



**L E G A L  
S E R V I C E S**

**INCORPORATED**

**TESTIMONY**

**IN SUPPORT OF**

**INTRO NO. 214A-2014, IN RELATION TO THE PROVISION OF LEGAL  
COUNSEL FOR LOW-INCOME ELIGIBLE TENANTS WHO ARE SUBJECT  
TO EVICTION, EJECTMENT OR FORECLOSURE PROCEEDINGS.**

**PRESENTED BEFORE:**

**THE NEW YORK CITY COUNCIL'S  
COMMITTEE ON COURTS AND LEGAL SERVICES**

**SUBMITTED BY:**

**JEANETTE ZELHOF  
EXECUTIVE DIRECTOR  
MFY LEGAL SERVICES, INC.**

**SEPTEMBER 26, 2016**

## **Introduction**

MFY Legal Services (“MFY”) envisions a society in which there is equal justice for all. Our mission is to achieve social justice, prioritizing the needs of people who are low-income, disenfranchised or have disabilities. We do this through providing the highest quality direct civil legal assistance, community education, partnerships, policy advocacy and impact litigation. We assist more than 20,000 New Yorkers each year. The mission of MFY’s Housing Project is to prevent homelessness and preserve affordable housing in New York City. In furtherance of that mission, MFY provides advice and full legal representation to tenants citywide and litigates in Housing Court, New York State Supreme Court and before administrative agencies on behalf of tenants in all types of housing, including rent-regulated apartments, New York City Housing Authority apartments, single room occupancy hotel rooms (SROs), and Three-Quarter Houses.

MFY supports the passage of Intro 214A-2014 (“Intro 214”) and believes that it is critical legislation that will ensure equal access to justice for the most vulnerable New York City residents who, without legal representation, would be unjustly stripped of one of the most fundamental human rights: a home. As the law currently stands, tenants in eviction proceedings do not have a right to an attorney. Therefore, most tenants are left alone to confront complex legal doctrines, an intimidating court system, and—in nearly every case—an experienced landlord’s attorney. The consequences of this dynamic are grave: unnecessary evictions and other negative consequences, which occur far too regularly because of tenants’ unfamiliarity with the legal system and imbalance of power.

Intro 214 would close the justice gap by establishing a right to free legal counsel for New York City residents facing an eviction proceeding with income at or below two-hundred percent of the federal income poverty guidelines. This bill, if passed, will not only save families from homelessness and its collateral consequences, but also save the City millions by preserving housing in economically and racially diverse communities.

## **Evictions Are Frequent Occurrences in New York City and Have Devastating Consequences**

It is without question that New York City is in the midst of a homelessness crisis. In the last year alone, over 23,000 families in New York City were evicted from their homes.<sup>1</sup> Over the past fifteen years, the homelessness population has almost doubled and recently hit its highest rate since the Great Depression. While such statistics are shocking when looked at in a vacuum, they are not surprising given the high eviction rate. Eviction and homelessness are interconnected because many low-income families have no alternative options for housing in New York.

Accordingly, evictions can cause devastating consequences to a family's health and severely hinder its advancement. Children miss school and are more likely to fail or drop out of school because their parents are dealing with an eviction proceeding. Indeed there is a direct correlation between a child's health and whether the child has experienced an eviction. As cited in a recent report regarding the costs of homelessness, in terms of health and finances: "Homelessness both before and after birth has significant negative implications for children's health and well-being, increasing the risk of long-term consequences not only for the child and his family, but also for society as a whole. Greater health care utilization associated with worse health outcomes involves large financial costs, most of which are paid by public health insurance. In 2012 the average cost of non-birth-related pediatric hospital stays was \$14,266 for infants and \$8,901 for toddlers, with 52% of all such stays covered by Medicaid."<sup>2</sup>

For adults, the stress associated with an eviction can take a huge toll on the person's physical and mental health—especially those vulnerable due to age or illness. At MFY, we see these secondary costs directly. Our Disability and Aging Rights Project speaks to hundreds of people each year trapped in these facilities -- not because they are unable to live independently, but because they were evicted, sometimes illegally, and cannot afford or do not have the wherewithal to find a new apartment. Therefore, elderly or disabled clients sometimes lose their homes in an eviction proceeding and are subsequently placed in nursing homes or adult homes, or even held in hospitals long after their treatment is complete. For those placed in adult homes, their federal disability benefits are paid to operators of these facilities at enhanced levels for institutional care; for those

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<sup>1</sup> See New York City Housing Court Statistics, 2015 Summary of Evictions, Possessions & Ejectments Conducted, available at [http://www.nycourts.gov/courts/nyc/SSI/statistics/Stats\\_2015SEPEC.pdf](http://www.nycourts.gov/courts/nyc/SSI/statistics/Stats_2015SEPEC.pdf).

<sup>2</sup> Sandel, Sheward, and Sturtevant, Compounding Stress: The Timing and Duration Effects of Homelessness on Children's Health (June 2015).

place in nursing homes, Medicaid pays at an even higher rate. Eviction frequently triggers decompensation and costly hospitalizations for tenants with mental illness. For recovering substance abusers, eviction often triggers relapse.

