
Government of the District of Columbia



Office of the Tenant Advocate

Testimony of

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Public Hearing on:

B21-879, the “Expanding Access to Justice Act of 2016”

Committee on the Judiciary

The Honorable Kenyon R. McDuffie, Chairperson

Council of the District of Columbia

Wednesday, October 19, 2016, at 10:00 AM

John A. Wilson Building, Room 500

1350 Pennsylvania Avenue, NW

Washington, DC 20004

Thank you, Chairperson McDuffie and members of the Committee, for this opportunity to provide comments on Bill 21-879, the “Expanding Access to Justice Act of 2016.” I am Johanna Shreve, Chief Tenant Advocate for the District of Columbia at the Office of the Tenant Advocate (OTA).

“Civil Gideon” and rental housing as a fundamental need

I strongly support Bill 21-879 and the adoption of a civil right to counsel or “Civil Gideon” law in the District. Furthermore, I applaud the legislation’s focus on helping more lower-income District residents -- six (6) in ten (10) of whom are renters -- secure legal representation in rental housing cases.

While the District has among the strongest tenant protections in the country, many of them are embedded in a complicated weave of intertwining rental housing laws and regulations. It is often the case that a tenant must be prepared for relatively complex litigation in order to vindicate his or her rights. Good legal representation is not just helpful, it is often an absolute necessity. For most tenants -- given the challenges involved in ascertaining what rights he or she may have, responding to the landlord’s claims, and pursuing the action in court until a positive outcome is achieved -- “going it alone” simply is not a viable option. No attorney

means no meaningful opportunity for the tenant to be heard and the loss of his or her rights. In too many instances, the consequences can be tragic.

This reality is reflected in the legislative findings in the OTA establishment act, and it is one of the primary reasons for the agency's creation.¹ I am proud of the impact the OTA legal team makes in terms of leveling the playing field for our clients, and paying for itself by winning financial awards and benefits in legal decisions and case settlements. I am also pleased by the similar returns we see on our investment in non-profit legal service providers and other outside attorneys who take on tenant cases.

While these programs deliver results and help to close the "representation" gap, more needs to be done to serve the legal needs of the more than 350,000 renters who reside in the District. According to a DC Bar Landlord–Tenant Task Force study, over 95 percent of tenants who confront eviction at D.C. Superior Court's Landlord and Tenant branch were not represented by counsel.² Many low-income individuals and families are simply unaware of their rights, and may face the prospect of homelessness

¹ D.C. Official Code 42-3531.03(3) ("Tenants cannot usually afford legal representation.")

² *From the President: Simply Maureen*, By Ronald S. Flagg, Washington Lawyer, June 2011.

due to a minor lease violation or the late payment or non-payment of small amounts of rent, as little as 15 or 25 dollars.³

That is why, throughout my tenure as Chief Tenant Advocate, I have made it a top priority to work with the legal community to find ways to promote tenant access to affordable representation. I whole-heartedly support Civil Gideon in the rental housing context because the stakes often are so high -- literally the difference between a home and homelessness. In the famous case that inspired the term “Civil Gideon,” the U.S. Supreme Court set forth the basic rationale underlying the right to counsel. It is one that squarely applies to rental housing matters: as Justice Hugo Black stated in *Gideon*, “[t]he right to be heard would be, in many cases, of little avail if it did not comprehend the right to be heard by counsel.”⁴

Of course, establishing priorities is imperative whenever taxpayer dollars are involved. In the criminal context, the *Gideon* Court extended the right to a government-funded attorney to cases in which stakes are the highest, namely capital crimes. Similarly, it is appropriate that the bill’s legislative findings enumerate a number of fundamental human needs to

³ *As the nation’s capital booms, poor tenants face eviction over as little as \$25*, by Terrence McCoy, Washington Post, August 8, 2016, Page 1.

⁴ *Gideon v. Wainwright*, 372 U.S. 335, 344–45, 83 S. Ct. 792, 797, 9 L. Ed. 2d 799 (1963).

which the Civil Gideon principle could apply. They are all compelling, including health care; safety from domestic violence; child custody and visitation; the ability to challenge an incarceration or immigration detention or deportation; nutrition and education; an income-enhancing public benefit; and a meaningful opportunity to obtain employment. But it is also appropriate that the legislation prioritizes rental housing as a fundamental need that impacts all the others:

Safe, secure, and accessible housing is essential to achieving equal access to all other fundamental needs. Without housing, individuals and families too often cannot preserve family integrity, gain employment or other income, or enjoy access to healthcare, proper nutrition, and education. (lines 59-62)

Potential savings to tax-payers

In terms of assessing the program's fiscal impact on the District, it is important to note that tenants who seek to vindicate their own rights in court also serve the public interest. Indeed, there are often unintended cost benefits that flow to fellow tenants and the District itself. A tenant who successfully challenges an unlawful rent increase helps the District maintain its stock of affordable rental housing. A tenant who secures a court order requiring the landlord to abate housing code violations -- and to compensate the tenant for the failure to do so -- helps maintain the quality

of rental housing. Successful tenant litigation can compel landlord compliance more generally and thus spare other tenants of the need to litigate.

