

# Implementing New York City's Universal Access to Counsel Program:

Lessons for Other Jurisdictions

# I. Introduction

In 2017, New York City enacted the first legislation in the country establishing a Universal Access to Counsel program (UAC) for all income-eligible tenants facing eviction.<sup>1</sup> The legislation requires that, subject to appropriation, the city provide access to legal representation to all eligible tenants by 2022.<sup>2</sup> The current plan is to phase-in the program over time by zip code. In the program's first year, three zip codes in each of the city's five boroughs were included in the UAC program.<sup>3</sup> Four zip codes in each of the five boroughs were selected for implementation in the first two years. The legislation requires full representation for any tenant facing eviction whose household income does not exceed 200 percent of the federal poverty guideline; it requires free legal advice, but not representation, for tenants with higher incomes.<sup>4</sup>

1 N.Y.C. ADMIN. CODE § 26-1301, et seq. The legislation refers to "Universal Access to Counsel"; however, many advocates and city officials have used that term interchangeably with the phrase "Right to Counsel." The distinction, if any, between the terms has been the subject of much discussion. In this paper, when referring to the statutory program, UAC is used; "Right to Counsel" is used to discuss advocacy efforts and studies of systems that involved a right to counsel.

2 N.Y.C. ADMIN. CODE § 26-1302. Andrew Scherer, one of the leaders in the effort to secure the Access to Counsel legislation, described the requirements as follows: "The law requires New York City to build up the capacity of the City's nonprofit legal services organizations over a period of five years so that by July 31, 2022 the organizations will be able to provide attorney representation for every low-income household in New York City that is sued in Housing Court for eviction.... Starting in the fall of 2017, the City began guaranteeing legal assistance to eligible tenants in specific zip codes in each borough. The City will continue to expand the program geographically during the five years leading up to full implementation of the law.... New York City's nonprofit legal services providers are being asked to contract with the City to provide...full representation to eligible low-income individuals," as well as brief consultations to ineligible individuals. *The Right to Counsel of Tenants Facing Eviction*, CITYLAND (Feb. 20, 2018), <https://www.citylandnyc.org/the-right-to-counsel-for-tenants-who-face-eviction/>.

3 For instance, in Manhattan, low-income tenants living in parts of Harlem (ZIP code 10026), West Harlem (10027), and the Upper West Side (10025) were the first to become eligible for free legal representation through the program. See Abigail Savitch-Lew, *City Tackles Roll-Out of Universal Access to Counsel in Housing Court*, CITYLIMITS.ORG (Jan. 17, 2018), <https://citylimits.org/2018/01/17/city-tackles-roll-out-of-right-to-counsel-in-housing-court/>.

4 N.Y.C. ADMIN. CODE § 26-1301. The eligibility threshold (200% of the federal poverty guideline) was \$40,840 for a family of three in 2017. Annual Update of the HHS Poverty Guidelines, 82 Fed. Reg. 8831, 8832 (Jan. 31, 2017).

New York City's UAC has generated substantial interest as other jurisdictions across the U.S. consider or implement similar programs. In June 2018, San Francisco voters approved a ballot initiative requiring the city to establish, fund, and run a program to provide legal representation to all tenants facing eviction regardless of income.<sup>5</sup> The Los Angeles City Council approved a motion in August 2018 instructing the housing department to develop recommendations for a new eviction defense bill or program.<sup>6</sup> Philadelphia, Pennsylvania; Washington, D.C.; and Newark, New Jersey, as well as other cities throughout the country, have increased funding for legal assistance to tenants and are now implementing or considering expansions in their programs.<sup>7</sup>

Recognizing the national interest in expanded access to counsel for tenants in eviction cases and the groundbreaking nature of New York City's UAC, the NYU Furman Center has spent the past year observing the implementation of the program.

5 No Eviction Without Representation Act, S.F. Prop. F (Nov. 1, 2017), [http://sfelections.sfgov.org/sites/default/files/Documents/candidates/Legal\\_Text\\_No\\_Eviction\\_Without\\_Representation.pdf](http://sfelections.sfgov.org/sites/default/files/Documents/candidates/Legal_Text_No_Eviction_Without_Representation.pdf); see also J.K. Dineen, SF's Measure F wins, will give tax-funded legal help to tenants facing eviction, *SAN FRANCISCO CHRONICLE* (June 5, 2018, 11:14 PM), <https://www.sfchronicle.com/politics/article/SF-Measure-F-to-give-tax-funded-legal-help-to-12970924.php>.

6 LOS ANGELES CITY COUNCIL JOURNAL/COUNCIL PROCEEDING MINUTES, Item No. 11 (Aug. 17, 2018), <https://cityclerk.lacity.org/councilagenda/MeetingView.aspx?MeetingID=5115&MinutesMeetingID=5043&doctype=Minutes>; see also LOS ANGELES CITY COUNCIL HOUSING COMMITTEE, REPORT AND RECOMMENDATION, [http://clkrep.lacity.org/online/docs/2018/18-0610\\_rpt\\_hsg\\_8-8-18.pdf](http://clkrep.lacity.org/online/docs/2018/18-0610_rpt_hsg_8-8-18.pdf) (recommendation for enacting a right to council ordinance and/or program that the full City Council adopted).

7 Office of the Mayor, *Mayor Kenney Announces Philadelphia Eviction Prevention Project*, CITY OF PHILADELPHIA (Jan. 30, 2018), <https://www.phila.gov/2018-01-30-mayor-kenney-announces-philadelphia-eviction-prevention-project/>; Expanding Access to Justice Amendment Act of 2017, Washington D.C. B22-0244 §§ 3051-3055, <https://legiscan.com/DC/text/B22-0244/2017> (providing for annual grant to the D.C. Bar Foundation, which will award subgrants to legal services providers to expand legal services in eviction proceedings); *Unanimous Council Passes FY 2018 Budget*, COUNCIL OF THE DISTRICT OF COLUMBIA (June 13, 2017), <http://dccouncil.us/unanimous-council-passes-fy-2018-budget/> (allocating \$4.5 million to cover tenant legal fees in eviction cases); Newark Ord. 18-0673, <https://newark.legistar.com/LegislationDetail.aspx?ID=3600177&GUID=706512AB-9068-4508-8193-1F1C1293ABE5&Options-ID%7cText%7c&Search=tenants&FullText=1> (providing that the City of Newark will partner with a "Designated Organization" to provide legal services to eligible tenants in eviction proceedings, but not specifying the funding source).

We visited Housing Court facilities across the city, watched how UAC is working, and observed how it is changing practices in those courts. We spoke with members of the judiciary, representatives from legal services providers participating in the UAC program, members of the landlords' bar, tenant organizers, and other tenant advocates about the challenges and opportunities that implementing the program has posed. To better understand the challenges tenants face and their views about the need for counsel, we interviewed more than 100 tenants, most of whom appeared in Housing Court without counsel and did not live in the zip codes currently covered by the UAC program.<sup>8</sup>

This Policy Brief gives a brief summary of the history of advocacy efforts to establish a "right to counsel" in eviction cases, which led up to the city's UAC legislation. It provides an overview of the Furman Center's observations of the first year of the program roll-out and suggests how the city's experience might help other jurisdictions shape the design and implementation of their programs. Recognizing that every jurisdiction differs,<sup>9</sup> and the importance of local context to understanding and learning from another jurisdiction's experiences, Section II of the paper details the context in which the city's UAC was designed. Section III then describes how the city has implemented UAC. Finally, Section IV discusses what can be learned from the city's experience implementing the program, and highlights issues that other jurisdictions need to consider in implementing a universal or expanded access to counsel program.

<sup>8</sup> We interviewed more than 100 tenants in the Brooklyn Housing Court.

<sup>9</sup> For example, New York has a unique and complex body of rent and eviction regulations and real property legislation that govern the grounds upon which tenants may be evicted, the court process, and claims and defenses that may be asserted in a summary proceeding seeking rent or possession of an apartment. This paper is not intended to provide a detailed examination of those matters.