The consequences of the massive eviction rate in the City reverberate far beyond any individual or family. All of these situations mean increased costs to the City that far outweigh the cost of providing a lawyer in Housing Court. Unfortunately, the cost of eviction has been measured only in the expense of additional shelter beds. MFY's daily experience shows that this is actually an underestimate of the costs.

### **Providing Free Legal Counsel Reduces Evictions**

When tenants are summoned into Housing Court, they are lost without an attorney to help them navigate the legal system. The housing laws that apply in New York City are comprehensive and complicated. Housing Court can be an unforgiving place, where critical decisions are often made in crowded, noisy hallways. Tenants often do not understand the adversarial system, and frequently confuse a landlord's attorney as someone from whom to seek advice. In an effort to resolve a case under these circumstances, tenants fail to assert rights and defense, do not get necessary repairs, sign stipulations agreeing to vacate apartments without knowing they can access benefits to preserve their housing, do not challenge incorrect rent amounts and when they do agree to payouts, are pressured to do so without sufficient time and agree to judgments. All of this occurs because, until recently, approximately 99% of tenants appeared *without counsel* in Housing Court.<sup>3</sup> In contrast, approximately 90% of landlords were represented.<sup>4</sup>

Over the past two years, New York City has increased funding to legal services providers to represent low-income tenants in Housing Court. The results speak for themselves. As set forth in the recently released Annual Report by the NYC Office of Civil Justice, from 2013 to 2015, a time when the city expanded access to legal representation by 26%, evictions dropped by 24%.<sup>5</sup>

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<sup>3</sup> See New York State Courts Access to Justice Program 2010 Annual Report, 1; New York State Courts Access to Justice Program 2013 Annual Report, 32.

<sup>4</sup> Id.

<sup>5</sup> New York City Office of Civil Justice 2016 Annual Report.

MFY has benefited from this increase as a member of LEAP, a coalition of 14 legal services providers, that receives funding for anti-eviction work. This has enabled MFY to double our housing unit and to expand services to areas in the Bronx and Brooklyn in the throes of gentrification and targeted by predatory landlords who will stop at nothing to obtain possession of potentially lucrative apartments. Following are just a few examples of the work funded by the City's new initiatives:

- Mr. R is a Bronx tenant who received services to help individuals with HIV/AIDS from the City. While Mr. R was hospitalized, his landlord resorted to “self-help” and illegally evicted him. The landlord discarded all of Mr. R’s belongings and changed the locks on the apartment door without first obtaining a lawful court order -- and then rented the apartment to someone else. When Mr. R was released from the hospital, he returned to his apartment to find he could not gain access. He went to Housing Court to try to get back into his apartment and found it was too complicated to do on his own. He was referred to MFY for assistance by a Bronx Housing Court judge through the court’s referral system. MFY attempted to negotiate with the landlord, to no avail, and proceeded to a hearing that resulted in Mr. R’s being restored to possession of his apartment.
- Ms. P, a single mother with a young child, was evicted from her home in the Bronx for nonpayment of rent. Her eviction was caused in part because the landlord illegally withheld mail from Ms. P -- mail which included a notice of eviction. Ms. P found MFY through the court’s referral system. Once MFY was retained, we filed a motion to stay the re-letting of her apartment and worked with HRA to expedite an application for a one shot deal. After obtaining the one-shot deal, Ms. P and her child were restored to their home. MFY then assisted Ms. P obtain funds to have her personal belonging returned from storage.
- Ms. DR, a monolingual Spanish speaker, lives in Inwood with her family. When Ms. DR contacted MFY’s intake hotline, her family had been evicted by the marshal based on a default judgment the landlord obtained against her. A Housing Court judge had previously denied her *pro se* Order to Show Cause to prevent the eviction. When Ms. DR was initially served with court papers, she went to the landlord’s office and paid the rent, as she had in the past when rent was late, and was told by the landlord’s employee told she did not need

to go to court because the problem was resolved. But what DR did not understand was that the landlord was not seeking to evict her for nonpayment of rent, and merely paying the rent would not resolve the case. Rather, the landlord had filed a holdover eviction proceeding based upon Ms. DR's alleged chronic rent delinquency. MFY immediately intervened, moved to reargue the original *pro se* motion, and the court scheduled a hearing on the facts underlying the default. As a result, prior to the hearing, the landlord agreed to restore Ms. DR and her family to possession of the apartment to give her keys to the apartment that very day, issue a new lease, and to renovate the kitchen and bathroom of the apartment.

- MFY is representing 19 tenants in an eight-unit building in Crown Heights, Brooklyn – a rapidly gentrifying area where low-income, long-term rent stabilized tenants have been the target of increasing pressures and harassing tactics by landlords, including the use of construction/renovation as harassment of existing tenants. In 2014 and 2015 the building underwent extensive renovations and many of the long-term tenants moved out. During and immediately prior to these renovations, tenants faced dangerous construction zone conditions and harassment, including repeated buyout offers, threats of eviction, denial of essential services, and even a staged ICE raid in which the landlord attempted to intimidate South Asian tenants out of the building. The landlord also engaged in an unusual scheme to rent out the units: rather than bringing a single household or group of renters into each apartment, it has advertised individual rooms in each apartment separately. Each four-bedroom apartment is therefore rented to four to five individual households, most of whom had no contact with each other prior to moving in. The landlord provides each “household” with a separate lease, or in some cases, no lease. MFY commenced a Supreme Court action seeking reinstallation of the boiler, restoration of five units to rent stabilized status, a significant overcharge award for multiple tenants, the cure of numerous violations of the Housing Maintenance Code, and forging of affordable long-term tenancies for all involved. We obtained a preliminary injunction and currently the case is in discovery.

