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HOUSE DEMOCRATIC POLICY COMMITTEE

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**House of Representatives**  
COMMONWEALTH OF PENNSYLVANIA

**HOUSE DEMOCRATIC POLICY COMMITTEE HEARING**

**Topic: Legal Aid for Tenants Facing Eviction**

**Virtual – Harrisburg, PA**

**October 9, 2020**

**AGENDA**

- 10:00 a.m. Welcome and Opening Remarks
- 10:10 a.m. Panel One:
- Patrick Cicero  
Executive Director, Pennsylvania Legal Aid Network
  - John Pollock  
Coordinator, National Coalition for a Civil Right to Counsel
  - Sam Chenkin  
Founder, Reclaim The Sector
- 10:30 a.m. *Questions & Answers*
- 10:50 a.m. Panel Two:
- Bob Damewood  
Staff Attorney, Regional Housing Legal Services
  - Kevin Quisenberry  
Legislative Director, Community Justice Project
  - Rasheedah Phillips  
Managing Attorney of Housing Policy, Community Legal Services, Inc.
  - A. Michael Snyder  
Chancellor, Philadelphia Bar Association
  - Catherine Carr  
Civil Gideon and Access to Justice Task Force Co-Chair, Philadelphia Bar Association
- 11:30 a.m. *Questions & Answers*
- 11:50 a.m. Closing Remarks

**Pennsylvania House of Representatives  
House Democratic Policy Committee  
Hearing on Legal Aid for Tenants Facing Eviction**

**October 9, 2020**

**Testimony of Patrick M. Cicero, Esq.  
Executive Director of the Pennsylvania Legal Aid Network, Inc.**

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Chairman Sturla, Representative Cephas, Representative Kenyatta, Representative Innamorato, and members of the House Democratic Policy Committee, my name is Patrick Cicero and I am the Executive Director of the Pennsylvania Legal Aid Network, Inc. or PLAN. Thank you for the opportunity to testify this morning on the critical need for legal aid for tenants facing eviction. I appreciate the opportunity to shine light on this issue. Others who will testify today will discuss the reasons why eviction defense and comprehensive housing policy go hand in hand and are necessary tools in ensuring dignity and the human right to shelter that should be enjoyed by all Pennsylvanians regardless of income or access to resources. I will focus my testimony on the complexity of the issues involved, the value of working through existing funding structures, the need to provide adequate funding to support housing and other critical legal aid work, and the role that PLAN plays in the delivery of civil legal aid in our Commonwealth.

PLAN is a network of fifteen non-profit legal aid offices in Pennsylvania providing civil legal aid to low income households and victims of domestic violence. We are the only comprehensive system of legal aid offices that covers every county in Pennsylvania through our regional programs and also provides services statewide through specialty projects on critical legal needs. Collectively, as of June 30, 2020, the PLAN system had 600 full-time equivalent staff members, including 300 attorneys and 122 paralegals. Last year, our programs handled approximately 73,000 civil legal cases. In the category of rental housing, PLAN programs handled more than 16,500 cases. This was 23% of all cases handled by our programs last year. Of course, the number of cases that we handle each year pales in comparison to the need. A recent study prepared for the National Council of State Housing Agencies estimates that by January 2021, there could be as many as 240,000 evictions filed in Pennsylvania because of COVID-19.<sup>1</sup> Clearly, the need is significant.

You will hear from my colleagues about the important role that legal representation can have in the context of eviction. Even in states like Pennsylvania where we are mostly a tenancy at will state – which means that a landlord can evict not only for breach of lease terms, but also for

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<sup>1</sup> Analysis of Current and Expected Rental Shortfall and Potential Evictions in the U.S., National Council of State Housing Agencies, prepared by Stout Risius Ross, LLC, Appendix B at 36. (September 25, 2020). Available at: [https://www.ncsha.org/wp-content/uploads/Analysis-of-Current-and-Expected-Rental-Shortfall-and-Potential-Evictions-in-the-US\\_Stout\\_FINAL.pdf](https://www.ncsha.org/wp-content/uploads/Analysis-of-Current-and-Expected-Rental-Shortfall-and-Potential-Evictions-in-the-US_Stout_FINAL.pdf)

end of term – there is significant value in having a lawyer present for tenants. My colleagues will discuss this in more depth, but simply put, when low-income Pennsylvanians can access legal representation, they are far better able to secure their income, housing, health, and families.

We are encouraged by your interest in ensuring that tenants can access legal representation when facing eviction. PLAN has long supported a civil right to counsel. We were very much involved in 2007 when the Pennsylvania Bar Association followed the lead of the American Bar Association in recommending such a right. Our commitment remains steadfast, and we look forward to working collectively with the legislature and critical stakeholders.

In the context of your examination of how to provide representation to tenants, it is important for me to urge patience and caution. In my view, it is better to get this right through a deliberative process rather than done quickly. On this point, I would urge the formation of a legislative working group that seeks to bring together stakeholders – including the courts – to put together legislation that anticipates the roadblocks and seeks to overcome them.

In the context of any right to counsel legislation, I believe there are a few critical factors that need to be considered:

First, consider providing funding to accommodate existing structures for the provision of civil legal aid to low income households. Currently, funding for legal aid at the state level flows through the Department of Human Services (DHS) for state and federal funds. In addition, the Pennsylvania IOLTA Board, an independent board of the Pennsylvania Supreme Court, administers funding for legal aid from IOLTA accounts and Access to Justice Act filing fee revenue. These entities have well established processes in place for the distribution of this funding to support a comprehensive legal aid system.

Both entities contract with PLAN and its member programs to deliver legal services to low income households. IOLTA also contracts with additional legal service providers who have discrete focus on specialized areas of law. For our part, PLAN receives significant funding because we are the only comprehensive network of programs that covers all 67 counties in the state and allocates funding based on poverty population. This ensures equitable access to resources across the state. In almost every county in the state, PLAN programs are the only legal aid program that serves low-income clients across an array of issues including housing. We do a good job at this, too. In January, the Pennsylvania IOLTA Board released an independent report from experts of Franklin & Marshall College, titled [Economic Impact of Civil Legal Aid in Pennsylvania](#). A key finding from the report is that for every dollar invested in PLAN-funded civil legal aid programs, Pennsylvania received \$12 in economic benefits.

Legislation creating funding for the right to counsel should work within this existing structure, either through DHS or through the PA IOLTA Board and through their traditional network of funded entities. There is no need to create parallel or redundant systems.

Second, it is important that you engage with the court system – including the Administrative Office of Pennsylvania Courts – during this process to ensure that whatever legislative right is developed will be able to be implemented by the courts. Our court system is unified in name only, and it is clear that a right to counsel is only as effective as the enforcement of that right, which will occur at the local level. There are 60 judicial districts in Pennsylvania – each of which has a President Judge who exercises significant authority over the manner in which the business of the courts is conducted. Furthermore, there are 546 magisterial district judges across 66 counties, as well as the Philadelphia Municipal Court, who are the frontline entities in eviction cases in Pennsylvania. Any right to counsel legislation must plainly and clearly spell out when the right attaches, and must consider the complexity of the judicial system in which this right is to be enforced.