## II. Background of UAC Legislation in New York City

Millions of eviction proceedings are filed each year throughout the country, and many of those proceedings result in the removal of tenants from their homes, either because tenants move out after a case is filed or because they are evicted by city marshals or sheriffs who remove their possessions from their homes.<sup>10</sup> Indeed, research shows that in some cities, as many as one in ten renters must move each year because of eviction proceedings.<sup>11</sup>

The significant negative effects of evictions and resulting housing instability on individuals, families, and localities are well-documented: Evictions often cause households to move into lower-quality housing in neighborhoods with higher crime, more concentrated poverty, and fewer educational or employment opportunities.<sup>12</sup> They may lead tenants to lose their jobs as well as personal property that can be costly to replace. Evictions may cause or exacerbate mental and physical health problems, and may disrupt a household's social

<sup>10</sup> *National Estimates: Evictions in America*, EVICTION LAB (May 11, 2018), <https://evictionlab.org/national-estimates/> (showing that the number of evictions filed in 2016 was 2,350,042); but see Daniella Aiello et al., *Eviction Lab Misses the Mark*, SHELTERFORCE (Aug. 22, 2018), <https://shelterforce.org/2018/08/22/eviction-lab-misses-the-mark/> (arguing that the Eviction Lab data likely undercounts the rate of evictions by relying on incomplete and inaccurate data gathered primarily by for-profit companies).

<sup>11</sup> *Eviction Rankings*, EVICTION LAB, <https://evictionlab.org/rankings/#/evictions?r=United%20States&a=0&d=evictionRate&l=58> (last visited Oct. 29, 2018) (in 2016, eviction rate as 16.5% in North Charleston, South Carolina, 11.44% in Richmond, Virginia, 10.49% in Hampton, Virginia, and 10.23% in Newport News, Virginia).

<sup>12</sup> See Matthew Desmond, *Forced Relocation and Residential Instability among Urban Renters*, 89 SOCIAL SCI. REV. 227 (2015); Matthew Desmond & Tracey Shollenberger, *Forced Displacement from Rental Housing: Prevalence and Neighborhood Consequences*, 52 DEMOGRAPHY 1751 (2015).

support networks.<sup>13</sup> A tenant who has been subject to an eviction proceeding will likely be “blacklisted” as a problem tenant and have a significantly more difficult time obtaining new housing.<sup>14</sup> Moreover, even if a tenant leaves her home before an eviction proceeding has been filed, that tenant will face unplanned housing instability, which can disrupt her relationship to the community, her work schedule, and schooling choices for her children.<sup>15</sup>

In New York City, almost 70 percent of the population, or 2.1 million households, rent their homes.<sup>16</sup> In recent years, over 200,000 summary eviction

cases<sup>17</sup> have been filed against the city’s renters annually.<sup>18</sup> Though New York City has funded legal assistance for those facing eviction for many years, the level of funding never allowed legal services providers to represent more than a small fraction of the renters involved in eviction cases.<sup>19</sup> Indeed, before 2014, while approximately 95 percent of landlords were represented by counsel, only one percent of all tenants were represented when they appeared in court.<sup>20</sup>

Concern about the lack of adequate representation for tenants is not new. In the early 1970s, New York established the Housing Part of the New York City Civil Court (“the Housing Court”)<sup>21</sup> to address cases directly related to residential rental housing. In addition to cases seeking to address substandard housing conditions, the Housing Court was given jurisdiction over summary proceedings filed by landlords seeking possession of an apartment for non-payment of rent (“non-payments”) or for other reasons, including violations of lease provisions and staying in possession after a lease has expired, among others (“holdovers”).<sup>22</sup>

13 See, e.g., Matthew Desmond, *EVICTED: POVERTY AND PROFIT IN THE AMERICAN CITY* 296–99 (2016) (describing the myriad consequences of evictions, including job loss, forced relocation to more impoverished neighborhoods, huge psychological strain, and a breakdown of community bonds); Kathryn A. Sabbeth, *Housing Defense as the New Gideon*, 41 HARV. J.L. & GENDER 56, 66–69 (2018) (same).

14 Paula A. Franzese, *A Place to Call Home: Tenant Blacklisting and the Denial of Opportunity*, 45 FORDHAM URB. L.J. 661, 666–69 (2018) (explaining that an eviction proceeding on a tenant’s record “will all but assure denial of her rental application”); see also Esme Caramello & Annette Duke, *Heads Up: The Misuse of Mass Courts As a Free Tenant Screening Device*, 59 BOS. B.J. 15, 15 (2015) (describing the tools landlords use to screen and blacklist tenants in Massachusetts); Eric Dunn & Marina Grabchuk, *Background Checks and Social Effects: Contemporary Residential Tenant-Screening Problems in Washington State*, 9 SEATTLE J. SOC. JUST. 319, 336–37 (2010) (detailing the common practice among Washington landlords to avoid renting to tenants they perceive to be “high risk” because of past involvement in evictions or other housing-related litigation). In New York City, this practice of “blacklisting” has been common, and companies are often hired by landlords to search landlord-tenant court files to identify such tenants. Kim Barker & Jessica Silver-Greenberg, *On Tenant Blacklist, Errors and Renters With Little Recourse*, N.Y. TIMES (Aug. 16, 2016), <https://www.nytimes.com/2016/08/17/nyregion/new-york-housing-tenant-blacklist.html>.

15 See Gerald S. Dickinson, *Towards a New Eviction Jurisprudence*, 23 GEO. J. ON POVERTY L. & POL’Y 1, 12 (2015) (explaining that residential mobility produces a “loss of neighborhood ties”); Matthew Desmond & Carl Gershenson, *Housing and Employment Insecurity Among the Working Poor*, 63 SOC. PROBS. 46, 49–50 (2016) (arguing that forced moves can lead to job instability because, among other reasons, workers often relocate to less convenient locations, increasing the likelihood that they will be late or miss work entirely); Courtney Lauren Anderson, *You Cannot Afford to Live Here*, 44 FORDHAM URB. L.J. 247, 271–72 (2017) (describing how housing instability, due to poor housing conditions and evictions, can cause high turnover rates in local school districts).

16 N.Y.U. FURMAN CENTER, *STATE OF NEW YORK CITY’S HOUSING AND NEIGHBORHOODS IN 2017* 22 (2017), [http://furmancenter.org/files/sotc/SOC\\_2017\\_Full\\_2018-08-01.pdf](http://furmancenter.org/files/sotc/SOC_2017_Full_2018-08-01.pdf); U.S. Census Bureau, *Selected Housing Characteristics, New York City: 2012-2016 American Community Survey 5-Year Estimates*, AMERICAN FACTFINDER tbl. 2016 New York city, New York, [https://factfinder.census.gov/faces/tables/services/jsf/pages/productview.xhtml?pid=ACS\\_16\\_5YR\\_DP04&prodType=table](https://factfinder.census.gov/faces/tables/services/jsf/pages/productview.xhtml?pid=ACS_16_5YR_DP04&prodType=table) (last visited Oct. 29, 2018).

17 In New York City, eviction proceedings are generally commenced in Housing Court as summary proceedings rather than plenary actions. Summary proceedings are generally shorter than plenary proceedings and rarely involve pre-trial discovery.

18 N.Y.C. OFFICE OF CIVIL JUSTICE, 2017 ANNUAL REPORT AND STRATEGIC PLAN 18 tbl.2 (2017), [https://www1.nyc.gov/assets/hra/downloads/pdf/services/civiljustice/OCJ\\_Annual\\_Report\\_2017.pdf](https://www1.nyc.gov/assets/hra/downloads/pdf/services/civiljustice/OCJ_Annual_Report_2017.pdf) (230,071 evictions filed in 2017; 233,884 in 2016; 234,270 in 2015).