### **An Analogous Model of a Limited Right to Counsel Is Instructive**

For over ten years, MFY, along with Northern Manhattan Improvement Corporation, has been the Manhattan provider for the Assigned Counsel Project (ACP), a Department for the Aging (DFTA) initiative, through which the Manhattan Housing Court refers approximately 130 eviction cases. ACP has been, in many ways, a pilot “right-to-counsel” project. Tenants who are over 60 years of age and in particular need of legal assistance are identified by judges and referred by the court to the legal services provider in that borough, which is obligated to provide representation regardless of the perceived merit of the case or income of the respondent, and DFTA provides case management services. ACP cases tend to be more complex and pose greater challenges than the average Housing Court case. The clients are elderly, disabled, isolated, and often homebound or hospitalized. Many have limited capacity, and most are unable to reach out to legal services providers on their own or have no knowledge that legal services are available. Those that may have contacted legal services providers are sometimes turned away because they present, at first, as seemingly “hopeless” cases, and legal services providers with insufficient staffing try to take cases in which they can make a difference. Yet once these tenants are assigned lawyers through the ACP, we prevent eviction in the vast majority of the cases. For the remainder, it may become clear that it is no longer appropriate for the tenant to live independently – for example, even if we were to obtain 24/7 home care for them they would still be unable to make decisions for themselves -- or the tenant simply may no longer be able to afford the apartment, even with available benefits. In the instances where we cannot prevent eviction, we work with DFTA and other service providers to provide as much support as possible to the tenant in finding another place to live -- support that is rarely available to unrepresented tenants.

ACP’s success rate can be attributed in part to experienced housing lawyers who find legal defenses not apparent on first look. The success can also be attributed to the change in landlord and landlord’s counsel’s behavior when the tenant is represented.

Additionally, having a lawyer means not only avoiding eviction in the short term but stabilizing the person in the long term by addressing the underlying problems that led to the brink of disaster, such as loss of benefits or other income, need for physical and/or mental healthcare or a guardian, consumer debt problems, or need for home care.

The lesson is clear: far more evictions are preventable than meet the eye, and even in the seemingly hopeless cases, legal representation makes a difference. And due to our ability to address the issues that cause tenants to be brought to court in the first instance, legal representation means there is a less likelihood of tenants ending up back in Housing Court.

### **The Need for a “Right,” Not Simply Increased Funding**

We are extremely appreciative of the commitment to, and the enormous efforts that have gone into providing, increased funding for anti-eviction work. Already this funding is making a difference in the lives and communities of low-income New Yorkers. But while increased funding is clearly working and is an important step in the right direction, it is not sufficient. We need to have a “right” to counsel. Merriam-Webster defines “right” as “something that a person is or should be morally or legally allowed to have.” The right to a competent defense of one’s home is something to which this City should commit, for several reasons. Despite the increased funding committed by this administration, most low-income tenants still lack representation. Moreover, the funding is temporary and a policy change could cause all funding to cease. If that occurs, the progress that has recently been made would be for naught, and the City would experience a significant rise in eviction proceedings resulting in homelessness and more. In order to staunch the increasing gap between rich and poor in this City, this effort must be ongoing and not subject to political winds. A Right to Counsel will preserve the integrity of a court system intended to purports to mete out justice, showing that our justice system is for all, not just for some.

Even putting aside the social and moral benefits of passing Intro 214, a Right to Counsel will save the City money. A report by a private financial firm, Stout Risius Ross, Inc., shows that Intro 214 pay for itself and save the City more than \$320 million per year through saved shelter and affordable housing costs,<sup>6</sup> not to mention the costs of health and mental health care, lost jobs, and disruptions in education of the next generation of New Yorkers. A Right to Counsel can be implemented in a thoughtful and methodical way with the right being phased in over time so as to not overwhelm the courts or City budget. New York can and should be a leader in this effort.

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<sup>6</sup> Stout Risius Ross, Inc., The Financial Cost and Benefits of Establishing a Right to Counsel in Eviction Proceedings Under Intro 214-A, 25 (2016).



## **Conclusion**

In conclusion, MFY Legal Services strongly supports Intro 214, which will give New York City tenants who are at or below 200% of the federal poverty line the ability to protect their families from homelessness by guaranteeing a right to counsel in eviction proceedings. The justice gap in Housing Court —where the vast majority of landlords are represented by experienced counsel— results in far too many unnecessary evictions and adverse impacts for tenants and the communities in which they live. Intro 214 is a cost-effective and socially responsible means to ensure that New York continues to be a vibrant city of economically and racially diverse communities.