Third, I would urge you to put into place a mechanism that ensures sufficient funding and that allows additional eviction representation to occur. This requires the legislation to be drafted in such a way so that the funding does not replace existing funding that is already provided. In other words, we do not want to supplant the housing/eviction work that is already being done with existing funding, but rather want to supplement this funding to deliver additional benefits to Pennsylvanians facing eviction. Currently, certain rules restrict programs receiving funding from providing representation on issues where the state has the obligation to provide counsel. The framework of those restrictions should be carefully considered in developing right to counsel legislation in eviction proceedings.

Thank you for the opportunity to provide my high-level thoughts at this hearing. As legislation is developed, I look forward to providing specific feedback and suggestions to ensure success, and look forward to working with the General Assembly to ensure that meaningful access to the civil right to counsel across the Commonwealth can become a reality.

I am available for any questions that the Committee may have about my recommendations and testimony. Of course, even after the hearing, I am available at my contact information which is below.

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**NCCRC**

National Coalition for a  
Civil Right to Counsel



**The Increased Need for an Eviction Right  
to Counsel in the COVID-19 Era, and What  
Pennsylvania Can Do**

October 9,  
2020

# RTC before COVID-19



## BACKYARD

NEXT CITY ON HOUSING EQUITY

### Is Tenants' Right to Counsel On Its Way to Becoming Standard Practice?



JARED BREY DECEMBER 10, 2019



MOST POPULAR

A Tale of Two Community Reinvestment Act Proposals

# Eviction RTC advancements

Enacted: NYC, San Francisco, Newark, Cleveland, Philadelphia

Pending:

- Federal level: Reps. Pressley, DeLauro, Clyburn; Sens. Merkeley, Harris
- State level: CT, MA, MN
- Local level: Boulder, Los Angeles, Santa Monica

In the works: Baltimore, Central Valley CA, Charleston, Chicago, Delaware, Detroit, Jersey City, Kansas City, New York, Oklahoma City, Pennsylvania, San Antonino

# Philadelphia data pre-COVID

- Stout study:
  - Only 8% of tenants (but 81% of landlords) have attys
  - 78% of pro se tenants disruptively displaced, compared to 5% of tenants w/counsel
  - \$3.5 million investment in RTC would yield \$45 million in avoided costs
- 20% of shelter use is due to evictions (source: city task force)
- 12% of all evictions potentially unjust due to violation of city ordinances (source: WHYY study)

# RTC funding

- NYC: \$200 million in general revenue. Stout report predicted \$320 million net savings
- San Francisco: \$10.5 million in general revenue (\$750k increase in Aug 2020)
- Newark: \$400k in general revenue
- Cleveland: \$300k in general revenue, add'l bridge funding from United Way

# RTC successful results

- Percentage of tenants remaining in homes: NYC 84%, San Francisco 67%
- Decline in filing rate: NYC 30%, San Francisco 10%
- Decline in default rate: NYC default rate down 34%
- Increase in representation rate: NYC has gone from 1% to 38%.

# COVID-19 evictions and the increased need for RTC

1. Increased complexity / enforcement issues
2. Increased risks to tenants (health if doubling up, incarceration for perjury)
3. Increased LL illegal behaviors
4. Moratoria alone just punt problem down the road

Additional: need for representation to access / use rental assistance

## Increased complexity: CDC moratorium

- Vague language in order (nonrenewals of leases? preventing notice to quit? preventing independent sheriff action? withholding rent? halting or dismissal of case?)
- Wildly disparate interpretation / enforcement by courts
- Tenants not covered until declaration is in LL's hands, and many don't know about requirement
- Declaration requirement creates perjury risk if LL attorney tries to put pro se tenant on stand for cross-examination

# Complexity-related enforcement issues from CARES Act moratorium



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CORONAVIRUS



## Despite Federal Ban, Landlords Are Still Moving to Evict People During the Pandemic

ProPublica found landlords in at least four states have violated the ban, which was put in place by the CARES Act but has no clear enforcement mechanism.

≡ TIME

CORONAVIRUS BRIEF

YOUR QUESTIONS ANSWERED

FINDING HOPE

ENTERTAIN YOURSELF



NEWSLETTER

U.S. • COVID-19

## Renters Are Being Forced From Their Homes Despite Eviction Moratoriums Meant to Protect Them

# Complexity-related enforcement issues with CDC moratorium

CITY OF HOUSTON

## Review Of Houston Eviction Cases Finds Most Moving Forward Despite Federal Moratorium

Local housing advocates say the moratorium isn't making a significant difference so far.

A Houston Public Media review of about 100 cases heard in Harris County during the first week of the CDC moratorium found the order isn't doing much for people in the Houston area — at least not yet. Only one of those 100 cases was halted by the moratorium.

In another case, a judge rejected a renter's attempt to use the moratorium, saying it didn't apply to her because she has two jobs so she couldn't possibly be "destitute."

## Increased complexity: restarted court processes

- Remote hearings: access issues (lack of right tech, no broadband), technical difficulties, access to interpreters, confusion about whether to show up in person vs. remotely, effective access for people with disabilities, difficulty sharing documents
- In-person hearings: health risks for immunocompromised litigants (esp. given high volume), courts defaulting people for appearing w/o masks
- Mediation: proposed as solution? Results w/o counsel (esp. that lasts beyond mediation?)

## Increased illegality

VICE NEWS

# Landlords Can't Evict Their Tenants, So They're Shutting Off Utilities and Threatening Them Instead

"I'm certain they're aware it's illegal, and I'm certain they don't care."



**LAS VEGAS**  
**REVIEW-JOURNAL**

108°F



**NEWS**

**LOCAL**

**SPORTS**

**BUSINESS**

**OPINION**

**CRIME**

**2020 ELECTION**

**IN'**

**CORONAVIRUS UPDATES**

Home >> Business >> Housing

## Some landlords still locking out tenants amid Nevada eviction freeze

# After the CDC and state moratoria expire ....

The New York Times

The Coronavirus Outbreak >

LIVE

Latest Updates

Maps and Cases

States Reopening

Answers to Your Questions

Newsletter

## *An 'Avalanche of Evictions' Could Be Bearing Down on America's Renters*

The economic downturn is shaping up to be particularly devastating for renters, who are more likely to be lower-income and work hourly jobs cut during the pandemic.