19 N.Y.C. OFFICE OF CIVIL JUSTICE, 2016 ANNUAL REPORT 31 tbl.9 (2016), <https://www1.nyc.gov/assets/hra/downloads/pdf/services/civiljustice/OCJ%202016%20Annual%20Report.pdf> (from data collected over two days in April 2016, 15.4% of tenants in housing court were represented by legal services providers; 27.3% of tenants were represented by counsel of some sort); *De Blasio Administration Reports Record 27% Decrease in Evictions as Access to Legal Assistance for Low-Income New Yorkers in Housing Court Increases*, N.Y.C. OFFICE OF THE MAYOR (Jan. 26, 2018), <https://www1.nyc.gov/office-of-the-mayor/news/065-18/de-blasio-administration-reports-record-27-decrease-evictions-access-legal-assistance-for> (explaining that in 2016, the HRA’s tenant legal services program contributed to the representation of 27% of tenants in eviction proceedings).

20 See *id.* at 28.

21 The New York City Civil Court is part of the New York State Unified Court System.

22 N.Y. CITY CIV. CT. ACT §§ 110, 203 (2010); *Cf.* 2017 ANNUAL REPORT, supra note 19, at 18–19 (providing data on the types of cases filed in the Housing Court).



Today, although the Housing Court is part of the city's civil trial court, it operates as a separate court with unique procedures. Currently, there are 50 Housing Court judges and approximately 1,000 support personnel, including court officers, court attorneys, and court clerks in the Housing Court. Each county in the city—the Bronx, Brooklyn (Kings County), Manhattan (New York County), Queens, and Staten Island (Richmond County)—has its own Housing Court facility, and there are community courts in Harlem (New York County) and Red Hook (Kings County) which also hear some housing cases.<sup>23</sup>

From the early years of Housing Court, the disparity between the proportions of landlords and tenants who were represented when they appeared in court was evident. For decades, the New York State Legislature, the Office of Court Administration, tenant advocacy groups, and the legal community repeatedly urged the city to “level the playing field.”<sup>24</sup> In particular, New York's judi-

ciary repeatedly raised concerns about the effect that the large numbers of unrepresented litigants had on the delivery of justice and the operation of the city's Housing Court.<sup>25</sup>

Since the 1980s, advocates and academics have sought to address that disparity by seeking increased funding for legal services organizations, and by arguing for a broad “right to counsel” for people facing eviction, in effect a “civil *Gideon*” that would mirror the right to counsel in all criminal cases established in *Gideon v. Wainwright*.<sup>26</sup> The need for tenant representation received increased attention in the past two decades, as New York City entered a period of significant growth and the real estate market boomed. Between 2000 and 2010, median rents in New York City rose by 21 percent in real dollars, and by another 11 percent between 2010 and 2017.<sup>27</sup> In 2016, however, the median income in the city was only four percent higher than it was in 2000.<sup>28</sup> The share of recently available rental housing units affordable to low-income households fell by over 12 percentage points between

23 N.Y. STATE UNIFIED CT. SYS., NEW YORK CITY HOUS. COURT: ADMIN., <https://www.nycourts.gov/COURTS/nyc/housing/administration.shtml> (showing that each borough has its own Housing Court) (last visited Nov. 20, 2018); Mary Marsh Zulack, *The Housing Court Act (1972) and Computer Technology (2005): How the Ambitious Mission of the Housing Court to Protect the Housing Stock of New York City May Finally Be Achieved*, 3 CARDOZO PUB. L., POL'Y & ETHICS J. 773, 773–79 (2006) (explaining that the Civil Court Act of 1972 established the Housing Part, concentrating all housing cases in this part and creating new causes of actions specific to Housing Court); THE SPECIAL COMM'N ON THE FUTURE OF THE N.Y. STATE COURTS, A COURT SYSTEM FOR THE FUTURE: THE PROMISE OF COURT RESTRUCTURING IN NEW YORK STATE 66, 79–80 (2007), [http://ww2.nycourts.gov/sites/default/files/document/files/2018-05/courtsys-4future\\_2007.pdf](http://ww2.nycourts.gov/sites/default/files/document/files/2018-05/courtsys-4future_2007.pdf) (describing the community courts in Red Hook and Harlem, and the current Housing Court system in New York City).

24 See Judge Jonathan Lippman, *Shifting the Landscape on Access to Justice*, 38 CARDOZO L. REVIEW 1159, 1159 (2017) (arguing that, from the perspective of “a judge who is proactive in the pursuit of justice,” the greatest threat to justice “is the desperate need for legal services by the poor and people of modest means”); Raymond H. Brescia, *Sheltering Counsel: Towards a Right to a Lawyer in Eviction Proceedings*, 25 TOURO L. REV. 187, 190 (2009) (describing a New York State Bar Association conference among tenant advocates, elected officials, members of the private bar, and academics convened to develop strategies for achieving a right to counsel in housing court); TASK FORCE TO EXPAND ACCESS TO CIVIL LEGAL SERVS. IN N.Y., REPORT TO THE CHIEF JUDGE OF THE STATE OF NEW YORK 1 (2010), <http://ww2.nycourts.gov/sites/default/files/document/files/2018-04/CLS-TaskForceREPORT.pdf> (report from the Office of Court Administration advocating for new funding to provide legal assistance to address, among other areas, housing).

25 TASK FORCE TO EXPAND ACCESS TO CIVIL LEGAL SERVS. IN N.Y., *supra* note 25, Press Release: Chief Judge Announces Creation of Permanent Commission on Access to Justice, STATE OF N.Y. UNIFIED CT. SYS. (July 22, 2015), [https://www.nycourts.gov/PRESS/PDFs/PR15\\_07.pdf](https://www.nycourts.gov/PRESS/PDFs/PR15_07.pdf) (finding that “the justice gap negatively affected all New Yorkers” and that providing legal services “enhances court efficiency and reduces litigation costs”); Russell Engler, *And Justice for All—Including the Unrepresented Poor: Revisiting the Role of the Judges, Mediators, and Clerks*, 67 FORDHAM L.R. 1987, 2065 (1999); CMTY. TRAINING & RES. CTR. & CITY-WIDE TASK FORCE ON HOUS. COURT, HOUSING COURT, EVICTIONS AND HOMELESSNESS: THE COSTS AND BENEFITS OF ESTABLISHING A RIGHT TO COUNSEL (1993).

26 See e.g. Andrew Scherer, *Gideon's Shelter: The Need to Recognize a Right to Counsel for Indigent Defendants in Eviction Proceedings*, 23 HARV. C.R.-C.L. L. REV. 557, 561–62 (1988); Kriston Capps, *New York City Guarantees a Lawyer to Every Resident Facing Eviction*, CITYLAB (Aug. 14, 2017), <https://www.citylab.com/equity/2017/08/nyc-ensures-eviction-lawyer-for-every-tenant/536508/>.

27 N.Y.U. FURMAN CENTER, *supra* note 17, at 34 tbl. Housing Market and Conditions (the median rent in 2000 was \$1,040, and the median rent in 2010 was \$1,260); U.S. Census Bureau, *Median Gross Rent (Dollars): 2017 American Community Survey 1-Year Supplemental Estimates*, AMERICAN FACTFINDER tbl. 2017 New York City, New York, [https://factfinder.census.gov/faces/tableservices/jsf/pages/product-view.xhtml?pid=ACS\\_17\\_SPL\\_K202511&prodType=table](https://factfinder.census.gov/faces/tableservices/jsf/pages/product-view.xhtml?pid=ACS_17_SPL_K202511&prodType=table) (last visited Nov. 3, 2018) (the median gross rent was \$1,397).

28 N.Y.U. FURMAN CENTER, *supra* note 17, at 34 tbl. Demographics (the median income in 2000 was \$57,820, and the median income in 2016 was \$60,010).

2006 and 2016.<sup>29</sup> Since the year 2000, at least 220,515 units have exited rent stabilization (the rent regulations affecting approximately one million apartments in New York City).<sup>30</sup> As rents have risen, New York City renters have devoted increasingly large shares of their income to rent, and in 2016, over half of renter households in the city were rent-burdened (spending over 30% of their incomes on rent). Low-income households were stretched especially thin: 85 percent of extremely low-income households and 78 percent of very low-income households were rent-burdened in 2016.<sup>31</sup>

It was in this context that in 2013 Community Action for Safe Apartments (CASA), a Bronx community group, and the Community Development Project at the Urban Justice Center (UJC), a social justice advocacy organization, issued a report entitled *Tipping the Scales*, which advocated for legislation establishing a right to counsel in Housing Court.<sup>32</sup> CASA, UJC, and other advocacy groups and legal services providers also formed the Right to Counsel Coalition (RTC Coalition) to educate and organize tenants and other community members to advocate for such legislation.

