

The Movement to Secure Right to Counsel in Housing

It is hard to argue that housing is not a fundamental human need. Decent, affordable housing should be a basic right for everybody in this country. The reason is simple: without stable shelter, everything else falls apart.

- Matthew Desmond, *Evicted: Poverty and Profit in the American City*

Around the country, a movement to secure the right to counsel in eviction cases seeks to redress the imbalance of power between tenants and landlords in housing court. Having the assistance of a lawyer in housing court can mean the difference between staying in one's home or losing it. [One study](#) found that two-thirds of tenants who had an attorney were able to stay in their homes, compared with a third of tenants who represented themselves in housing court. Yet, in jurisdictions across the U.S., the majority of tenants face evictions without a lawyer, while the vast majority of landlords, [85 to 90 percent in some housing courts](#), are represented.

At the local level, advocates have joined together with legal services organizations to push for changes in legislation that would increase funding of direct legal services for tenants in eviction cases to ensure counsel for low-income individuals. The path forward has been diverse. In addition to calls for legislative reform that would provide a right to government-funded counsel, some jurisdictions have adopted programs that engage pro bono lawyers to provide services to demonstrate the benefit of guaranteed counsel and help fill the gap.

Right to Counsel Cities

Two cities have pioneered the right to counsel in housing in the United States, securing government-funded representation for tenants in eviction cases: New York City and San Francisco.

New York

In August 2017, New York City culminated a decades-long campaign to become the first city in the country to guarantee a right to counsel in eviction cases. The fight began with a 1989 class action [litigation](#). Although the case was ultimately dismissed on procedural grounds, advocates, including [Professor Andrew Scherer](#), the lead counsel in the class action, continued to litigate on behalf of tenants' rights and to lobby for a right to counsel in housing matters.

Progress was slow until recently. According to a New York City Office of Justice [report](#), as of 2013, only one percent of [tenants](#) facing an eviction case in New York were represented by counsel. That year, the New Settlement Apartments' Community Action for Safe Apartments (CASA) and the Community Development Project at the Urban Justice Center issued a [report](#) that supported the need for housing reform, including a right to counsel, in Bronx Housing Court. On the heels of this report, in 2014, the New York City Council introduced local legislation to create a right to counsel in housing eviction matters. The [Right to Counsel NYC Coalition](#) was also formed in 2014, in recognition of the need to bring together advocates, tenants, academics, and legal services providers to establish a right to counsel for tenants facing eviction.

In 2016, these efforts led to a ten-fold [increase](#) in the city's funding of legal aid for direct representation of tenants in eviction cases from Fiscal Year (FY) 2013 to FY 2017. That same year, the New York City Bar Association's Pro Bono and Legal Services Committee presented the city with a [cost-benefit analysis](#) of a right to counsel in eviction proceedings, prepared pro bono by Stout Risius Ross. This analysis estimated that providing counsel to residents seeking to remain in their homes would result in cost-savings of \$320 million for the city. The high costs of shelters and services for unsheltered homeless residents far outweighed the cost of city-funded legal representation.

On August 11, 2017, the city passed Intro 214-B, which provides that at the end of five years, all income-eligible tenants (residents whose income is 200 percent of the federal poverty level or less) will be [guaranteed](#) legal representation in eviction cases. During the five-year roll-out [plan](#), the city will provide services to residents in select zip codes, and will gradually expand to include the entire city. Advocates have identified several challenges to the roll-out, including getting the [word](#) out to tenants in the pilot zip codes about their [right](#) to a lawyer, and hiring and training dozens of attorneys working with legal services organizations around the city that have applied for funding to provide representation.

Despite these challenges, in the [first year](#) of the program (FY 2018), the city's legal services programs for tenants provided legal representation, advice, and assistance to 33,000 households, including 26,000 facing eviction proceedings, and benefitting more than 87,000 city residents. By the last quarter of FY 2018, within the zip codes participating in the first phase of the roll-out, 56% of tenants appearing in eviction cases had counsel and another 2% received some legal advice or assistance from the city's tenant legal services programs. Citywide during this quarter, 30% of tenants appearing in eviction cases had counsel and an additional 4% received some legal advice or assistance, contributing to an overall decrease of approximately 8000 residential evictions from 2013 to 2017.

From the start, advocates in New York pushed for legislation that would guarantee tenants a right to counsel, supported by government-funded legal aid. Pro bono attorneys played a key role in drafting a citywide right-to-counsel law and in researching legal questions for the Coalition, such as whether the locality had the legal authority to implement a right to counsel without infringing on the authority of the courts or the state.