## How the RTC movement is responding

- Federal advocacy: the “3-legged stool” of moratorium, rent relief, and right to counsel
- Continued legislative work: Boulder, Massachusetts, etc.
- Continued pilots work: Baltimore, Houston, Los Angeles, Massachusetts, Richmond, Rochester, etc.
- CARES Act funding (CDBG-CV, CRF, ESG): advocate to use some for representation (<https://bit.ly/2FAG6KZ>)

# What Pennsylvania can do

NEWS

## Wolf calls on Pa. Legislature to extend eviction moratorium, protect renters and homeowners

*Republicans say the best way to provide relief is to get the economy back up to full speed.*

**Sam Ruland** York Daily Record

Published 12:32 p.m. ET Sep. 8, 2020 | Updated 4:58 p.m. ET Sep. 8, 2020



 NEWS  
wpxi.com

Weather Live Stream Video Decision 2020 News Coronavirus 11 Investigative

BREAKING NEWS | 20 residents, 2 staff members test COVID-19 positive at Westmoreland Co. nursing home

FROST ADVISORY IS IN EFFECT

## Confusion over how federal eviction moratorium applies to Pa. impacting renters

## What Pennsylvania can do

- Push for “3-legged stool”: federal and state moratorium, rent relief, right to counsel
- Enact **enforceable right** to counsel for tenants facing eviction (not just expanded rep): being contemplated at state level in MA, MN
- Expand CARES Act funding (CDBG-CV, CRF, ESG): PA allocated \$8 million in CRF, but more needed (other jurisdictions' allotments: <https://bit.ly/2FAG6KZ>)

# Contact

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**Testimony Before the House Democratic Policy Committee**  
**Robert Damewood, Regional Housing Legal Services**  
**October 9, 2020**

Good afternoon. My name is Bob Damewood and I am a staff attorney in the Pittsburgh office of Regional Housing Legal Services. Thank you for your focus on providing a right to counsel in eviction cases and for giving me the opportunity to speak today.

RHLS provides free legal services to non-profit organizations that engage in affordable housing or community development activities that benefit low-income Pennsylvanians. Since 1973 we have assisted in the completion of over a billion dollars' worth of housing development projects throughout the State. Although we occasionally represent tenant organizations, nearly all of our clients are non-profit, community-based landlords. Prior to joining RHLS in 1997, I worked as a staff attorney for Northwestern Legal Services in Mercer County, where I focused primarily on housing matters, including eviction defense.

I'd like to start with a quote by Matthew Desmond, author of the groundbreaking book Evicted:  
***"If we want more family stability, more community stability, we need fewer evictions."***

Desmond spent a year studying evictions in Milwaukee, and many of his findings are things that the legal aid lawyers speaking today know from first-hand experience. One is that ***the face of the eviction epidemic belongs to moms and kids.***

Desmond found that single mothers with children are particularly susceptible to being evicted. There are many reasons for this. Women are paid less than men. Single mothers must bear the cost of a larger rental unit along with other expenses like childcare and healthcare. Landlords sometimes evict victims of domestic violence. On top of all this, Desmond found that the mere presence of children in the household increased the risk of eviction. Desmond's findings have been substantiated by CMU's CREATE Lab, who mapped eviction filings in Allegheny County and found an extremely close correspondence between areas with a high incidence of eviction filings and those with a high density of single-parent renter households with children as reported by the American Community Survey.

Another of Desmond's findings was that *eviction isn't just a condition of poverty, it's a cause of poverty*. Desmond found strong evidence that being evicted increases the chances of losing one's job. At the very least it can cause a disruption to income as tenants must take off work to move, along with increased expenses and often the loss of personal belongings.

Finally, Desmond echoed numerous other researchers who have found *a link between evictions and a wide range of personal and social ills*, such as the onset of depression; the aggravation of mental illness; suicides; increased substance abuse, domestic violence and illness; decreased academic performance; higher neighborhood instability; and, of course, homelessness.

As John Pollock mentioned earlier, tenants facing eviction experience significantly better outcomes when they have legal representation. This is true even in a tenancy-at-will jurisdiction such as Pennsylvania. In my experience, even in cases where there is no legal right to long-term continued occupancy, legal representation can be the difference between having to live doubled up with family members, or worse, and having the time to locate suitable housing. Where tenants have a right to continued occupancy absent good cause to evict, such as in subsidized housing or manufactured home communities, having legal representation can save a family from losing their home and being uprooted from their community.

In order to design a right to counsel system that is effective throughout Pennsylvania, there is a great deal of work that must be done. We need to engage stakeholders in urban and rural areas, research national best practices, determine whether and how those best practices would work in Pennsylvania, review potential funding sources, and identify a mechanism for setting priorities and allocating funds. Rasheedah Phillips, who you will hear from shortly, has convened a statewide Right to Counsel Workgroup to take on this work. I think all of the initial members of the Workgroup share my belief that this work is vitally important to the wellbeing of Pennsylvania's working families. We would appreciate an opportunity to report our findings and recommendations to this Committee early in the next legislative session.

Thank you for the opportunity to speak on this important topic. I am available to answer any questions you have.

**Pennsylvania House of Representatives  
House Democratic Policy Committee  
Hearing on Legal Aid for Tenants Facing Eviction**

**October 9, 2020**

**Testimony of Kevin Quisenberry, Esq.  
Litigation Director of the Community Justice Project**

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Members of the House Democratic Policy Committee, my name is Kevin Quisenberry. I am the Litigation Director of the Community Justice Project, a statewide law firm within Pennsylvania Legal Aid Network. The Community Justice Project engages in class action litigation and other forms of impact advocacy to help create positive change for low-income residents in Pennsylvania. We have extensive experience litigating and advocating for the rights and interests of lower-income renters in the Commonwealth. Thank you for the opportunity to testify today. I will focus my testimony on the public and private costs of eviction and the corresponding need for access to legal representation by lower-income renters facing eviction and “good cause” protection from eviction for *all* Pennsylvania renters.

**1. Synopsis of the Recommendation:**

The General Assembly should enact legislation to: 1) robustly fund eviction defense legal assistance for lower-income renters, and 2) require “good cause” for *all* residential lease terminations in the Commonwealth, in order to promote housing stability, reduce homelessness and protect against arbitrary, discriminatory, retaliatory, erroneous or otherwise faultless evictions.

**2. Summary of Need:**

Eviction from one’s home, like involuntary displacement, can be devastating to a family, and particularly to lower-income families. Major disruption of a child’s education or a parent’s employment, loss of access to one’s family, neighbors, doctors or church, homelessness, along with the very real risk of psychological injury are some of the common consequences of eviction. Evictions also have destabilizing effects on communities, resulting in increased emergency shelter costs, emergency room costs, law enforcement costs, lost property tax revenue, lost municipal utility revenue, among other things. Of course, evictions are sometimes unavoidable, such as when a tenant violates material contractual obligations or when the property will be converted to a different use. However, arbitrary, discriminatory, retaliatory and otherwise faultless evictions should be prevented whenever possible, in order to minimize the public and private costs of eviction.

The injustice of erroneous and faultless evictions is compounded by the eviction process itself, where renters are *far* less likely than their landlords to be represented by legal counsel. Except for Legal Aid attorneys (and a smattering *pro bono* attorneys), there are, essentially, no legal resources available to low-income renters in the Commonwealth who face eviction. Correcting

this fundamental imbalance in power and access to the courts would significantly reduce the risk of erroneous eviction, and it would greatly reduce the occurrence of and fallout from the staggering number of evictions that occur in the Commonwealth each year.

