

# City Tackles Roll-Out of Right to Counsel in Housing Court

By **Abigail Savitch-Lew** | January 17, 2018



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*Judge Marcia Sikowitz's court room at Brooklyn Housing Court*

On a weekday morning, the benches of Judge Marcia Sikowitz's small court room are packed to the brim and there is a line out the door. Most of those in the room are distressed tenants, often people dealing with other life crises. Adding to the crowded and noisy mix are landlord attorneys, Human Resource Administration staff, and attorneys paid by the city to represent tenants. They are part of what Sikowitz described as both an exciting and challenging roll-out of the city's universal right to counsel in housing court.

"It's a miracle. It's an amazing program long overdue...It's a complete game changer for everyone," says Sikowitz. But it's also a big learning curve for tenants, who are discovering they can choose to get legal help instead of settling, for landlord lawyers who are finding each case more taxing and time-consuming, and for legal service attorneys who are rapidly expanding their client base, as well as more work for both Sikowitz's staff and herself.

A few floors downstairs from Sikowitz, a tenant waiting on a slow-moving line says she's never heard of universal right to counsel and doesn't really care to know if she qualifies. "It's news to me. Why do they want to help us now?" she says, while an East Flatbush landlord is equally skeptical. "I don't understand how expanding legal services for tenants is going to help when the rents are so high...and the taxes are so high."

Right to counsel is still phasing in and still a work in progress. In February 2017, after years of tenant advocacy, Mayor de Blasio made the announcement that New York City would become the first city in the nation to invest in universal access to counsel for low-income tenants in housing court. He signed a bill codifying this initiative into law on August 11.

The law requires the city to provide legal representation to all low-income tenants making up to 200 percent of the federal poverty line (\$40,840 for a family of three) and who are facing eviction proceedings. It also requires the city to offer brief legal guidance to all tenants regardless of their income.

Prior to the law, the administration had already increased funding for various legal assistance programs targeting tenants facing eviction and harassment from \$6 million in 2013 to \$62 million in 2016, effectively bringing the rate of representation for tenants from about one percent in 2013 to 27 percent in 2016. The continued expansion includes \$77 million in this year's budget, culminating in an annual investment of \$155 million in FY 2022, which is expected to serve 400,000 New York City tenants in need annually. Advocates say the program's cost will be partly offset by avoided evictions and reduced shelter in-take.

"This unprecedented commitment to funding civil legal services, along with the city's status as the first—and so far the only—city in the nation to ensure that every tenant facing eviction in housing court will have access to legal services, makes New York City a national leader in providing high-quality and well-resourced legal assistance to residents in need," wrote Lourdes Centeno, a spokesperson for the Human Resources Administration (HRA), in an e-mail to City Limits.

The program is being ramped up across the city, with three ZIP codes per borough in the first year—the third ZIP code was added recently. The program is also supposed to phase in for tenants in NYCHA's administrative proceedings. There are more than a dozen legal service providers under contract with the city to provide universal access, including the Bronx Defenders, The Legal Aid Society, Legal Services NYC, Mobilization for Justice and others.

The city is required by the right to counsel law to hold an annual hearing for the public to comment on the progress of the initiative. A date has not yet been scheduled for that first hearing.

### **Supporters and skeptics**

Supporters of the program point to the fact that after the de Blasio administration began increasing legal service investments, eviction rates began to decline: there were 24 percent fewer evictions in 2015 than in 2013, while the volume of landlord petitioning for eviction remained about the same, according to a 2016 report by the Human Resources Administration (HRA).

Earlier research also supported the idea that providing counsel has an impact on court proceedings, according to HRA: A 1990s study by The Pro Bono Project in Manhattan Housing Court found that unrepresented tenants in Manhattan Housing Court were more than four times as likely to have a warrant eviction and that represented tenants were more likely to secure rent abatements and stipulations requiring repairs from landlords.

There are not yet any metrics available on this year's efforts: the administration's first report on the roll-out is due in September.

Skeptics, however, say that additional legal services won't at the end of the day be able to help tenants afford rising rents.

"This is, again, all about the money. You can have the best lawyers in the world representing tenants, but if at the end of the day the tenant cannot afford the rent, the tenant cannot afford the rent," says Mitch Posilkin, general counsel for the Rent Stabilization Association, a trade association for residential property owners. He says that while RSA did not oppose the passage of right to counsel, the organization thinks it's "basically a charade that does not help the people most in need" and that it obscures the fact that the government should be investing more in rental subsidies.