In 2014, City Council Members Mark Levine and Vanessa Gibson introduced legislation to require the New York City Office of Civil Justice (OCJ) to establish programs to provide all tenants facing eviction with access to legal services within five years.<sup>33</sup> After hearings and negotiations,



the City Council approved an amended bill in July 2017, which Mayor de Blasio signed that August. The legislation made New York City the first major city in the United States to fund universal access to legal representation in eviction cases for low-income individuals.<sup>34</sup> The law provides: “Subject to appropriation, the coordinator [of the Office of Civil Justice] shall establish a program to provide access to legal services” for low-income individuals in eviction cases in Housing Court and “shall ensure that, no later than July 31, 2022 ... all income-eligible individuals receive access to full legal representation no later than their first scheduled appearance in a covered proceeding in housing court, or as soon thereafter as is practicable.”<sup>35</sup>

<sup>29</sup> *Id.* at 25.

<sup>30</sup> N.Y.C. RENT GUIDELINES BOARD, CHANGES TO THE RENT STABILIZED HOUSING STOCK IN NEW YORK CITY IN 2017 15 (2018), <https://www1.nyc.gov/assets/rentguidelinesboard/pdf/changes18.pdf>.

<sup>31</sup> N.Y.U. FURMAN CENTER, *supra* note 17, at 25.

<sup>32</sup> RIGHT TO COUNSEL NEW YORK CITY, *History of the Right to Counsel NYC Coalition*, [https://d3n8a8spro7vhmx.cloudfront.net/righttocounselnyc/pages/10/attachments/original/1517948094/history\\_of\\_RTC.pdf?1517948094](https://d3n8a8spro7vhmx.cloudfront.net/righttocounselnyc/pages/10/attachments/original/1517948094/history_of_RTC.pdf?1517948094) (last visited Oct. 26, 2018).

<sup>33</sup> Providing legal services for tenants who are subject to eviction proceedings, Int 0214-2014 B, (N.Y.C. Council 2014), <http://legistar.council.nyc.gov/LegislationDetail.aspx?ID=1687978&GUID=29A4594B-9E8A-4C5E-A797-96BDC4F64F80&Options=ID%7CText%7C&Search=0214> (last visited Oct. 26, 2018).

<sup>34</sup> Mayor de Blasio Signs Legislation to Provide Low-Income New Yorkers with Access to Counsel for Wrongful Evictions, NYC.GOV (Aug. 11, 2017), <https://www1.nyc.gov/office-of-the-mayor/news/547-17/mayor-de-blasio-signs-legislation-provide-low-income-new-yorkers-access-counsel-for/#/0>.

<sup>35</sup> Local Law 136 (2014) (codified at N.Y.C. ADMIN. CODE. § 26-1302). Currently, the program does not provide counsel to appear for tenants in appellate courts or in most administrative tribunals, though the City Council is considering a bill that would expand the program to cover these additional types of proceedings.

### III. Implementing Universal Access to Counsel into New York City's Housing Court

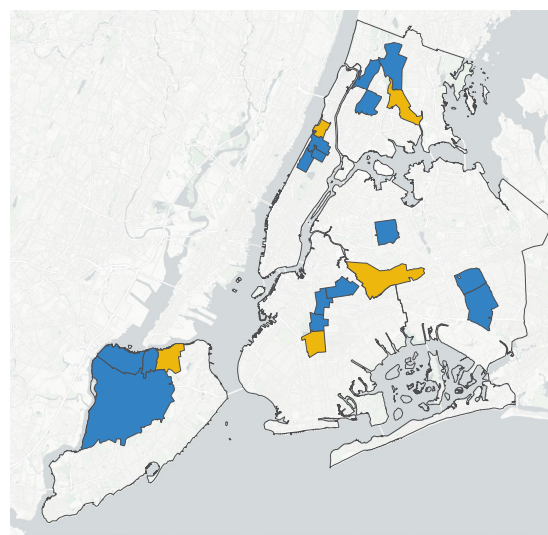
Coordination and implementation of the UAC program is managed by the City's Office of Civil Justice (OCJ), which was created in June 2015 as part of the New York City Human Resources Administration/Department of Social Services (HRA)<sup>36</sup> to "oversee and monitor the City-supported civil legal services available to low-income New Yorkers and other residents in need, and to study the impact and effectiveness of the services that are available to New Yorkers as well as the need for such services."<sup>37</sup> To ensure smooth implementation and provide high-quality representation in the program, the legislation requires OCJ to award contracts only to non-profit organizations.<sup>38</sup>

In the first year of the roll-out of UAC, OCJ selected the zip codes in which the program would initially be implemented based on a range of factors including shelter entries, the prevalence of rent-regulated housing, the volume of eviction proceedings, and whether the area is already being served by other legal services programs. During

the five-year phase-in period, additional zip codes will be added based on these and other indicators of need.<sup>39</sup> As of this writing, the program is operating in 20 zip codes, four in each of the city's boroughs (see Figure 1).<sup>40</sup>

**Figure 1: Zip Codes Participating in Universal Access to Counsel Program, New York City (as of November 21, 2018)**

■ First year Zip codes ■ Second year Zip codes



Sources: NYU Furman Center; New York City Housing Court; New York City Department of Information Technology & Telecommunications via NYC OpenData

Before the UAC program commenced, the Supervising Judge of the Housing Court and other representatives of the Office of Court Administration (OCA) worked with participating legal services providers and members of the RTC Coalition to ensure that the Housing Court was prepared for the initial phase of the program. Eviction cases in covered zip codes were assigned to specific judges and, where possible, a room was set aside in or just outside

<sup>36</sup> HRA is the agency which provides public assistance and in which the City's Office of Civil Justice is housed. See *Legal Assistance*, N.Y.C. HUMAN RES. ADMIN., <https://www1.nyc.gov/site/hra/help/legal-assistance.page> (last visited Oct. 26, 2018).

<sup>37</sup> 2017 ANNUAL REPORT, *supra* note 19, at 1.

<sup>38</sup> In the first year of the program, OCJ only awarded contracts to organizations that had already been providing legal services. This decision was driven by the requirement that participating providers be "organizations that have the capacity to provide legal services" and by the history of such non-profit organizations providing competent and effective representation to low-income tenants in Housing Court. Local Law 136 (2014) (codified at N.Y.C. ADMIN. CODE § 26-1302); see also HRA's *Fiscal Year 2018 Preliminary Budget: Hearing Before the Comm. on the Justice System*, 2018 N.Y.C. Council 4 (Mar. 12, 2018) (testimony of Jordan Dressler, Civil Justice Coordinator).

<sup>39</sup> 2017 ANNUAL REPORT, *supra* note 19, at 52.

<sup>40</sup> See N.Y. STATE UNIFIED CT. SYSTEM, NEW YORK CITY HOUS. COURT: FREE LAWYERS FOR TENANTS (UNIVERSAL ACCESS TO LEGAL SERVICES), <http://www.nycourts.gov/courts/nyc/housing/freeLawyerQualify.shtml> (showing that UAC program is operating in the following zip codes: in the Bronx, 10457, 10462, 10467, and 10468; in Brooklyn, 11216, 11221, 11225, 11226; in Manhattan, 10025, 10026, 10027, 10031; in Queens, 11373, 11385, 11433, 11434; in Staten Island, 10302, 10303, 10310, 10314) (last visited Nov. 21, 2018).



those judges' courtrooms for the UAC attorneys to conduct initial interviews of tenants to determine eligibility for UAC representation. In some of the courts, HRA staff were assigned to the UAC courtrooms to conduct the initial eligibility screening and, when appropriate, to refer tenants to other HRA staff who could help them apply for rent assistance or other benefits or social services. Personnel from clerks' offices were trained to identify which cases should be assigned to the UAC parts and courtroom court officers were often instructed by judges sitting in the UAC parts to ensure that tenants from the covered zip codes were referred to a UAC attorney and to HRA representatives.<sup>41</sup>

Generally, the referral to a participating legal services provider occurs on the first date that tenants in covered zip codes appear on a scheduled court date.<sup>42</sup> As the roll-out has progressed, OCJ and OCA, in consultation with the UAC assigned judges and the attorneys appearing for tenants and landlords, have continually assessed Housing Court procedures with respect to UAC and, as a result, some modifications have been implemented.