Leaders of the right to counsel movement continue to call on pro bono volunteers from the private bar to advocate for further changes to the law. These changes include amending the ordinance to add representation for tenants whose income is up to [400 percent](#) of the federal poverty line, tenants in appeals and administrative proceedings, and residents facing loss of subsidized housing or rent subsidies.

San Francisco

In San Francisco, the fight for a right to counsel began with a pilot pro bono program that culminated in a change in the city's law. In March 2012, San Francisco passed an ordinance authorizing a one-year Right to Civil Counsel [Pilot Program](#) for residents within 200 percent of the federal poverty level with cases involving a basic human need such as housing, safety, or

child custody. The Justice & Diversity Center (JDC) of the Bar Association of San Francisco received a contract to implement the Right to Civil Counsel Pilot Project from October 2012 to September 2013, engaging pro bono attorneys to provide full-scope representation for tenants in the pilot project.

As a result of the pro bono project, the JDC concluded that providing full-scope representation increases the likelihood that tenants will remain in their home, as compared to tenants with no representation, and the city agreed to continue [funding](#) nonprofit organizations to connect pro bono attorneys to tenants in need of counsel.

In 2018, a coalition of tenant groups, neighborhood leaders, and advocates called the [San Francisco Right to Counsel Committee](#) filed the “No Eviction Without Representation” [ballot initiative](#), also known as Proposition F, to guarantee a right to counsel for all tenants in eviction cases. On June 5, 2018, the ballot initiative [passed](#), creating a right to counsel with no income-eligibility threshold. In November 2018, the mayor of San Francisco [announced](#) that the city will allocate \$5.8 million to provide free counsel for tenants in eviction proceedings through FY 2020, with the funds to be split among 11 legal services and partner organizations. While the program is being implemented, [JDC’s Homeless Advocacy Project](#) continues to offer pro bono volunteers opportunities to help clients fight eviction proceedings and to assist homeless individuals with securing federal disability benefits, among other services.

Cities with Pilot Projects

Other cities around the country are introducing programs that rely on a combination of city-funded support and pro bono representation to serve low-income tenants and provide counsel to meet the needs of underserved individuals.

District of Columbia

In Washington, D.C., the imbalance between landlords and tenants is stark, with 95 percent of landlords [represented by counsel](#), compared to 90 to 95 percent of tenants unrepresented. In 2015, law firms and legal services organizations, including Legal Aid Society of the District of Columbia, Bread for the City, Legal Counsel for the Elderly, the D.C. Bar Pro Bono Center, Sidley Austin*, DLA Piper*, Jenner & Block*, and Hogan Lovells*, created a pro bono [pilot](#) project organizing volunteer attorneys to provide legal representation to tenants in eviction cases involving subsidized housing. The pilot received over \$300,000 in initial funding through the D.C. Bar Foundation, with monies appropriated by the D.C. City Council.

In 2017, a [bill](#) was introduced to provide a right to counsel in civil cases whenever fundamental human needs, including housing (as well as preservation of liberty, safety, family integrity, health care, nutrition, education, income, and meaningful opportunity to obtain employment) are at stake. The bill provides for a Civil Right to Counsel Innovation Fund to pay for legal services in such proceedings. In July 2017, the D.C. Council [approved](#) \$4.5 million for the bill, with \$3.9 million in ongoing appropriations and \$600,000 for 2017, to fund a [Civil Legal Counsel Grants Program](#) administered by the DC Bar Foundation and awarded to legal aid organizations that provide representation to low-income D.C. tenants in eviction proceedings. The DC Bar

Foundation awarded the initial round of grants on January 1, 2018, and [awarded](#) a second round in mid-June 2018 for providing eviction defense services from July 1, 2018 through December 31, 2019.

Pro bono lawyers continue working to help tenants fight evictions through a number of avenues, including the housing right to counsel [project](#), which works with subsidized housing tenants; the advocacy and justice [clinic](#), in which pro bono attorneys can take on housing matters while mentored by an expert housing attorney; and the landlord tenant [resource center](#), where attorneys or firms can make a regular commitment to provide same-day legal information to pro se parties with landlord tenant cases in the courthouse while being managed by an expert housing attorney.

Philadelphia

Philadelphia has more [evictions](#) per household than any city with a similar population size. Approximately 24,000 eviction [actions](#) are filed per year in the city and 81 percent of landlords have legal counsel while only eight percent of tenants are represented.

Pro bono attorneys have been an important part of the moves Philadelphia has made towards keeping people in their homes. Pro bono counsel have taken on individual representation in eviction defense as well as working on reforms to Philadelphia Municipal Court Procedures and conducting research on other issues relating to the right to counsel.

