



TESTIMONY OF:

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BROOKLYN DEFENDER SERVICES

Presented before

**The New York City Council
Committee on Justice System and Committee on Housing and Buildings**

Oversight Meeting and Introduction of Bills Int 1104-2018 and Int 1529-2019

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My name is Alexandra Dougherty, and I am a Senior Staff Attorney of the Civil Justice Practice at Brooklyn Defender Services (BDS). I would like to take this opportunity to speak in support of ongoing and expanded funding of the right to counsel for New York City tenants.

Brooklyn Defender Services provides multi-disciplinary and client-centered criminal, family, and immigration defense, as well as civil legal services, social work support and advocacy, for nearly 30,000 clients in Brooklyn every year. BDS' Civil Justice Practice (CJP) aims to reduce the civil collateral consequences for our clients who have had interaction with the criminal, family or immigration justice systems. We also serve our clients with additional civil legal needs; we know that even a minor housing or benefits issue, if unaddressed, can have insurmountable repercussions, especially for our clients who are already dealing with serious problems in other forums.

BDS supports Intro numbers 1104-2018 and 1529-2019. We applaud the city for increasing funding and expanding eligibility for Right to Counsel programs. Our colleagues in the Right to Counsel coalition have made clear why this particular expansion of RTC is so critical, and we encourage the Council to continue supporting this important work.

As the Council expands the scope of what RTC representation can look like, we would like to take this opportunity to draw the Council's attention to our specific client base. As an office in the unique position of already being assigned counsel in other forums, many of our clients' civil

legal issues are not easily generalized or best resolved by traditional Housing Court representation. I urge the City Council to continue considering the specific circumstances and needs of tenants like BDS clients for whom housing instability is part of a broader picture that includes criminal or family court involvement.

The City should respect client continuity and client choice

The vast majority of CJP clients are referred to us by another BDS unit and already have a BDS attorney in another forum. Unlike traditional providers, our model allows us to establish a connection to clients without first requiring screening and an extensive in person intake procedure. We routinely give advice and appear in court for existing BDS clients immediately upon contact. Providing civil representation within BDS minimizes confusion for our clients and saves clients the time of going through a complicated intake procedure with another provider, as well as and the emotional labor of discussing sensitive details of the case at a new office.

The nature of our representation means that we are able to share information about our clients' cases amongst our colleagues at BDS in order to anticipate and avoid potential civil problems. Our clients can choose to work with a CJP attorney as soon as they have housing or civil questions instead of waiting until they are sued in Housing Court. When we get involved early, we are often able to prevent a Housing Court case entirely by addressing underlying benefits issues with administrative agencies, settling directly with the landlord out of court, or giving clients preventative advice. When we are able to resolve issues before they develop into court cases, our clients are spared months of stressful litigation, the threat of imminent eviction, and placement on the tenant blacklist, which would be a devastating long term obstacle to securing stable affordable housing.

We frequently get involved in a case early when a BDS criminal client is temporarily excluded from their apartment pursuant to an order of protection. Our client is immediately forced to choose between finding new housing, and potentially owing rent in two apartments, or violating the order of protection and risk getting charged with contempt. In that situation, the tenant would not be eligible for representation from a traditional provider until they eventually fall behind in rent and get sued in Housing Court, potentially months later. Instead, we can immediately provide advice about their various options and minimize the risk of either losing the apartment or violating the order of protection. CJP's housing specialist can also provide critical early guidance in that situation by helping our clients secure affordable housing before eviction is imminent.

Continuity in representation creates expertise and efficiency

BDS clients are often dealing with multiple complex legal systems. Their civil legal needs are best met by attorneys who have knowledge in and access to these other legal systems. CJP attorneys routinely go to criminal and family court with our clients and colleagues, and directly inform those courts about our clients' housing and civil issues. When an incarcerated BDS client faces housing consequences we have the infrastructure in place to communicate with that client. We often prevent incarcerated tenants from defaulting in Housing Court because our colleagues refer those cases to us early.

In fact, judges and court staff are aware of our expertise and ability to handle these types of housing cases. We receive a steady stream of referrals from the court of cases in which the tenant is incarcerated or is facing eviction based on an underlying criminal case, as the court is aware that our office has a unique ability and capacity to work with these tenants.