It is incumbent upon the General Assembly—particularly now, when many thousands of households either are or soon will be threatened with eviction due to the economic crisis caused by the coronavirus pandemic—to take feasible steps to minimize the negative impacts of no-fault lease terminations and erroneous evictions. The Commonwealth should follow the lead of other states and localities that have acted to reduce the societal and personal costs of eviction, by providing funding for eviction defense legal assistance and by providing “good cause” protection against residential lease terminations. Both of these measures have proven to be very effective.

### **3. Reasons Supporting the Recommendation:**

a. Eviction defense legal assistance would greatly help to prevent to erroneous evictions of vulnerable residents.

b. A good cause requirement for residential lease terminations would safeguard against arbitrary, discriminatory, retaliatory, erroneous or otherwise faultless evictions.

c. Eviction defense legal assistance and a good cause requirement for residential lease terminations would help to create housing stability for renters, including seniors, persons with disabilities and persons of color, who disproportionately suffer the harms of no-fault or erroneous eviction.

c. Eviction defense legal assistance and a good cause requirement for residential lease terminations would encourage stable tenancies and responsible ownership practices.

d. Eviction defense legal assistance and a good cause requirement for residential lease terminations would reduce eviction rates, thereby reducing associated costs to the local governments, such as lost property tax revenue, unpaid municipal utility bills and increased costs to address homelessness and hospitalization.

e. Eviction defense legal assistance and a good cause requirement for residential lease terminations would provide protection to landlords against unfounded accusations or litigation by tenants who may seek to challenge the justified termination of a lease and would help to reduce costs that result from eviction.

f. Eviction defense legal assistance and a good cause requirement for residential lease terminations are especially important in the present context of rapidly rising rental costs in communities throughout the Commonwealth.

g. The need for eviction defense legal assistance and a good cause requirement for residential lease terminations has been brought into sharp focus by the economic and health crises caused by the current coronavirus pandemic..

### **4. Research Supporting the Recommendation:**

- **Legal Background**

“Good cause” protection against no-fault residential lease terminations generally means that, as long as the property continues to be used as a residential rental dwelling, a renter’s lease should not be terminated unless the tenant has committed a serious violation of the lease or repeated, lesser material violations of the lease. “Good Cause” protection generally requires adequate notice and opportunity to dispute an allegation of lease breach. A showing of “good cause” to justify the termination of a lease also has been determined by some courts to be an element of the Constitution’s due process protections.<sup>1</sup>

Virtually all federal housing programs provide for a “good cause” lease termination requirement.<sup>2</sup> For example, the Low Income Housing Tax Credit program operated by the Pennsylvania Housing Finance Agency requires a “good cause” provision to be included in the lease, and PHFA has published a model lease addendum for this purpose.<sup>3</sup>

The General Assembly, itself, has legislated “good cause” protection from eviction for *certain* private market renters in Pennsylvania. Under the Manufactured Home Community Rights Act:

A manufactured home community owner may terminate or refuse to renew the lease of a lessee or may evict a lessee and manufactured home occupants only for one of the following reasons:

- (1) Nonpayment of rent.
- (2) A second or subsequent violation of the rules of the manufactured home community occurring within a six-month period.
- (3) If there is a change in use of the community land or parts thereof.
- (4) Termination of the manufactured home community.

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<sup>1</sup> See, e.g., Mitchell v. U.S. Dept. of Housing and Urban Development, 569 F.Supp. 701, 709 - 710 (D.C.Cal., 1983) (“A showing of “good cause” is not only a statutory prerequisite for termination, but also a requirement of due process.”) (internal citations omitted).

<sup>2</sup> See, for example, the Low Income Housing Tax Credit (LIHTC) program. Pub. L. 101-508, § 11701(a)(7) and IRS Rev. Rul. 2004-82, Q&A 5 (2004). See also, for example, 24 CFR 966.4(1) (Low Income Public Housing Program) and 24 CFR 247.3 and 247.4 (applicable to various project-based Section 8 and similar HUD programs).

<sup>3</sup> PHFA’s “good cause” lease addendum is available online at [https://www.phfa.org/forms/housing\\_management/tax\\_credits/manuals\\_and\\_documents/exhibits/lihtc\\_lease\\_addendum.pdf](https://www.phfa.org/forms/housing_management/tax_credits/manuals_and_documents/exhibits/lihtc_lease_addendum.pdf) (last visited 10/08/2020).

68 P.S. §398.3(a). This “good cause” protection easily could be modified and extended to all renters in the Commonwealth.

However, the vast majority of private market renters in Pennsylvania lack this basic, extremely important protection.

There is no civil legal right to counsel in eviction proceedings under Pennsylvania law.

- **Policy Background**

Many states and localities across America have recognized the need for good cause protection against lease termination and have enacted this basic protection for renters.<sup>4</sup> And a growing number have begun to add legal assistance for eviction prevention as a funding priority.

In large part, this has been in recognition of the often extreme hardship borne by families who experience no-fault eviction, and the disproportionate impact of this on lower-income renters. For an excellent analysis of the hardships of eviction, please read Matthew Desmond’s Pulitzer Prize winning book, *Evicted: Poverty and Profit in the American City*. For a similarly eye-opening evaluation of the consequences to families and communities of involuntary displacement, please see Mindy Fullilove’s book, *Root Shock: How Tearing Up City Neighborhoods Hurts America, And What We Can Do About It*. Not only have elected officials begun to understand the destabilizing effects of eviction on families and communities. Many have begun to recognize what scholars and housing advocates have long known: evictions are costly for governments and landlords, and the legal eviction process is (very misguidedly) tilted in favor of eviction as the outcome.

The consequences of eviction are many and multidimensional. The body of research indicates that evictions result in both hard and soft costs to the public, including increased emergency shelter costs, emergency room costs, law enforcement costs, lost property tax revenue, lost municipal utility revenue, etc.<sup>5</sup> Concentrated patterns of eviction in neighborhoods also have

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<sup>4</sup> See, e.g., ARIZ. REV. STAT. § 33-1476 (LexisNexis 1975); Arizona Recreational Vehicle Long-Term Rental Space Act, ARIZ. REV. STAT. § 33-2143 (LexisNexis 2000); Connecticut Mobile Manufactured Homes, CONN. GEN. STAT. § 21-80 (1974); District of Columbia Rental Housing Evictions, D.C. CODE § 42-3505.01 (2001); Florida Mobile Home Park Lot Tenancies, FLA. STAT. ANN. § 723.061 (West 1984); Massachusetts Local Control of Rents and Evictions, MASS. GEN. LAWS ANN. ch. 40 § 1-9 (West 1970); New Hampshire Termination of Tenancy, N.H. REV. STAT. ANN. § 540:2 (1985); New Jersey Removal of Residential Tenants, N.J. STAT. ANN. § 2A:18-61.1 (West 2000); New York Rent Control Act, N.Y. UNCONSOL. LAW § 26-408 (McKinney 1985). For an example of a local ordinance adopting good cause provisions, see Just Cause for Eviction Ordinance, OAKLAND, CAL., O.M.C. § 8.22.3 (2002).