## IV. Learning from New York City's Experience

Jurisdictions handle landlord-tenant cases differently and the organization of housing courts, relevant laws, and judicial procedures also vary. The process for commencing an eviction case, the permissible grounds for bringing such a case, the requirements for tenant appearances in court, and how clerks' offices, judges, and court personnel interact with the parties also differ across jurisdictions. Accordingly, design and administration of an access to counsel program must be tailored to a jurisdiction's specific legal, judicial, and procedural context. That said, New York City's experience in the early years of the UAC implementation provides valuable lessons for other jurisdictions about the choices and challenges that implementing large-scale access to counsel in eviction cases is likely to pose. Our recommendations are based on our observations, along with insights we gathered from the many thoughtful judges, court personnel, administrators of the program, lawyers involved in the program, tenants, tenant advocacy groups, and others in New York City striving to make the UAC program work smoothly and effectively. We have ordered the lessons around the questions that a jurisdiction designing a UAC program will need to address to implement the program.

<sup>41</sup> Testimony of Jordan Dressler, *supra* note 39, at 5; various interviews conducted by Furman Center staff.

<sup>42</sup> The Clerk's office may direct *pro se* tenants who live in the covered zip codes to the HRA office in the courthouse for income eligibility screening at the time they answer; however, most tenants wait until their first appearance in court for screening and intake by the legal services provider.



### **a. Will the program be phased-in and, if so, how?**

A foundational question for a jurisdiction considering UAC is how long it will realistically take to implement the program, and whether implementation should take place in phases. This question implicates several different challenges, including space constraints, provider capacity, and court capacity.

New York City determined that it was not feasible to launch the program on a citywide basis immediately. Instead, the program is being rolled out in the city by zip code over five years. Four zip codes in each of the five boroughs were selected for implementation in the first two years. As noted above, in choosing the order in which zip codes are included in the program, the city consulted with the Housing Court, legal services providers, and advocates, and looked at a variety of criteria, including which areas were experiencing large numbers of people seeking placement in homeless shelters and which have a high number of rent-regulated housing units.<sup>43</sup>

Jurisdictions considering how to select the order of any phase-in will need to evaluate which metrics about their neighborhoods, housing market, and tenants signal the greatest need for tenant legal services. Jurisdictions also will need to evaluate the capacity of the legal services providers and the courts in different geographies. They might also want to consider whether, in light of local housing issues and the relevant law, there are certain types of cases or categories of tenants for which legal services are likely to be most

necessary and effective.<sup>44</sup> For example, a jurisdiction may determine that a phase-in should start with a particularly vulnerable population, or with a neighborhood experiencing unusually high levels of evictions or changes in housing affordability.

If a jurisdiction decides to phase in a UAC program over time, eligibility criteria should be transparent and easy to understand so that tenants can readily determine whether they are eligible for the services during any particular phase of the roll-out. It will also be important for the criteria to be easily verifiable by the court or other entity charged with confirming eligibility.

### **b. Who will provide the services?**

As part of fashioning any UAC program, a municipality must consider who will provide the legal services and whether funding for community organizers and/or support services, such as social workers and paralegals, should be provided. Different jurisdictions will face various constraints in terms of procurement rules and budget demands, but jurisdictions drafting the authorizing legislation for a new program should think through whether any adjustments to those rules or their budgets are necessary given the challenges of hiring and training large numbers of supervisors, staff lawyers, and support staff to provide quality legal representation for all low-income tenants in eviction proceedings.

44 While there have been a few evaluations of how legal services have affected the outcomes of cases in NYC in the past, they did not shed much light on what kinds of cases are likely to benefit most from legal services, but New York City's experience over the next few years may help to answer that question. For existing evaluations, see 2016 ANNUAL REPORT, *supra* note 20, at 2, 24 (explaining that evictions by marshals declined 24 percent in 2015 as compared to 2013, a two-year period when the city substantially increased funding for legal services to low-income tenants, and that the number of eviction warrants issued in 2015 reached the lowest point in years); and Carroll Seron et al., *The Impact of Legal Counsel on Outcomes for Poor Tenants in New York City's Housing Court: Results of a Randomized Experiment*, 25 L. & SOC. REV. 419, 428 (2001) (finding in an experimental study of Manhattan Housing Court that unrepresented tenants were more than four times as likely as represented tenants to have a warrant of eviction issued against them).

43 Savitch-Lew, *supra* note 3.

Many legal services offices that are likely to be UAC providers also play an important role in the communities they serve. Some legal services providers work with community groups, for example, to address building-wide issues and problematic landlords in their neighborhoods. Further, low-income residents often rely upon local legal services offices for assistance with an array of legal problems that may not be related to housing. A tenant, a family member, a neighbor or a friend may have established relationships with the legal service provider in their neighborhood that may lead the tenant to be more comfortable with the provider or may make the provider more efficient and effective in representing the tenant. Accordingly, in deciding who will provide legal services to tenants under a UAC or an expanded access to counsel program, it is important to consider the relationships different providers have with neighborhoods, and to structure the assignment of tenants to a provider in ways that support that provider's relationship with the community or the individual tenant.

Any program providing universal or even a significant expansion of access to counsel will likely have substantial effects on legal services providers' staffing needs, training programs, caseloads, and perhaps attorney retention rates. Strategic, advanced thinking by providers, together with the jurisdiction, about how to design and implement the program and about what internal and external supports providers will need is important to ensure that the provider community is equipped to meet the program's demands and to provide quality legal representation for tenants.

#### **i. Staffing and Training**

Because UAC programs will require a large pool of attorneys interested in learning and practicing housing law, jurisdictions considering a universal access to counsel program should take into account the time it will take to build that pool and to hire and train staff attorneys and an adequate number of experienced housing attorneys as supervisors. Jurisdictions (or the legal service providers they partner with) may need to work with local law schools both to encourage them to refer graduating students and alumni for job openings, and to consider increasing the number of courses and law clinics they offer on housing law. Jurisdictions may also want to recruit retired attorneys or tap into the pro bono programs of local firms that do not have conflicts with existing clients. Any implementation plan should include specific strategies about how the jurisdiction, and the legal services providers it works with, will recruit enough qualified attorneys. The plan should budget both time and money for those efforts.

Because staffing such broad access to counsel may mean hiring many attorneys who are relatively new to housing litigation practice, providers likely will also need to provide additional training and supervision for the new hires. Less-experienced attorneys may need additional guidance in assessing the best strategy for handling a matter, drafting papers, and assessing the strength of claims. They also will not be able to carry caseloads as large as those of more experienced attorneys. Accordingly, both the budget for the program and the implementation timeline need to account for additional supervisors and training time.

## ii. Retention

Legal services attorneys typically have large caseloads and deal with case-related emergencies on a regular basis. However, the number of cases and the nature of the housing caseload may change with introduction of a UAC program. In the past, because of limited resources and, for some, a philosophical commitment to orienting work around a specific neighborhood or community, legal services providers have determined which tenants they can or should represent. Attorneys might screen, for example, for: whether a client was in particularly dire circumstances; whether having counsel would make the case more likely to result in a favorable outcome for the client or the conditions in the affected building; whether the case was likely to make “good law”; or whether the case was referred by a community group or related to tenant organizing efforts. The UAC program creates a different model more akin to that of public defenders for criminal cases. In New York City, the UAC providers are required to accept all income-eligible tenants referred to them, unless the office has a conflict of interest.

