provider on intake when the case started but they were unable to assist. AV went back and forth to court and did not obtain legal assistance until her home health aide, who recalled seeing a Bronx Defenders flyer detailing our expertise in drug holdovers, brought AV to our office as a walk-in client. Through aggressive motion practice, we were able to save AV's apartment and keep her family together. Had the home health aide not chanced upon our flyer, AV would have been at grave risk of losing her home.

Additionally, for the right to counsel to be meaningful, it must expand to cover a broader range of cases. Many of our clients live in abominable conditions. They routinely report rodent infestations, moldy ceilings, and peeling lead paint. HP actions can be an important tool for forcing landlords to fix such problems, but tenants do not currently enjoy a right to counsel for affirmative litigation. That should change.

In one recent case, NS, a single mother with a one-year-old daughter, retained The Bronx Defenders to help her with a nonpayment case. The conditions in her apartment were awful. She had photos showing leaking ceilings, hopelessly dilapidated fixtures, and a refrigerator covered in roach droppings. She lamented that her daughter struggled to take her first steps on the warped, uneven floors. NS sued her landlord in an HP action but when she asked if The Bronx Defenders could represent her in that proceeding, we had to decline. To be sure, the right to counsel helps tenants like NS address dangerous living conditions in the context of defensive litigation. But while the nonpayment case drags on, NS and her daughter continue to live in terrible conditions, and NS will be forced to navigate the complexities of the HP action largely on her own.

Recommendations

- OCJ should consider enmeshed justice involvement a priority for access to legal assistance as the right to counsel rolls out. This means if a tenant is facing eviction because of an arrest/criminal court case (i.e. drug holdover) or is at risk of having children removed in family court based on housing conditions and instability, the tenant should be given an automatic priority for representation. This should be effective immediately.

- The city should pass Intro 1104, increasing the income threshold to 400% of the federal poverty line. Currently, the law's income restrictions mean that a single New Yorker earning a \$15-per-hour minimum wage would not be eligible for representation.
- Alternatively, OCJ should decrease income restrictions and adopt an indigency standard (as used in criminal and family court).
- Expand the right to counsel to cover additional categories of cases, like HP actions.

COURTHOUSE RESOURCES AND CHALLENGES

Inadequate court resources and facilities present additional challenges to implementation of the right to counsel. As highlighted in the *Special Commission on the Future of the New York City Housing Court Report to the Chief Judge* (January 2018), there is a lack of space in Bronx Housing Court. This continues to be a huge challenge to legal services providers: we are forced to assess eligibility and then establish relationships and have conversations with tenants who are sharing confidential information in crowded courthouse hallways.

Tenants who miss the announcements about access to counsel in the courtroom may not even be aware of their right to counsel, as there is very limited signage in the Bronx Housing Court explaining the program. Many tenants, even those in the already-covered zip codes, are not aware of the right to counsel, and as such regularly fall prey to landlord attorneys who pressure them to sign agreements before meeting with counsel.

The burden falls on the providers to inform tenants about the right to counsel, determine eligibility, and establish trust despite these impediments.

For example, GM and his elderly mother, AF, both non-English speakers eligible for a free lawyer, came to us during our intake shift in housing court. The landlord and his attorney were following them, pressuring for a settlement or immediate trial. The tenants were intimidated and would only speak in whispers. Our attorney huddled with the tenants, both to shield them from their landlord and to listen as they quietly shared the sensitive details of their case. They were both undocumented and said that the landlord had threatened to report them to ICE. When attorneys are forced to meet their clients for the first time under these circumstances, the right to counsel is severely compromised.

The proposed move of the Bronx Housing Court building to 851 Grand Concourse in 2020 presents a unique opportunity to develop plans for the new space that create confidential intake space adjacent to the courtrooms, ADA accessibility, sufficient seating, and clear signage. Unlike the current space, which had to be retrofitted for right to counsel intake and has led to numerous challenges, construction of the new space allows for plans that actually meet the implementation recommendations below. It will be critical that the proposed plans are developed in close collaboration and communication with the legal services providers and Right to Counsel Coalition NYC to ensure that the results realize these implementation goals.

Recommendations

- OCJ should work closely with the OCA to make the following changes:
 - Make space adjacent to courtrooms available for confidential meetings between tenants and counsel.
 - Create space for all providers to review and copy tenant documents and information, as well as view and print electronic records from agencies such as the Division of Housing and Community Renewal, Department of Housing, Preservation and Development, and others.
 - Create signage about the right to counsel and informing tenants where to go.
 - Increase language access resources, including interpreters and multi-language signage and translated materials, in the court to facilitate the right to counsel for non-English speaking tenants;
- OCJ should implement the following changes:
 - Assist tenants in connecting with providers prior to making court agreements without receiving legal advice.
 - Play a more direct role in addressing incivility and bias in the courthouses.
 - Develop resources for tenants with mental health impairments and cognitive issues to ensure they can avail themselves of their right to counsel.