<sup>5</sup> *Id.* See also, e.g., the March 20, 2017 testimony of the Philadelphia Bar Association Civil Gideon and Access to Justice Taskforce before the Philadelphia City Council, available online at <http://www.philadelphiabar.org/WebObjects/PBAReadOnly.woa/Contents/WebServerResources/CMSResources/NeedsandEvictionCrisisTestimony2017.pdf>; M. Desmond, “Unaffordable

been shown to correlate with increases in neighborhood poverty and crime.<sup>6</sup> Evictions cost landlords as well, through lost revenues and increased transactional costs.<sup>7</sup> But by far the harshest costs of no-fault lease termination and eviction are those suffered by the renters who lose their homes, and particularly low-income families.

Eviction is a leading cause of homelessness, especially for families with children.<sup>8</sup> It is directly linked to high rates of housing instability, which often brings about further instability—in family relationships, at school, or at work—compromising the life chances of adults and children.<sup>9</sup> Families displaced from their homes often end up in worse housing in worse neighborhoods,<sup>10</sup> which has been shown to correlate with increased incidence of lead poisoning, asthma and other adverse health effects attributable to environmental factors.<sup>11</sup> Evictions are negatively associated with mental health, leading to increased rates of depression and suicide. And eviction negatively impacts childhood development.<sup>12</sup> It is no surprise that poverty is a leading risk factor for eviction, but studies also suggest that eviction is a driver of poverty.<sup>13</sup> Among many other things, the mere fact of being sued for eviction, a matter of public record in Pennsylvania, permanently mars a person’s reputation as a renter and consumer.

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America: Poverty, housing, and eviction,” *Fast Focus No. 22-15*, University of Wisconsin’s Institute for Research on Poverty (2015), available at <https://www.irp.wisc.edu/publications/fastfocus/pdfs/FF22-2015.pdf>.

<sup>6</sup> *Id.*

<sup>7</sup> *Id.*; see also Pew Charitable Trust, *How Free Legal Help Can Prevent Evictions*, *supra* note 4.

<sup>8</sup> M. Desmond, “Unaffordable America: Poverty, Housing, and Eviction,” *citing* United States Conference of Mayors, *Hunger and Homelessness Survey* (Washington, DC: United States Conference of Mayors, 2013).

<sup>9</sup> *Id.*

<sup>10</sup> *Id.*

<sup>11</sup> See National Coalition for the Homeless, *Healthcare and Homelessness* (July 2009); Matthew Desmond, Harvard University Rachel Tolbert Kimbro, Rice University, *Eviction’s Fallout: Housing, Hardship, and Health*, available at [http://scholar.harvard.edu/files/mdesmond/files/desmondkimbro.evictions.fallout.sf2015\\_2.pdf](http://scholar.harvard.edu/files/mdesmond/files/desmondkimbro.evictions.fallout.sf2015_2.pdf).

<sup>12</sup> See, e.g., Pew Charitable Trusts, *How Free Legal Help Can Prevent Evictions*; March 20, 2017 Testimony of the Philadelphia Bar Association Civil Gedeon and Access to Justice Taskforce; M. Desmond, “Unaffordable America: Poverty, Housing, and Eviction” and the references cited therein.

<sup>13</sup> *Id.*

The issue of no-fault lease termination and eviction, however, is not just a poverty issue. It also is an equity issue. In America, working families headed by racial/ethnic minorities are twice as likely to live under the federal poverty guideline as are white working families, a gap which has markedly increased since the onset of the Great Recession in 2007.<sup>14</sup> This pattern plays out in communities across Pennsylvania. In the City of Pittsburgh, for instance, persons of color are far more likely to rent, rather than own, their homes. Approximately two-thirds of African-American households in Pittsburgh rent their homes, whereas 40.6% of white households rent.<sup>15</sup> Persons of color in Pittsburgh are far less likely to have sufficient income or assets to be able to successfully relocate after a lease termination or eviction.<sup>16</sup> African-Americans in Pittsburgh are far more likely than white households to be housing cost burdened: 46% of African-American households pay more than they can afford for housing, compared to 33% of white households.<sup>17</sup> The disparity in *severe* housing cost burden is even greater: 25% of all African-American households in Pittsburgh pay over half of their income on housing cost, compared to 16% of white households.<sup>18</sup> African-American households are more than twice as likely to live in poverty as white households (33% vs. 14.9%).<sup>19</sup> The same patterns are reflected in the homeless population, where African-Americans constitute the majority of sheltered homeless in Allegheny County, 56.6%.<sup>20</sup> Similar disparities are experienced by female-headed households with children, disabled renters and seniors.<sup>21</sup>

The injustice of these disparities is often made worse by the formal eviction process, where landlords often have legal counsel while low-income tenants lack even access to legal counsel.

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<sup>14</sup> The Working Poor Families Project, *Low-Income Working Families: The Racial/Ethnic Divide* (Winter 2014-2015), available online at: [http://www.workingpoorfamilies.org/wp-content/uploads/2015/03/WPFP-2015-Report\\_Racial-Ethnic-Divide.pdf](http://www.workingpoorfamilies.org/wp-content/uploads/2015/03/WPFP-2015-Report_Racial-Ethnic-Divide.pdf).

<sup>15</sup> *Pittsburgh's Racial Demographics 2015: Differences and Disparities*, pp. 3, 33-34, University of Pittsburgh Center on Race and Social Problems (2016), available online at [www.crsp.pitt.edu/sites/default/files/REPORT.pdf](http://www.crsp.pitt.edu/sites/default/files/REPORT.pdf).

<sup>16</sup> *Ibid.*

<sup>17</sup> 2015-2019 Analysis of Impediments to Fair Housing Choice, p. 78, Table II-22, available online at [http://apps.pittsburghpa.gov/dcp/Final\\_2015-2019\\_Analysis\\_of\\_Impediments\\_to\\_Fair\\_Housing\\_Choice\\_for\\_the\\_City\\_of\\_Pittsburgh\\_PA.pdf](http://apps.pittsburghpa.gov/dcp/Final_2015-2019_Analysis_of_Impediments_to_Fair_Housing_Choice_for_the_City_of_Pittsburgh_PA.pdf)

<sup>18</sup> *Ibid.*

<sup>19</sup> *Id.* at 32.

<sup>20</sup> *Pittsburgh's Racial Demographics 2015: Differences and Disparities*, *supra* note 15, p. 33.

<sup>21</sup> *E.g.* March 20, 2017 Testimony of the Philadelphia Bar Association Civil Gedeon and Access to Justice Taskforce *supra*; M. Desmond, "Unaffordable America: Poverty, Housing, and Eviction," *supra*.

Any honest lawyer will tell you that meaningful access to the courts and one’s chances of winning in Court—for instance by introducing evidence that establishes a legal defense or counter-claim—are largely dependent upon one’s access competent legal counsel.<sup>22</sup> Studies around the Country have evidenced this pattern and its consequences.