While the primary focus of a UAC program will be helping tenants, jurisdictions implementing such programs should also consider how such programs may pose challenges for legal services providers. The providers will have to determine how to balance other types of litigation and legal services with the large numbers of individual eviction cases that they will be assigned through a UAC program. In addition, the change in the nature of the practice may have an effect on attracting and retaining attorneys in legal services programs. Caseloads may increase if hiring and training programs cannot keep up with need, and attorneys may find the pressures to provide adequate representation to increasing numbers of clients difficult to handle. Some attorneys may want to supplement their work representing individual tenants in eviction proceedings with litigation involving

community organizations, tenant groups, and affirmative group litigation involving rent strikes, demands for repairs, abatement of rent, or cases seeking the appointment of an administrator to run a building instead of the landlord. Ensuring that the UAC attorneys have an appropriate caseload and offering them the opportunity to handle other types of litigation will expand their litigation experience, make them more effective advocates, and may increase longevity in the practice. Jurisdictions therefore may need to develop, and budget for, sufficient staffing to ensure appropriate caseloads and to permit such litigation opportunities.<sup>45</sup>

## c. When and how will eligible tenants be advised about the availability of assigned counsel?

Determining how best to advise tenants that they are entitled to counsel under a UAC program is critically important. The time and manner of this determination will depend upon local court procedures. In New York City, eviction proceedings begin when a landlord serves a tenant with court papers and files the papers in Housing Court.<sup>46</sup> Tenants must answer non-payment proceedings by filing a written or oral answer in the clerk's office; the tenant is then assigned a date to appear in court.<sup>47</sup> For “holdover” proceedings (eviction proceedings brought for any reason besides non-payment of rent), the clerk's office assigns a court date when the landlord files the court papers, and the tenant can answer the petition in the courtroom on the assigned date or, in some cases,

<sup>45</sup> Group litigation may also significantly reduce the number of eviction proceedings brought against individual tenants by resolving building-wide rent and repair issues.

<sup>46</sup> Eviction proceedings in New York City are summary or special proceedings, therefore, the pleadings include a notice of petition and petition rather than a summons and complaint. See N.Y. REAL PROP. ACTS. LAW § 731 (Consol. 2018).

<sup>47</sup> If a tenant does not answer the petition within five days from the date of service, judgment will enter in favor of the landlord. See N.Y. REAL PROP. ACTS. LAW § 732. The judge then “may stay the issuance of the warrant for a period of not to exceed ten days from the date of service.” *Id.*

ahead of time in the clerk's office.<sup>48</sup> Accordingly, tenants might come to court to file their answer before an appearance date in the courtroom or they might file their answer on the first appearance before the judge.<sup>49</sup>

Historically, *pro se* tenants who appeared in the clerk's office were only given information about legal services providers if they asked. Now, the clerk's office has been instructed to give *pro se* tenants who live in UAC-covered zip codes a flyer about eligibility and to direct them to an appropriate room to be screened.

Tenants who are unrepresented when they arrive for their first appearance date may be less likely to take advantage of the UAC counsel if they have only a limited block of time within which to resolve the case—if, for example, they must be at work at a particular time or have caregiving responsibilities. To allow tenants to set aside the time to meet with counsel, jurisdictions should consider ways of informing tenants, in advance of their first trip to the courthouse, of the availability of counsel and the process for meeting with counsel.

In New York City, tenants' groups, legal services organizations, and the RTC Coalition have organized meetings to educate tenants and advocates about the UAC program.<sup>50</sup> The city's Tenant Support Unit has begun to conduct outreach to educate tenants about the program. Some advocacy groups have launched door-knocking campaigns in the covered zip codes to make sure people are



aware of their rights and of the eviction process.<sup>51</sup> The RTC Coalition has established a website to help tenants determine if they are eligible for UAC and to connect tenants to attorneys and to tenant organizing groups.<sup>52</sup> Legislation has been introduced in the New York City Council to provide funding for an information campaign. In addition, the OCA website for the Housing Court highlights the UAC program and explains how an attorney can help, tells how to find UAC lawyers in the courthouse, and provides a link to a webpage with specific information about eligibility criteria.<sup>53</sup>

Jurisdictions might also consider including information about the availability of assigned counsel in the petition or summons served on the tenant. Public service ads may also be helpful. Of course, tenant organizers can play a critical role in informing people about the availability of counsel.

<sup>48</sup> *Id.* at §§ 735,743. In 2017, non-payment summary proceedings were 87.6 percent of the eviction cases filed in the Housing Court in New York City. The percentage of holdover summary proceedings was 12.4 percent. 2017 ANNUAL REPORT AND STRATEGIC PLAN, *supra* note 19, at 18–19 tbls. 2–4 (listing the total number of evictions filed as 230,071, the total number of non-payment petitions as 201,441, and the total number of holdover petitions as 28,630).

<sup>49</sup> N.Y. COMP. CODES R. & REGS. tit. 22, § 208.42(d) sets out the required language in Notices of Petition served in summary eviction proceedings.

<sup>50</sup> See Testimony of Jordan Dressler, *supra* note 39, at 6.

<sup>51</sup> *Educating Tenants on Their Right to Counsel*, THEINK.NYC (Nov. 2, 2018), <http://theink.nyc/educating-tenants-right-counsel/>.

<sup>52</sup> See EVICTION FREE N.Y.C., [evictionfreenyc.org](http://evictionfreenyc.org) (last visited Nov. 20, 2018).

<sup>53</sup> See N.Y. UNIFIED COURT SYSTEM, NEW YORK CITY HOUS. COURT: ABOUT UNIVERSAL ACCESS <http://www.nycourts.gov/courts/nyc/housing/aboutUniversalAccess>.



#### **d. How will tenants be educated about the advantages of being represented?**

Tenants may need to be educated about the role counsel can play in landlord-tenant proceedings, both to allay tenants' fears about Housing Court and to achieve the goal of having universal, or close to universal, representation for tenants in court. Again, door-knocking and public service campaigns, educational and organizing efforts by community groups, and information provided to tenants by the court system (in the court filings or in the courthouse) may be used to explain how having an attorney can help the tenant. The information should make clear that attorneys can save the tenant time by appearing for the tenant in certain proceedings; affect the outcome of the case by identifying and interposing possible defenses and counterclaims, by negotiating better settlements; and helping the tenant obtain rental assistance or other benefits. Jurisdictions should also consider whether judges should be asked to explain the benefit of counsel to eligible tenants who have declined to be represented before accepting settlements or allowing the case to proceed.

#### **e. How will counsel be assigned to a tenant?**

The process of connecting tenants to counsel should be as quick and easy as possible, to ensure that tenants are able to take advantage of counsel. In New York City, the process involves several steps after a tenant is informed of the availability of counsel: the tenant must establish eligibility under the program's income restrictions; the tenant must be assigned to a particular attorney; and the tenant and that attorney must meet or arrange a later time to do so. If a tenant's first meeting with assigned counsel is at the courthouse on the date of the tenant's first court appearance, the attorney generally will not be able to review the history of the landlord-tenant relationship or access building records and other documents relevant to the tenant's case. The case therefore may need

to be adjourned to allow for a thorough investigation. This delay may discourage tenants, especially those who will lose another day of work or have to pay for another day of child- or elder-care in order to meet with the attorney, from taking advantage of the availability of counsel.<sup>54</sup> Accordingly, every effort must be made to minimize the steps in the process of obtaining representation by assigned counsel.

Assigning counsel at the earliest possible time will help tenants, the court, and counsel for both sides. Early assignment of counsel may result in fewer adjournments, for example, and may mean that appropriate answers and motions are filed earlier in the proceedings. Attorneys will be able to obtain necessary information earlier in the proceeding, which will facilitate effective defenses or settlement discussions with opposing counsel. Jurisdictions implementing a UAC program need to consider whether the program should assign counsel before the first court date, and determine how tenants should be advised of their access to counsel and referred to the proper office.<sup>55</sup>

#### **i. Determining Tenant Eligibility**

In any UAC program, eligibility for assignment of counsel should be determined as early and as quickly as possible so that tenants get the benefit of counsel for the entirety of their legal case. In New York City, the process for determining eligibility in court is evolving. HRA representatives and attorneys, depending on the courthouse, have conducted initial financial eligibility screenings when a tenant was referred to an attorney.