Additionally, after a “Civil Gideon” bill was introduced in the New York City Council,⁵ a study by an independent financial firm concluded that the legislation would not only pay for itself, but would save the City \$320 million annually. This conclusion was based on a number of factors, including the reduction in costs associated with evictions and government services provided to the destitute, including the reduced stress on homeless shelters.⁶ It is reasonable to expect that a “Civil Gideon” law in the District would have similar cost-benefit results.

Recommendations and considerations

I have the following recommendations and considerations aimed at promoting longer-term programmatic success.

⁵ The New York City Council, “Intro 214-2014: Providing legal counsel for low-income eligible tenants who are subject to eviction, ejectment or foreclosure proceeding” (introduced March 26, 2014).

⁶ *Report of Stout Risius Ross, Inc.*, March 16, 2016, Pro Bono and Legal Services Committee of the New York City Bar Association.
http://www2.nycbar.org/pdf/report/uploads/SRR_Report_Financial_Cost_and_Benefits_of_Establishing_a_Right_to_Counsel_in_Eviction_Proceedings.pdf

Implementation and assessment

The bill as introduced defines the term “covered proceeding” to include six (6) specific administrative or judicial proceedings, all of them housing-related: evictions; housing code violations; termination from a rental housing subsidy program; rent increase and rent abatement cases under the rent control program; and homeless services.

This bill would require the DC Bar Foundation to develop an annual plan including criteria, policies, and procedures for the provision of legal services by designated legal service providers. These providers would represent eligible individuals in covered proceedings. The Foundation would also be required to provide the Council with an annual programmatic report assessing the program’s performance, legal outcomes, and unmet legal needs.

Recommendation

We recommend that the DC Bar Foundation consult with as broad a cross-section of the District’s tenant bar as possible – including the OTA – in designing the program and assessing its performance, particularly as it relates to evaluating tenant needs that are or are not being met. This is especially important given that a covered proceeding includes diverse types

of rental housing – including subsidized, rent control, and market rate housing – and issues ranging from eviction, to building conditions, to rent increase violations. Optimizing the allocation of resources will require bringing together a broad range of legal service providers to share their experiences and perspectives.

Income eligibility

To be eligible under this bill an individual or group has to make gross household income at or below 200 percent of the federal poverty guidelines issued by the US Department of Health and Human Services. Thus, the program's income threshold this year would be \$23,760 for a single-member household and \$48,600 for a four-person household.⁷ We know that the District is among the most expensive places in the country, and that incomes have not kept pace with sky-rocketing cost of rental housing. Indeed, one (1) in four (4) renters in the District, or about 41,000 households, now spends more than 50 percent of household income on rent and utilities, a fifty percent increase since 2002.⁸

⁷ <http://familiesusa.org/product/federal-poverty-guidelines>

⁸ *Going, Going, Gone: DC's Vanishing Affordable Housing*, by Wes Rivers, DC Fiscal Policy Institute, March 12, 2015, Pg 3.

Many tenants who are likely to earn more than the bill's income maximum, particularly those who live in rent controlled apartments, will have a compelling need for program services.

Recommendation: Keeping in mind the obvious fiscal impact concerns, we recommend that consideration be given to raising the income threshold in appropriate situations. An example is where a group of tenants seek to challenge a housing provider petition, and where there would be little or no fiscal impact in extending the representation to individuals who are over-income. In many such instances, such flexibility would not only promote judicial efficiency, it would also potentially improve the strength of the case.

Funding

The intent of the bill as introduced appears to be that only new money – not any funding already available to a designated legal services provider through Access to Justice or otherwise – shall be used for the right to counsel program. That is important because (1) legal resources for low-income District residents are scarce; and (2) the very purpose of a right to counsel program would be undermined if it were to supplant rather than supplement other programs.

Recommendation: We recommend that a specific funding source be identified for the “Civil Right to Counsel Innovation Fund,” and that the intention not to divert funds from any existing legal service program be clarified.

Case selection and data collection

The bill would also require the Foundation to collect and report to the Council certain demographic, income, case type data. Our understanding is that the legal service providers’ “DC Housing Right to Counsel Pilot Project” selected cases by filtering eviction actions at the Landlord and Tenant Court filed for subsidized housing cases. This was possible because the landlord who files an action must check a box on the summons form if the tenant being evicted lives in subsidized housing. The check-box is there because Housing Authority regulations require the landlord to file a 30-day notice to vacate *in all cases* prior to filing an eviction action including non-payment cases. Generally this is not required in non-payment cases for non-subsidized housing.

We believe there should also be a check-box for rent controlled properties. The District’s default policy is that a rental unit is under rent control if the landlord has failed to register the unit or claim an exemption

with the Rent Administrator. Thus, when the attorney checks the rent control and registration status of the property, the landlord's failure to check the box would help dispose of easy cases earlier in the process. More generally, the check-box would provide valuable information for purposes of "Civil Gideon" and otherwise. It would promote early intervention and help make tenants more aware of their rights when it matters the most. It would help to resolve cases where possible prior to hearing. It would help "capture" a higher percentage of "covered proceedings" under the bill. And it would help in terms of program assessment and possible resource reallocation strategies.

Recommendation

The OTA has had discussions with the Court regarding the "L&T form rent control check-box" issue. We recommend further consultation with the Court by the Committee and relevant others in the context of this legislation.

Conclusion

Thank you, Chairperson McDuffie, for this opportunity to comment on Bill 21-879 and for your leadership on this issue of critical importance to

District renters. I look forward to continuing to work with you and your staff on this and other matters of mutual interest.