Our colleagues from other providers also refer cases to CJP, even cases in the existing Universal Access zip codes. Housing cases that are linked with ongoing criminal or family court cases tend to be more legally and factually complicated and time-intensive than traditional Housing Court cases. We enthusiastically take these referrals from other providers who could successfully resolve multiple traditional Housing Court cases in the time it would take to litigate one housing case based upon criminal charges. We also take referrals of these cases from providers whose federal funding requirements prevent them from handling certain criminal charges.

Providing tenants with continuous BDS representation is not just administratively efficient, it is also client-focused and results in concrete victories for our clients. This is obvious when looking at NYCHA termination of tenancy proceedings. BDS criminal attorneys refer cases involving NYCHA tenants to CJP promptly before the threat of eviction has arisen. We consult with the criminal attorney and advise how a potential plea would affect our client's NYCHA housing before NYCHA has even started a termination proceeding.

Ms. S and Mr. V are recent CJP clients who live in NYCHA with their daughter. Mr. V's BDS criminal defense attorney referred them to us as soon as she became aware they were NYCHA tenants. We advised that Mr. V's plea offer would likely be safe for the family's housing because it would result in the case getting dismissed and sealed. Because we were involved at this early stage, we were immediately aware when NYCHA started a termination proceeding against Ms. S, who was the head of household. At the first hearing date NYCHA offered a settlement agreement in which Mr. V would be permanently excluded from the apartment on the basis of his arrest. His permanent exclusion would have been devastating for the family because Mr. V is their daughter's primary care giver during the day while Ms. S is getting treatment for a chronic health issue. Instead of advising Mr. V and Ms. S to settle, we showed NYCHA proof that the criminal case had been dismissed and sealed; permanent exclusion based on that arrest would be a violation of New York State sealing statutes. NYCHA declined to pursue the termination proceeding and our clients were able to avoid any threat of eviction and disruption to their family's stability. NYCHA routinely offers permanent exclusion to tenants facing termination regardless of the disposition of the criminal case, and CJP is uniquely able to protect our clients from devastating consequences of NYCHA's repeated violations of the state sealing statutes.

BDS clients deserve nuanced resolutions, which are not always traditional “wins” in Housing Court

When a BDS client faces a cascading set of issues in multiple legal systems, the best outcome reflects our client's priorities and considers these issues holistically. CJP attorneys work with our BDS colleagues to address our clients' needs and respect their priorities. Sometimes, a traditional victory in Housing Court does not reflect these priorities. An alternative solution like entering shelter voluntarily may be the best option considering ongoing housing and family cases, for example. Traditional providers can't always identify alternative resolutions when their representation is limited to Housing Court.

One BDS client, Mr. S, was living in a one bedroom rent stabilized apartment when ACS removed his three children from their mother and placed them in his custody. He suddenly found himself the single dad of three kids in a one-bedroom apartment. He was forced to quit his job to care for them and couldn't pay for his rent. Meanwhile, ACS began threatening to remove the children from him too because the apartment was too small for all of them. Amid this uncertainty, Mr. S's landlord brought a non-payment case against him because he had fallen behind on the rent. He could have easily applied for FHEPS, which would have paid his arrears and ongoing rent, and remained in his affordable rent stabilized apartment. However, he was desperate to leave the apartment and prevent the removal of his children. What Mr. S wanted was to save his family, which required either finding a larger apartment on an emergency basis or going to PATH and be placed in an appropriately sized shelter. Housing Court is rightfully very resistant to the idea of surrendering an affordable rent stabilized apartment. Without our knowledge and expertise of Mr. S's family court situation, he likely would have been forced into resolving the nonpayment case at the expense of losing his children to foster care.

Conclusion

BDS enthusiastically supports the city's groundbreaking Right to Counsel initiative and its commitment to implementing and expanding the program. Our partners in the Right to Counsel Coalition provide critical and zealous representation keeping thousands of the most vulnerable New Yorkers in their homes each year. As the City Council continues to expand Right to Counsel, we ask that they remember the unique needs of our client population and how they may be best served in every capacity. The Civil Justice Program will continue work to meet the needs of BDS clients suffering unsafe housing conditions, facing eviction for nonpayment during times of financial hardship, or facing eviction in holdover proceedings borne from Brooklyn's shortage of affordable housing and rampant gentrification, whether this means litigation in housing court, representation in administrative hearings, or where these issues can be resolved through persistence and determined advocacy of our staff.

Thank you for considering my comments. If you have any questions, please feel free to reach out to me at 718-254-0700 ext. 141 or adougherty@bds.org.