Posilkin also notes that providing counsel to a tenant who cannot pay the legally required rent will slow down the process of their eviction, which effectively "shift[s] the burden onto the owner" who is "forced to have tenants in place longer who are not paying their rent for whatever reason."

Tenant lawyer Edward Josephson of Legal Services NYC, for his part, says that in many cases landlord lawyers are coming with "phony explanation[s]" to overcharge tenants. But he acknowledges that, for some tenants—especially those in non-regulated housing, who lack the rights of their rent-regulated counterparts—the best that lawyers can do is slow down the clock. "What we can do is get them more time," he says, so that tenants find housing and don't end up in the shelter system. That's in some ways an acknowledgement that, at least in some cases, right to counsel will result in more owners sheltering non-paying tenants for longer periods of the time.

Lawyers can also help tenants get connected to the rental assistance resources that do exist, such as emergency rent assistance and the De Blasio administration's time-limited rental assistance programs, Living in Communities (LINC). Even so, it's not always possible to prevent a tenant from falling into homelessness.

### **Roll-out challenges**

Those familiar with the roll-out say it's going well, but, as to be expected with such an ambitious undertaking, has its share of difficulties.

"It's been a big challenge to grow the system so fast. It's like going from zero to 1,000 miles-an-hour overnight," says Councilmember Mark Levine, the leading sponsor of the universal right to counsel legislation. Josephson agrees: "We're doing our very best—but it still remains to be seen whether we can ramp up in a linear away over five years."

"I think that we've reached a point which is positive but we are kind of working out the kinks as we go along," says Jeremiah Schlotman of the Legal Aid Society. He emphasizes that it's important for city government to "take very seriously any concerns that are being raised and then work expeditiously...to implement procedures, processes, and modification, and any necessary wholesale changes in order to address" problems that come up in implementation.

Josephson says one of the big challenges is a “huge acceleration in the pace of handling cases, which means that all the providers have to hire like crazy, have to train their new staff and have to train people to be the supervisors of the new staff, which in some ways is the most challenging thing.”

While there are many new young lawyers out there who want to help tenants—Legal Services NYC has expanded its housing units from about 50 to about 250 attorneys and paralegals across the five boroughs over the past couple years—finding enough people with housing-court experience to serve as supervisors is more challenging and creates a bottleneck, he says.

Both attorneys also say it’s important that the city’s contracts with legal service providers provide sufficient financial support to legal service organizations. “Although the City’s current allocation of funds is generous and needed, legal services providers must work with the City to ensure realistic numbers that best balance meeting the demand with ensuring quality representation,” Schlotman says, explaining that it’s important the number of cases per attorney is not overly burdensome, which might require increased funding over time.

And housing court itself is in the process of adapting to the change. The intake process for assigning tenants from the targeted ZIP codes to lawyers can be chaotic. Some housing courts are overcrowded, simply lacking adequate amounts of space. Many tenants who arrive in housing court have not heard of the right to counsel, and some are skeptical that they need a lawyer. Judge Sikowitz says she tries to explain to tenants why it’s beneficial to have a lawyer and more than half eventually agree.

And there’s also new tensions: According to Josephson, some judges are still used to trying to settle cases quickly, and may be ruffled by legal services providers aiming to get the best outcomes for their client, even if they have to go all the way to trial. Both the landlord and tenant lawyers perceive the other side as fighting more aggressively.

Schlotman says it would be a good idea if tenants could apply at housing court for the One Shot Deal Short Term Emergency Assistance program, which provides financial assistance to help tenants avoid eviction and other circumstances. Currently, tenants have to go to an HRA Job Center to apply for the assistance. If a tenant forgets, the lawyer will find themselves wasting time calling the tenant and reminding them to go to an HRA Job Center.

### **Where legal services are targeted**

According to HRA, a variety of factors are used to determine which ZIP codes will receive priority in the five-year phase in of universal counsel, including the prevalence of rent-regulated housing, homeless shelter entries, and number of eviction proceedings.

“On the whole, the city has been pretty respectful of listening to providers’ opinions of where and how the roll-out should go, and it’s not exactly the way we want it, but it’s pretty good,” says Josephson.

The full reasoning or formula used by HRA has not been made available to the public, however, which leaves some room for skepticism.