Owing in significant part to Federal cutbacks to civil legal aid to the poor, in housing courts around the country as high as 90 percent of landlords have attorneys, and greater than 90 percent of tenants do not.<sup>23</sup> The result is that legal eviction proceedings generally result in tenants being evicted, often simply because tenants are simply unfamiliar with the legal process, including how to introduce evidence, assert legal defenses or counterclaims, or file or properly draft an appeal.<sup>24</sup> Beyond unfamiliarity with the legal process, many tenants also face additional courtroom barriers on account of their language or disabilities.<sup>25</sup> And many simply succumb to the pressure of the situation and agree to an unfair or unrealistic settlement in exchange for a little more time to relocate.<sup>26</sup>

Tenants who are represented by legal counsel in eviction proceedings, however, are *far* less likely to be evicted than their unrepresented counterparts.<sup>27</sup> As described in Richard Engler’s meta-study, “Connecting Self-Representation to Civil Gideon,” *supra* note 23, pp. 46-49:

Courts that handle housing cases have been the focus of countless reports across the country over the past three decades. The titles capture the perilous fate awaiting unrepresented tenants: *Injustice In No Time, No Time for Justice, Judgment Landlord, Justice Evicted....* In addition, *Si-lence in the Court: Participation and Subordination of Poor Tenants’ Voices in Legal Process*

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<sup>22</sup> See generally, for example, the Pew Charitable Trusts’ report, *How Free Legal Help Can Prevent Evictions*, available online at <http://www.pewtrusts.org/en/research-and-analysis/blogs/stateline/2017/10/27/how-free-legal-help-can-prevent-evictions>.

<sup>23</sup> M. Desmond, “Unaffordable America: Poverty, Housing, and Eviction,” *supra*, citing R. Engler, “Connecting Self-Representation to Civil Gideon,” *Fordham Urban Law Review* (2010): 38–92 (providing a meta-analysis of existing studies).

<sup>24</sup> March 20, 2017 Testimony of the Philadelphia Bar Association Civil Gedeon and Access to Justice Taskforce *supra*.

<sup>25</sup> *Id.*; see also C. Seron, G. Van Ryzin, M. Frankel, and J. Kovath, “The Impact of Legal Counsel Outcomes for Poor Tenants in New York City’s Housing Court: Results of a Randomized Experiment,” *Law and Society Review* 35 (2001): 419–434; D. J. Greiner, C. W. Pattanayak, and J. Hennessy, “The Limits of Unbundled Legal Assistance: A Randomized Study in a Massachusetts District Court and Prospects for the Future,” *Harvard Law Review* 126 (2013): 901–989.

<sup>26</sup> *Id.*

<sup>27</sup> *Id.*

captures the powerlessness of tenants, while *Alone in the Hallway* speaks to the perils of hallway negotiations [without legal representation].

Despite some variation in details, the core features of the courts seem remarkably consistent.... Tenants rarely are represented by counsel, while the representation rate of landlords varies...to highs of 85-90%.... [T]he typical case pits a represented landlord against an unrepresented tenant. The demographics of the tenants reveal a vulnerable group of litigants, typically poor, often women, and disproportionately racial and ethnic minorities.

...Regardless of whether tenants appear or default, settle or go to trial, raise defenses or do not, the result invariably is a judgment for the landlord.... The unrepresented tenant faces swift eviction, and with minimal judicial involvement.

One variable that often can halt the swift judgment for the landlord is representation for the tenant, with the likelihood of eviction dropping precipitously. Some reports discuss winning generally, showing tenants three, six, ten, or even nineteen times as likely to win if they are represented by counsel, in comparison to unrepresented tenants. Others talk in terms of represented tenants faring better “[a]t every stage of the proceeding” or more generally in avoiding having judgments entered against them. Studies providing specific data show that represented tenants default less often, obtain better settlements, or win more often at trial.

Based on preliminary research, in 2016, landlords who filed eviction proceedings in the City of Pittsburgh at the Magisterial District Justice (MDJ) level were more than six times (600%) as likely as tenants to be represented by legal counsel. In case where the tenant did *not* have legal counsel, an eviction judgment was entered against the tenant 97% of the time, and only 2.2% of the cases settled. Tellingly, but not surprisingly, in cases where the tenant *did* have legal counsel, the tenant prevailed on the merits of the case at a rate that was approximately sixteen times (1600%) greater than the rate of those without representation. Further, in cases where the tenant *did* have legal counsel, the cases settled at a rate that was approximately seven times (700%) higher than in cases where the tenant lacked representation (16% v. 2.2%).<sup>28</sup>

Researchers who have analyzed this issue have virtually uniformly concluded that enhancing publically funded legal assistance for low-income families in eviction cases can be a very effective tool for preventing the fallout that results from evictions. Moreover, this has been shown to be a *very* cost-effective mechanism. For instance, an independent Economic Impact Study commissioned by the Pennsylvania Interest on Lawyers Trust Account (IOLTA) Board

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<sup>28</sup> These trends need to be further analyzed, as do similar data at the Court of Common Pleas level. It is anticipated that landlords are represented by legal counsel far more often than tenants in eviction proceedings before the Court of Common Pleas, where landlord “entities” (corporations, LLCs, etc.) are required by law to be represented by legal counsel.

found that for each dollar (\$1) spent on civil Legal Aid, there is an \$11 return to Pennsylvania taxpayers.<sup>29</sup>

**5. Reasons against the recommendation:**

Legislating to provide funding for legal assistance in eviction proceedings and protection against evictions absent good cause may place you “in the crosshairs” of some who may wish to prevent any legislation that is perceived to be detrimental to housing providers. Any such concerns, however, should be able to be allayed by effective outreach and education with interested parties.

**6. Conclusion**

The public and private costs and benefits of preventing evictions, by providing “good cause” protection for all renters and legal assistance for lower-income renters in eviction proceedings, are indisputable. Pennsylvania should join the growing chorus of states and localities that have acted to provide for these. Philadelphia, New York and San Francisco spring to mind as good examples where legislation has provided for legal counsel in eviction proceedings. Perhaps the best example of a “good cause” requirement is the one the General Assembly already enacted in the Pennsylvania Manufactured Home Community Rights, which easily could be extended to all renters in the Commonwealth. 68 P.S. §398.3(a). The present health pandemic has highlighted the urgent need for these measures. The General Assembly should enact legislation at this time to robustly fund legal assistance for lower-income renters in eviction proceedings and require “good cause” for all residential lease terminations in the Commonwealth.

Thank you, again, for the opportunity to provide this input at this hearing. I look forward to any further opportunities to work with you on legislation that promotes housing stability for all Pennsylvanian residents.

Respectfully submitted,

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<sup>29</sup> Pennsylvania Interest on Lawyers Trust Account (IOLTA) Board, *The Economic Impact of Outcomes Obtained for Legal Aid Clients Benefits Everyone in Pennsylvania* (April 11, 2012), is available at <https://www.paiolta.org/wp-content/uploads/2014/05/Economic-Impact-of-Legal-Aid.pdf>.