In January 2018, the mayor [launched](#) the Philadelphia Eviction Prevention Project with a budget of \$500,000 for a tenant helpline, website, information and connections to legal services, direct legal representation of tenants, outreach, and financial counseling. A team of legal services organizations led by Community Legal Services (CLS) implemented the Project.

As a result, the Landlord Tenant Help Center at the Philadelphia Municipal Court is now [open](#) 36 to 40 hours a week, instead of 10 hours, with full time staff to conduct intakes for tenants. Additionally, through the Lawyer of the Day program, pro bono attorneys can conduct a 20-minute intake and help a tenant gather documentation, reach a Judgment By Agreement with a landlord, go before the judge, or obtain a continuance. A newly-funded court [navigator](#) helps to direct litigants through the court process or to the Lawyer of the Day program. CLS now staffs a [hotline](#) from 11 am – 7 pm every weekday to answer questions, do emergency call backs, or make referrals. In the city's upcoming budget, Philadelphia has [expanded](#) funding for the Project to \$850,000, allowing for further growth.

In September 2017, the city [launched](#) an Eviction Task Force that made [recommendations](#) to the mayor in June 2018, including expanding access to legal representation for low-income tenants. Philadelphia also commissioned a pro bono cost-benefit [study](#) of the right to counsel by Stout Risius Ross, similar to the critical report that Stout prepared in New York City. This report, released in November 2018, concluded that with an annual investment of approximately \$3.5 million, the City could provide legal assistance to all tenants unable to afford representation, avoiding \$45.2 million in annual costs to the City for expenses like shelters, hospital visits, and mental health services. In other words, for every dollar Philadelphia spends on providing legal representation to low-income tenants, the return on investment will be more than \$12.

Newark

In a city where 78 percent of its 300,000 residents are tenants and 90 percent of tenants facing eviction lack legal representation, Newark [announced](#) in May 2018 an initiative to provide legal representation to income-eligible tenants facing eviction with an initial focus on seniors, the disabled, and undocumented residents. Three months later, the City Council [approved](#) an ordinance to create a nonprofit to provide this legal representation, although the ordinance does not provide funding or details about the nonprofit.

As in other cities addressing the housing crisis, pro bono attorneys have been instrumental in supporting these efforts. In Newark, the law firm McCarter & English* [announced](#) a partnership with the city in July 2018 to fill the housing need by creating a pro bono program to represent tenants in housing court. The firm created a fellowship to hire an attorney to lead a pro bono program. Law firm attorneys would take on pro bono engagements while partnering with legal services organizations to represent low-income tenants in eviction proceedings.

Currently, as the city government continues to negotiate the parameters of the right to counsel, pro bono attorneys are stepping up to help with direct representation. The pro bono representation may provide key data points showing that providing representation keeps more tenants in their homes, similar to the pro bono Pilot Project in San Francisco.

Minneapolis

In Minneapolis, there are more than 3000 court-ordered [evictions](#) per year and an estimated 3000 more that occur from landlords sending “notices to vacate” and many tenants voluntarily complying because they do not know their rights. Some neighborhoods in the city have unusually high eviction rates, with up to 48 percent of households in [North Minneapolis](#) receiving an eviction filing in a three-year period. Tenants are represented by counsel in only about [ten percent](#) of eviction cases but those represented tenants have a far higher likelihood of winning or settling their evictions cases and clearing evictions from their records.

To address this imbalance, Minneapolis recently [launched](#) a pro bono eviction defense program. In November 2018, the mayor announced the “More Representation Minneapolis” initiative, a partnership of the Volunteer Lawyers Network, Mid-Minnesota Legal Aid, and at least a dozen law firms that have committed to taking eviction defense cases pro bono. The initiative’s immediate goal is to increase tenant representation in eviction cases by 20 percent with the help of pro bono attorneys. The mayor has also proposed allocating \$150,000 in 2019 for a pilot project for city-funded counsel to represent low-income tenants facing eviction.

Conclusion

The six cities spotlighted here are just some of the locations around the country where the right to counsel movement is flourishing. For example, [Cleveland](#) is exploring how to guarantee legal counsel for indigent tenants in eviction cases and studying the potential impact of a right to

counsel on the community. Wisconsin and Massachusetts are also examining the issue of the right to counsel in housing matters, according to [John Pollack](#), the coordinator of the [National Coalition for a Civil Right to Counsel](#).

It could be years or even decades before the paradigm shifts to guarantee the right to counsel in housing across the United States. If the vanguard of this movement is any indication, pro bono attorneys will play a critical role in these efforts, providing representation to tenants facing eviction, drafting legislation to secure the right, researching legal questions to support the community advocates, and piloting programs to provide pro bono legal representation.

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