<sup>54</sup> Of course, once counsel is retained, tenants may not have to appear at every court date because their attorneys may appear for them.

<sup>55</sup> In New York, it may be difficult for an attorney to be assigned before the first court date, at least until the UAC is fully rolled out, because of the complexity of the roll-out process and the differing times for a tenant to answer a petition. Although Notices of Petition currently provide information about offices providing legal services and legal assistance (N.Y. Comp. Codes R. & Regs. tit. 22, § 208.42(d)), a referral to a UAC provider in Notices of Petition may be difficult to fashion and may confuse tenants because only residents in some zip codes are currently eligible for the service.

Now, the program is moving toward a system where all screening will be done by attorneys because of concerns that discussions about income eligibility should be subject to attorney-client privilege. The city's courthouses do not have sufficient space for attorneys or HRA to speak with tenants in a manner ensuring confidentiality. In addition, the UAC attorneys have limited time to spend with prospective clients, and tenants often do not know to bring documents verifying their income. The determination of UAC eligibility in court therefore may not be final, and an additional review of the tenants' financial situation or any possible conflicts for the attorneys may be necessary.

Coordinating an efficient system to determine eligibility will be a challenge for any jurisdiction considering UAC, particularly in light of spatial limitations in courthouses. Again, finding ways to notify tenants before they appear at the courthouse about the availability of counsel, the steps in the process, and the documents they'll need to bring with them to prove their eligibility, will help make the system work more smoothly.

## ii. Assigning Counsel

Any jurisdiction considering implementing a UAC program will have to consider how and at what stage counsel will be assigned to each tenant. Assigning cases to a designated legal services provider in the courthouse when the tenant first appears in court ensures that tenants quickly obtain an attorney and do not have to reach out to a legal services office on their own, thus minimizing tenants' inconvenience and uncertainty. However, as discussed above, in-court assignment of counsel limits an attorney's ability to accurately assess the prospective client's eligibility, and to identify and evaluate the tenant's defenses in the case; therefore, adjournment of the case may be necessary for additional follow-up.

In addition, in order to maintain the benefits that come from having community-based legal services offices in those jurisdictions that have local offices, it may make sense to consider factors other than income eligibility when assigning a tenant to a specific legal services provider for representation. For example, if a tenant has another case in which she is represented by a legal services provider in her community (e.g., a Family Court case or an eligibility issue with public benefits) or if she is a member of a tenant organization represented by a specific legal services provider, the assignment to the UAC legal services provider that happened to be in court rather than the one involved with the tenant or tenants' association could create confusion. Similarly, if an office specializes in a particular type of eviction case or serves a specific type of client, it may make sense to assign individual cases with those characteristics to that office.

## f. What to do when tenants decline representation?

Jurisdictions considering and implementing a universal access to counsel model will need to grapple with what to do when tenants decline an offer of legal counsel. In New York City, no data has been kept about the number of tenants declining the offer of counsel, but some observers estimate that between 15 and 30 percent of eligible tenants have declined the offer of counsel since UAC was initiated.<sup>56</sup>

<sup>56</sup> Estimates of the percentage of tenants declining UAC counsel was provided during meetings and interviews the Furman Center conducted with various stakeholders. The rate may change as word spreads about the program and about tenants' experiences with counsel.

The decision to decline representation appears to be based upon a variety of factors and concerns.<sup>57</sup> Tenants face obligations and pressures outside of their eviction proceedings, and may not have the time to undergo eligibility screening and meet with a UAC attorney, particularly if a follow-up meeting is required. They may want to get their cases quickly resolved on their first appearance in court so that they can get to work or pick up their children. Additionally, some tenants have expressed the view that an attorney is only required when a person has done something “wrong,” and they do not believe that they have done so. Others have been in court before, know the landlord’s attorney, and believe they can handle the situation themselves. It is also possible that tenants have previously attempted to obtain a legal services attorney only to be told that the attorney cannot take their case (given the limited resources of legal services offices in the past), tenants may therefore think that the present offer of assistance will ultimately result in the same outcome.

Additionally, some tenants do not consider the Housing Court to be a “real court.” Rather, many litigants—both landlords and tenants—seem to view it simply as a vehicle for debt/rent collection rather than a forum in which to assert and adjudicate legal rights. Some tenants are unfamiliar with legal service providers or skeptical about free lawyers, and decline counsel because they do not trust that they will be represented vigorously.<sup>58</sup> Some tenants are concerned about making their landlord angry and fear the possible consequences if they elect to be represented by

counsel.<sup>59</sup> In New York City, some landlords’ attorneys have approached tenants before an attorney is assigned<sup>60</sup> and convinced them to work out a settlement without counsel. In those circumstances, when the Court then advised that an attorney can be assigned, some of those tenants nevertheless declined counsel. As noted earlier, many tenants may not understand that an attorney can appear in court on their behalf; investigate relevant issues that a tenant is not likely to pursue on their own (such as rent overcharges); assert claims that the tenant may not know to raise (such as claims that a landlord has failed to provide a habitable dwelling unit); review building and housing code violations, and identify jurisdictional or procedural problems with the court proceedings.

Ensuring that tenants who decline counsel do so knowingly is essential. In New York City, the Housing Court has advised judges, and other staff about the UAC program. The judges handling UAC cases have been implementing comprehensive procedures to ensure that tenants know about the UAC program and the availability of counsel. These procedures require that, when any unrepresented tenant from the UAC covered zip codes appears in the courtroom, she is referred by the courtroom clerk or the court attorney to the UAC legal services provider assigned to cover the part that day. If the tenant appears before the judge without an attorney, the judge sitting in the UAC courtroom usually asks the tenant if she has spoken to an attorney. If the tenant declines counsel, the judge or the judge’s court attorney confirms that the tenant knows of the availability of counsel.

<sup>57</sup> Assessment of why tenants may decline or not wish to retain counsel is based upon Furman Center staff’s interviews with unrepresented non-UAC eligible tenants, judges, and legal services providers, as well as observations in the UAC courtrooms. See also Sara Sternberg Greene, *Race, Class, and Access to Civil Justice*, 101 IOWA L. REV. 1263 (2016); Rebecca L. Sandefur, *The Importance of Doing Nothing: Everyday Problems and Responses of Inaction*, in TRANSFORMING LIVES: LAW AND SOCIAL PROCESS 112, 117-19 (Pascoe Pleasence et al., eds., 2007).

<sup>58</sup> See Greene, *supra* note 62.

<sup>59</sup> In New York City, settlement discussions are usually conducted in crowded hallways of the courts. Surrounded by other litigants, tenants stand or sit on benches while they discuss cases and negotiate resolutions. *Pro se* litigants are generally at a disadvantage because of their limited knowledge of the law and their lack of experience with the courts. The noise and crowds may be overwhelming to tenants and many litigants simply wish to resolve the matter and leave the court.

<sup>60</sup> The practice of approaching tenants before their counsel is assigned may raise concerns about the landlords’ lawyers’ professional ethics.

Judges accepting a stipulation or consent order from unrepresented tenants also explain the benefit of counsel to eligible tenants who have chosen not to be represented. Tenants in New York City accordingly are advised of the availability of counsel by the courtroom clerk or the court officer, the court attorney,<sup>61</sup> and the judge. This repetition may help tenants become more comfortable with the idea and/or more likely to accept assistance.

As more tenants hear the benefits of counsel explained and observe the advantages that attorneys have provided others, they may be less likely to decline the assignment of counsel. The more pervasive presence of legal services attorneys in the courtroom may also increase acceptance of the view that legal representation in an eviction case should be routine and universal.