## **Testimony Before the House Democratic Policy Committee**

### **Hearing on Legal Aid for Tenants Facing Eviction**

Rasheedah Phillips, Managing Attorney of Housing Policy,

Community Legal Services

October 9, 2020

Good morning, my name is Rasheedah Phillips, and I am the Managing Attorney of Housing Policy at Community Legal Services of Philadelphia. Thank you to State Representatives Kenyatta, Cephas, and Innamorato for the opportunity to testify today, and for taking a critical look at solutions that will advance housing security for tenants in Pennsylvania, such as expanding access to legal representation for tenants facing eviction.

Community Legal Services provides free legal advice and representation to over 2,000 low-income tenants living in private and subsidized housing each year, as well as significant advocacy locally, statewide, and nationally around affordable housing and protection of tenant rights. I appreciate the opportunity to speak today on behalf of thousands of other Pennsylvanians - particularly renters - who cannot readily access additional supports when an emergency - be it loss of employment or a global pandemic - threatens their safety and housing stability.

As my colleagues have already shared, even prior to the COVID-19 pandemic, eviction was among the leading causes of homelessness in the United States, and in Philadelphia in particular, with eviction filings impacting nearly 1 in 14 renters each year, or approximately 19-22,000 tenants a year. Eviction filings also impacted about 89,000 people across Pennsylvania. Since the pandemic, the number of people at risk for housing instability has jumped to about 400,000. Despite various eviction moratoria, diversion programs, rental assistance, and other protections and resources that have been made available to tenants and landlords, many tenants are still unable to access them due to lack of notice, confusion, inconsistent enforcement, illegal eviction filings by landlords, short deadlines, and a host of other reasons. Navigating laws, declarations, certifications, and whether they apply to one's circumstances, during a global and personal crisis, can feel nearly insurmountable to most. The stakes are high for failure to activate these protections – homelessness, an eviction record, and increased risk of infection, hospitalization, or death due to COVID-19.

People who are evicted often end up in homeless shelters. Homelessness and couch-surfing results in cost burdens on the government in providing shelter and social services, medical transportation, and physical health care. On top of this are the costs that we do not see –

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victims who stay with their abusers because they have nowhere else to go, children who fall behind in school because they do not have a stable place to sleep, people in recovery who relapse because they do not have a stable home base from which to attend appointments. Eviction forces families to abandon their daily routines of home life, from attending school and work, to accessing health care and maintaining a safe environment. Homelessness or precarious housing arrangements put family members at risk of trauma or abuse, leading to behavioral health problems that cut across generations. Being evicted means being unable to access masks, medication, or other essential items and necessities from their home. It means looking for a new home at a time where you may be less credit-worthy for an application, unable to gather security deposits or access old deposits, making it nearly impossible to access a new place to live.

Any tenant, no matter how capable, will have a difficult time in eviction court when their landlord is represented by an attorney, which is the case in over 80% of eviction hearings. This power imbalance alone renders the court process unfair. People with language barriers, disabilities, and mental health challenges may have additional challenges navigating the complex legal system. Tenants without access to legal counsel often lose their homes simply because they do not understand legal procedures, such as how to file or properly draft an appeal to halt an eviction, or if they do not sign the right forms or get it to their landlord before a court case gets filed. Unlike landlords, who typically come to court as repeat players with attorneys at their disposal, most tenants have very little knowledge of how to prepare and present their housing cases in court.

As my co-panelists have shared, the consequences of eviction go far beyond temporary displacement and loss of shelter. Judgments based on evictions lead to loss of housing benefits, such as housing vouchers, and compromise the ability to get into quality housing, private or subsidized, often for the rest of one's life, leading to dangerous cycles of poverty and instability. Beyond the damage to individuals and families who are thrust into poverty and homelessness, evictions and forced displacement unravel the fabric of a community, helping to ensure that neighbors remain strangers and that their collective capacity to promote civil engagement remains untapped. Once the CDC eviction moratorium lifts on December 31, 2020, tens of thousands of tenants across the state will face eviction filings and will require legal assistance to help navigate complex laws and legal systems.

Access to justice is a moral imperative - one's ability to access the justice system and defend their shelter, their home, cannot be based on who can afford a lawyer. It is an unfortunate fact that in our country, access to basic needs and opportunities is racialized. Housing instability are all racial in nature, sewn into the very fabric of our institutions, policies, and our value systems. Although roughly 3 million people around the country are evicted each year, it is not a coincidence that who gets evicted falls along racial and gender lines - most frequently impacting



Black women and their children, and in Philadelphia, impacting Black families disproportionately in spite of their level of income. Additionally, data from The Reinvestment Fund has revealed that most areas with elevated eviction rates fall within zip codes with the highest COVID-19 positivity and hospitalization rates, while zip codes with higher COVID-19 positivity + hospitalization rates have predominantly Black renters.

Jurisdictions with right to counsel and other pilot programs have shown that tenants with attorneys are far less likely to be evicted, while other studies and housing experts have widely acknowledged that providing legal aid to families and individuals facing eviction, lock-out, or substandard housing conditions can significantly prevent homelessness by allowing tenants to stay in their homes, secure repairs or negotiate smooth transitions to safe, affordable housing. Attorneys help tenants navigate the court process, negotiate agreements to stay or time to move, and in some cases, can negotiate rental agreements that can fit a tenant's budget. Tenants don't end up with judgments or can negotiate better outcomes that don't bar them from future housing, ensuring access to future affordable housing.

Investing in eviction prevention, including an increase in rental assistance funds and investing in a right to counsel for tenants, is cost effective and is the one of the best measures to prevent evictions, housing instability, and homelessness. For example, the Stout study commissioned by the Philadelphia Bar Association has shown that right to counsel would cost about \$3.5 million and save the City \$45 million in costs of services. In other words, one dollar invested in tenant representation would save the City nearly \$13.

Beyond the substantial benefits of legal aid for individual low-income renters, legal aid also benefits our neighborhoods, improves the efficiency of our courts, and saves taxpayer money. Representing tenants in housing conditions cases prevents neighborhood disrepair by helping to enforce laws that require landlords to maintain their properties. Effective tenant representation improves courtroom efficiency by holding landlords accountable for frivolous or unconscionable agreements and cutting down on procedural delays caused by pro se tenants filing inappropriate or inadequate petitions. Recognizing these benefits, on November 14, 2019, Philadelphia City Council unanimously voted to pass a renter's right to counsel, guaranteeing all low-income renters' access to an attorney to fight their eviction. Given the scale, right to counsel will not start immediately. Instead, it will be phased in over five years or more.

As other panelists have shared, right to counsel is not a one-size fits all solution nor a panacea for the housing crisis. It is, however, one crucial and proven-to be effective tool towards the goal of reducing housing instability and homelessness, one that recognizes that housing is one of the most important stabilizing factors, as a gateway to stable employment, educational, and other opportunities, and a tool that promotes racial, gender, and disability equity. It remains critical that people have access to home as a source of stability so that they may have pathways back to

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employment and other opportunities that will allow us collectively to begin the process of healing and rebuilding our communities in the age of COVID-19.