In Manhattan, Harlem and West Harlem (10026 and 10027) and the Upper West Side (10025) were the first zipcodes included in this year’s roll-out. East Harlem, which had a family shelter entry rate second to only Harlem from FY 2012 to FY 2016, and Inwood, which is notable for its large rent-stabilized stock and a high eviction rate (according to JustFix) were not included in this year’s roll-out.

Schlotman says he believes the roll-out should proceed in first in poorer neighborhoods where landlords were more neglectful of housing or neighborhoods known for severe speculation. (Regardless of how rich the neighborhood is, universal counsel will be offered to those making below 200 percent of the poverty line, though all residents of the ZIP code, regardless of their income, become entitled to quick, free legal advice.)

10025 is certainly not one of Manhattan’s poorest zip codes: The median household income is \$80,025. But Councilmember Levine, whose district overlaps with 10026 and 10027, says that Manhattan Valley, part of the Upper West Side, is in fact “a huge battleground for displacement” due to an aggressive campaign by landlords to convert older housing into apartments for Columbia Students. In addition, he says, HRA is looking for areas with a legal service provider that has the ability to expand capacity, and in the Upper West Side, Goddard Riverside Law Project is equipped to provide those services. Furthermore, he says that both Inwood and East Harlem receive legal assistance through another legal services program.

He agrees, however, with the notion that there needed to be more public transparency about HRA’s process for selection ZIP codes.

According to Levine, some councilmembers in neighborhoods with small family homeowners, including parts of Staten Island and the eastern Bronx, have actually expressed concerns about being included in the program and the impact it might have on small landlords who themselves lack representation.

### **Will earlier program get cut?**

Josephson and Schlotman are also concerned about the fate of another program included in the legal-service contracts with the city—the Anti-Harassment and Tenant Protection (AHTP) legal services program.

“Whereas the anti-eviction legal services program targets tenants who are already involved in housing court proceedings, AHTP provides resources for tenant outreach and prelitigation services with the goals of *preventing* eviction and displacement,” says the HRA report. “In addition to full representation and brief legal assistance...AHTP legal service providers offer community education, landlord-tenant mediation, and counsel on cooperative tenant actions and building-wide lawsuits.”

14 ZIP codes of neighborhoods targeted for a rezoning were given special priority for these funds, including Inwood and East Harlem. According to Schlotman and Josephson, tenants in those rezoning neighborhoods are not yet fully “guaranteed” counsel, but that it makes lots of lawyers available. It does not cover tenants in NYCHA buildings within those ZIP codes, Josephson says.

Both Schlotman and Josephson are worried that the de Blasio administration will slash or completely eliminate AHTP as universal access is rolled out across all neighborhoods, a move both lawyers say would be detrimental. Schlotman further notes that city’s contracts have tended to mandate that legal service providers target a high, perhaps unrealistic number of clients. He is concerned that if legal service providers can’t meet the targets, that will only further the administration’s eagerness to cut the program.

Josephson argues that taking action against a landlord today—particularly one whose actions suggest the landlord aims to displace tenants—can sometimes prevent many evictions tomorrow. Furthermore, the initiative funds a lot of group-action cases, says Schlotman, which are important for tenants in buildings who may be afraid to speak up against a bad landlord on their own, sometimes because of their immigration status. He adds that group action cases against landlords are also a key part of enforcing the city’s rent regulations and preserving the city’s affordable housing stock for the long term.

For instance, through ANHP, a lawyer could attain a judgment that a building is rent-stabilized and that the landlord has been overcharging all the tenants. It would be much more difficult to achieve such a result with just the universal right to counsel program: A client would have to fall behind in rent and be facing eviction proceedings, and then their lawyer would have to defensively argue that the unit was rent-stabilized. Even then, the legal judgment would apply only to the tenant’s apartment, not to the entire building.

HRA says it doesn’t plan to cut the program—but didn’t guarantee it would maintain support, either. HRA’s Centeno says the \$155 million in the budget for FY 2022 will be used to provide legal services for “eviction, harassment and displacement” but that how exactly those resources will be distributed between various programs will be decided later.

“Today, over \$33 million annually is dedicated for [Anti-Harassment and Tenant Protection] and no reductions in funding to prevent displacement in these communities are planned at this time,” wrote Centeno in an e-mail to City Limits. “As with all of our programs, we will continue to assess the reach and impact of this program in order to make decisions about the most effective and efficient ways to create access to justice for New Yorkers in need.”