#### g. How to plan for the effect on housing court's resources?

The expansion of legal services and implementation of a UAC program will necessarily affect the courts that handle landlord-tenant cases. Jurisdictions must therefore budget the time and resources needed to provide courtroom staff and support personnel, space in the courthouse, and other adjustments needed to make expanded access to counsel function efficiently.

#### i. Judicial and Non-Judicial Court Staff

The adoption of UAC is likely to result in major shifts in how judges and court personnel spend their time. In particular, jurisdictions will likely see increases in the number and complexity of pleadings filed as more tenants are represented.<sup>62</sup> At the same time, the number of times that *pro se* litigants appear in the clerk's office to file

post-judgment motions<sup>63</sup> or seek advice will likely decrease as more tenants are represented. As a result, the clerk's staff may be able to spend less time explaining procedures such as how the Court operates, what papers need to be filed, or where legal services can be found. Judges and court attorneys will also likely spend less time discussing and explaining stipulations and orders with tenants, and will have more time to devote to considering and deciding legal issues raised by counsel. Moreover, with more represented litigants, more cases may be scheduled for trial, which may affect the Court's calendars significantly. Such changes may require additional judges, court attorneys, court officers, and clerical staff to be assigned to housing courts.

In New York City, the number of answers and motions filed alleging defenses—including those interposing counterclaims or raising new and perhaps novel legal and factual issues—appears to have increased under UAC.<sup>64</sup> Specifically, the number of pretrial motions filed in Housing Court increased by 19.1 percent between 2014 and 2016.<sup>65</sup> Similar changes may be expected in any jurisdiction that implements a dramatic increase in tenants' access to counsel.

63 In New York City, *pro se* tenants who have a judgment entered against them or who receive a warrant of eviction often file motions to vacate that judgment or to seek a stay of eviction. Court clerks are tasked with explaining to *pro se* tenants' basic procedures about how to fill out necessary forms for such motions.

64 Changes in the nature of the practices were also gleaned from meetings and interviews the Furman Center conducted with various stakeholders.

65 See 2017 ANNUAL REPORT, *supra* note 19, at 20-21 ("Housing Courts saw an overall increase in the number of pretrial motions filed (an increase of 19.1 percent) along with a decrease in the number of emergency orders to show cause (a decrease of 15.8 percent). These trends taken together suggest that the last two years have seen more litigation occurring in the earlier, pre-judgment stages of eviction proceedings and fewer requests being made by tenants to restore cases to the court calendar to dispute a negative judgment or to request additional time to meet conditions contained in a stipulated agreement with a landlord.").

61 In New York City, court attorneys are assigned to aid judges in conferencing cases with litigants, researching and preparing draft decisions, and carrying out related tasks.

62 Changes in the nature of the practices were gleaned from meetings and interviews the Furman Center conducted with various stakeholders.



## ii. Need to Improve Physical Facilities and Technology in Court

When a UAC program is implemented, it will be necessary to ensure that the courthouse has adequate space to accommodate more lawyers and other personnel required for the program. Depending upon the jurisdiction, additional courtrooms, space for interviewing tenants and conferencing cases, and improved access to copy machines, computers and other technology, as well as access to case files, may be needed.

In New York City, the UAC program has resulted in a large increase in the number of tenants' attorneys and OCJ/HRA staff, which has meant that more people appear in the courts every day. Most of the Housing Courts in New York City currently do not have adequate space for these attorneys, their support staff, and OCJ/HRA staff to interview prospective clients confidentially. Clerks' offices in most of the city's Housing Court facilities are crowded and accordingly have long lines for those seeking information or to file papers.

Jurisdictions considering expanded access to counsel programs should review their physical facilities and available technology to ensure that the infrastructure can meet the new demands the program will entail, and budget funds and plan implementation timelines accordingly.

## h. How will UAC affect landlords' interactions with tenants and their lawyers?

A UAC program may also have important consequences for landlords and the landlords' bar. Attorneys representing landlords can no longer assume that most of their cases will settle on the first appearance date in Housing Court. It is likely that they will have to respond to more motions than they did in the past. If a UAC program leads to an increase in the number of trials, that may increase the landlords' lawyers' staffing needs.

These developments may make pursuing eviction cases in court more costly for landlords.<sup>66</sup>

If litigation becomes more costly, landlords' attorneys' may change their litigation strategies. As previously noted, in response to the reported increase in adjournments and motion practice in New York City, some landlords' attorneys have more vigorously sought attorney's fees or requested court orders compelling tenants to deposit their rent with the court as a condition of obtaining adjournments. Observers also report that both landlords' and tenants' attorneys are litigating cases more aggressively. Tenants are interposing substantial defenses and counterclaims and filing more motions.<sup>67</sup> Further, landlords' attorneys may be less willing to negotiate settlements with the newer, less experienced tenant attorneys who now make up a larger share of tenant attorneys than they have in the past. Though aggressive litigation may lead to better outcomes for the parties, courts should anticipate this shift in practice, and consider how best to address any negative dynamics between opposing counsel that result.

As the cost of litigation increases, landlords may also turn more frequently to harassment or other extralegal tactics to encourage tenants to move out of their buildings rather than pursuing litigation. For example, landlords may increasingly use the long-standing practice of offering tenants "buy-out" agreements to surrender their homes in jurisdictions with tenant protections, or even increase the number of illegal evictions. At present, UAC models do not provide counsel for tenants facing pre-litigation buy-out offers or other tactics. Jurisdictions considering UAC programs

<sup>66</sup> Some landlords' attorneys and court personnel have suggested that there may be instances in which a limited group of low-income landlords of small buildings should be eligible for legal services assistance. Jurisdictions may wish to study whether small and low-income landlords (e.g., owners of a single small building in which they reside) who do not have the resources to hire an attorney should be assigned counsel in some landlord-tenant proceedings related to repeated non-payment of rent or nuisance cases.

<sup>67</sup> See 2017 ANNUAL REPORT, *supra* note 19, at 20-21.

may want to require collection of data to reveal whether landlords are employing work-arounds more frequently, and provide contingencies for additional resources to address such unintended consequences.

Similarly, because New York's UAC legislation only covers litigation in Housing Court and a limited group of administrative hearings,<sup>68</sup> some landlords have reportedly turned to other avenues to evict their tenants, such as ejectment actions filed in New York State Supreme Court.<sup>69</sup> Jurisdictions considering expanded access to counsel programs should think through whether such work-arounds might occur, and build in protections so that their programs are not undermined.

## V. Conclusion

New York City's Universal Access to Counsel legislation is groundbreaking, and its experience in implementing the UAC program provides an opportunity for other jurisdictions to gain insights for designing and implementing their own legal services programs. This Policy Brief details the program's initial phase and offers some lessons learned and considerations for other jurisdictions contemplating establishing a Universal Access to Counsel program as they think through the logistical, strategic, and procedural issues that expanding access to counsel entails.

### Authors

Vicki Been  
Deborah Rand  
Nicole Summers  
Jessica Yager

### Special Thanks

Sophia House  
Marie Mercier

### Acknowledgements

We are not listing the many individuals who we talked with about the implementation of Universal Access to Counsel in New York City because we talked with them confidentially, but we are grateful to the many judges, court personnel, tenant's attorneys, tenant organizers, advocacy groups, landlords' attorneys, landlords, and Human Resource Administration staff. We are also very grateful to the following students for excellent research assistance: Maia Cole, Krista Duffy, Ethan Fitzgerald, and Andrew Gerst.

### About the NYU Furman Center

The NYU Furman Center advances research and debate on housing, neighborhoods, and urban policy. Established in 1995, it is a joint center of the New York University School of Law and the Wagner Graduate School of Public Service. More information can be found at [furmancenter.org](http://furmancenter.org) and [@FurmanCenterNYU](https://twitter.com/FurmanCenterNYU).

<sup>68</sup> Jurisdictions may wish to consider expanding the scope of available representation to include other administrative hearings or appeals.

<sup>69</sup> However, while possible, those alternative methods of obtaining possession of apartments have not been widely pursued as they are substantially more complicated and expensive than summary proceedings.