

# Right to Counsel Coalition

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September 23, 2020

Dear Governor Baker, President Spilka, Speaker DeLeo, Senator Rodrigues, and Representative Michlewitz:

Estimates of how many eviction cases will hit the courts when the state moratorium ends have gone from 15,000, to 20,000 and are now climb to 60,000 cases and beyond. With approximately 10,000 eviction cases currently pending in the trial courts already waiting for adjudication, these numbers are a sobering reminder that it cannot be business as usual going forward.

To respond to the immediate crisis, a broad-based coalition continues to urge the state to include a targeted statewide right to counsel COVID pilot project as part of a comprehensive plan and top hospitals, municipal leaders, faith-based leaders, and large property owners agree. Chief Justice Gants called for a right to counsel in his State of the Judiciary last year and recognized the need for legal representation in his seminal decision, *Adjartey v. Central Division Housing Court*.

Without attorneys many tenants, including those who are elderly, disabled and of limited English proficiency, will be unable to navigate the court process effectively - especially in new virtual formats. While the court's inevitable reliance on virtual technologies will limit in-court traffic and facilitate social distancing, protecting the health of litigants and court staff, reliance on new virtual systems will also create new barriers for users of the courts - especially for unrepresented low-income tenants and homeowners.

**As the eviction moratorium clock has been ticking the Right to Counsel Coalition has continued to think through how to best deliver a continuum of legal representation and housing stability support and we write to you today to update you on our thinking.**

Because the scale of the anticipated evictions is so large, a comprehensive plan is needed and we must do everything we can to prevent the trauma that vulnerable families will face, with the disproportionate impact of this trauma being felt on communities of color.

To be ready for when the moratorium ends, it is our hope, that a significant portion of tenants facing eviction due to COVID-related non-payment of rent, may be able to be stabilized in their homes through rental assistance if it is funded sufficiently. Where this is possible, these funds could also restore rental income to landlords who, in some cases, may need this rental income to pay their mortgages or maintain their properties.

We believe that the state's response needs to have the following elements:

- support must be provided at every stage of the eviction process,
- legal representation needs to be paired with rental assistance, and
- a delivery system for legal representation and housing stability support must be coordinated to efficiently and effectively prevent homelessness and promote housing stability.

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Originally the Coalition proposed a pilot project that would handle 5,000 cases, but because of the scale of the crisis before us, the Right to Counsel Advisory Committee now proposes to develop **hybrid legal and housing stability teams to handle over 22,000 cases**. Parties eligible for assistance are low-income tenants who are facing eviction due to a COVID-related hardship and low-income owner-occupants who are evicting tenants. Hybrid legal and housing stability teams would allow for the right support at the right time and include:

- a. Case management specialists to help tenants apply for rental assistance in a court diversion program if an eviction is filed in court. We appreciate all that the Trial Court is doing with the Administration to quickly institute changes with the goal of creating a diversion program to provide tenants with the time to apply for rental assistance, but Housing Specialists will not be able to help people apply for rental assistance, nor should they. Assessing eligibility for rental assistance programs and connecting households to services to maximize income and reduce expenses to ensure ongoing housing stability can include collecting confidential information that would not be appropriate for a Housing Specialist to have and goes beyond their role as a neutral. Support will be needed at this stage to help tenants navigate the very complex systems for successfully applying to a myriad of federal, state and local rental assistance programs. Having case managers will speed up the RAFT application process; and cases resolved through case management will result in savings to tenants, landlords, courts, and the state.
- b. Pre-litigation legal assistance to prepare and file an Answer and other necessary court documents and represent tenants in mediation and through negotiation, if the diversion program does not result in the dismissal of a case. The majority of eviction cases have historically been and will likely continue to be resolved through agreements. To merely process cases without putting in place the tools to provide housing stability is not an adequate response to the impending crisis. Because the current capacity in legal services is not enough to handle the expected volume, this legal assistance must be provided by new lawyers who are quickly recruited and trained statewide. Legal assistance can result in a reduction of the amount of funds needed to resolve a case without displacement. A win-win.
- c. Experienced attorneys to be available for more complicated cases if a case is not resolved through mediation or negotiations. Historically, a very low percentage of matters go to trial and we expect that to remain the case. An experienced attorney would also be available to supervise pre-litigation legal assistance.
- d. Pro bono attorneys to represent tenants and pro bono attorneys recruited and trained to represent low-income landlords/owner occupants of 3-family housing, through a model similar to what Volunteer Lawyers Project currently does in the Eastern Housing Court.

In New York City, which was the first in the country to institute a right to counsel, 84% of the tenants in eviction cases remain housed. Rental assistance is a critical component of this success.

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**It is not enough to build the infrastructure of the court to handle virtual mediations if tenants are still alone in the process**, as proposed in Section 109 of H. 4887 and through a bond authorization of \$15 million. In fact, we are deeply concerned that Section 109 as currently written will erect more barriers and that more technology without more legal and housing stability support could exacerbate the imbalance of representation that tenants already experience - 78% of landlords have legal representation, while only 7% of tenants have legal representation. This creates an unfair mismatch, a disparity of legal representation for which the consequences can be devastating.

We urge a true collaborative approach with community stakeholders and the court and immediate passage of S. 2785 to establish a COVID right to counsel pilot program and funding through sources available through COVID relief dollars provided by the federal government to Massachusetts for both rental assistance and a statewide right to counsel pilot program, which does not compete with current legal services and housing stability state funding.

The legal services and housing communities stand ready to quickly scale up a meaningful right to counsel program to address the surge in cases post-moratorium, but time is of the essence.

Thank you,

Annette Duke on Behalf of the Right to Counsel Advisory Committee

***Right to Counsel Advisory Committee***

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Zoe Cronin, Greater Boston Legal Services

Gladys Vega and Norieliz DeJesus, Chelsea Collaborative

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Chris Norris and Steven Farrell, Metro Housing|Boston

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Cindy Rowe and David Albright, Jewish Alliance for Law and Social Action

Ellen Shachter and Susan Chimene, City of Somerville, Office of Housing Stability

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