I look forward to working as part of a group of statewide advocates and stakeholders to craft a right to counsel for tenants in Pennsylvania. Please let me know if I can answer any questions or provide any additional information on this issue.

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# PHILADELPHIA BAR ASSOCIATION

**Hon. A. Michael Snyder (Ret.)**  
CHANCELLOR

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**Testimony of Hon. A. Michael Snyder (Ret.), Chancellor  
Philadelphia Bar Association  
House Democratic Policy Committee  
Public Hearing on Legal Aid for Tenants Facing Eviction, October 9, 2020**

Representatives Cephas, Kenyatta, and Innamorato and other members of the House Democratic Policy Committee:

Good afternoon. I am Judge A. Michal Snyder (Ret.), Chancellor of the Philadelphia Bar Association. On behalf of the 12,000 members of the oldest association of lawyers in the United States, I wish to commend the House Democratic Policy Committee for holding a hearing on the critical need for legal aid for low-income tenants facing eviction in Pennsylvania.

I am honored to be here today to voice the strong support of the Philadelphia Bar Association for the creation of a statewide right to counsel law that would address the anticipated increased need for legal aid by low-income tenants in Philadelphia and across Pennsylvania due to the impact of COVID-19 on the economy and on the thousands of low-income tenants who are struggling to maintain their homes during this pandemic crisis.

The Philadelphia Bar Association has a long history of promoting access to justice for low-income people and in advocating for the creation of a civil right to counsel for low-income people at risk of losing basic human needs, such as housing. Providing a right to counsel for low-income tenants facing eviction is a sound and cost-effective solution to combat the devastating impact of COVID-19 on the eviction crisis existing in Philadelphia and many Pennsylvania cities. It will help reduce the spread of COVID-19

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and prevent homelessness and avert the trauma and harm to tenants and their families from being disruptively displaced, especially during this health crisis. It will also stabilize and strengthen neighborhoods and improve and preserve the housing rental stock for low-income tenants across the state.

Thank you for the opportunity to provide testimony on this critical matter. The Philadelphia Bar Association stands ready to support the efforts of the state legislature to enact a right to counsel for low-income tenants and participate as a stakeholder in future meetings to help design the legislation, which we hope will include increased revenue and resources for the Philadelphia network of nonprofit legal aid and public interest law partners who are actively engaged in providing legal aid to low-income tenants and combating the escalating eviction crisis in Philadelphia, which has been exacerbated by COVID-19. I am pleased to introduce Catherine Carr, co-chair of the Association's Civil Gideon and Access to Justice Task , who will provide additional testimony about the work of our Task Force that demonstrates the significant need for counsel for tenants in Philadelphia and how the City is moving toward the implementation of a right to counsel..

Respectfully submitted,

Hon. A. Michael Snyder (Ret.)  
Chancellor, Philadelphia Bar Association



**Testimony of Catherine C. Carr, co-chair of the Philadelphia Bar Association’s Civil Gideon and Access to Justice Task Force  
House Democratic Policy Committee  
Public Hearing on Legal Aid for Tenants Facing Eviction, October 9, 2020**

Representatives Cephas, Kenyatta, and Innamorato, and other members of the House Democratic Policy Committee:

Good afternoon. I am Catherine Carr, Adjunct Professor of Law at University of Pennsylvania Carey School of Law, Access to Justice Consultant, and former executive director of Community Legal Services, Inc., in Philadelphia. I have served for nearly 11 years, together with Joseph A. Sullivan, Pro Bono Counsel at Troutman Pepper, as co-chair of the Philadelphia Bar Association’s Civil Gideon and Access to Justice Task Force.

I am pleased to be here on behalf of the Association’s Civil Gideon and Access to Justice Task Force (“Task Force”) to state our strong support for a bill to provide a right to counsel and to share information about the work of our Task Force that demonstrates the significant need for counsel for low-tenants. We believe that our experience with how Philadelphia is moving toward the implementation of a right to counsel for tenants can be helpful as this committee explores introducing legislation to create a statewide law.

In 2006, the Association served as co-sponsor of the American Bar Association’s (“ABA”) landmark resolution calling for states and local jurisdictions to create a civil right to counsel as a matter of right and at public expense for low-income persons in those categories of adversarial proceedings where basic human needs are at stake, such as shelter, safety, child custody, health and sustenance, In April 2009, the Association’s Board of Governors adopted a resolution endorsing the creation of a civil right to counsel and called on the Chancellor to appoint a Task Force to develop and implement strategies to improve access to justice, and work toward creating a civil right to counsel. The Task Force decided early on to focus on creating a civil right to counsel in two priority areas: eviction and child custody. The Task Force is a blue ribbon panel of members of the state and federal judiciary, executive directors of nonprofit public interest and legal aid programs, leaders of the private bar, representatives from law schools, and other stakeholders committed to improving access to justice for low-income unrepresented civil litigants.

During the early years, the Task Force focused on developing a strategic plan to map out a realistic approach to achieve its mission over time. It set out to identify specific practical and aspirational goals for the future, including creating low-cost, volunteer-driven pilot projects to expand representation of low-income clients in landlord-tenant matters, and working with the courts on reforming procedures that directly impact unrepresented litigants. While legal aid

programs, including my own, have represented tenants for decades in eviction hearings, the limited funding for this work has meant that only a small proportion of tenants have received the assistance they need. Recognizing that many members of the community were unaware of the full scope of the unmet need for legal assistance, the Task Force also developed and implemented a strategic education and communications plan to inform the legal community, local and state government, and the public about the unmet need for civil legal aid and the urgent need to improve access to the courts. Below is a brief summary of some of the Task Force's work over the years.<sup>1</sup>

- In 2012, the Task Force's Housing Working Group launched the Landlord Tenant Legal Help Center, a collaborative project that was administered by SeniorLAW Center and managed by other legal aid organizational and stakeholder members of our Task Force.
- In 2013, with ABA support, the Association created the "Pennsylvania Civil Legal Justice Coalition," which worked with the Pennsylvania Senate Judiciary Committee to hold statewide hearings on the civil justice gap in Pennsylvania, and released a report titled [\*Toward Equal Justice for All: Report of the Civil Legal Justice Coalition\*](#), which made a number of recommendations, including the creation of a statewide right to counsel for low-income people faced with the threatened loss of basic human needs. Coalition members included representatives of the Allegheny Bar Association, Pennsylvania Bar Association, and Philadelphia Bar Association's Task Force.
- In 2016, members of the Task Force's Housing Work group worked to produce a strategic plan to address the escalating eviction crisis in Philadelphia that led to a City Council hearing on the crisis planned by Task Force members, tenant advocates, and City Council staff in March 2017. Following the hearing, the Mayor and City Council allocated funding to launch the Philadelphia Eviction Prevention Project ("PEPP"), a new pilot project operated by a collaboration of six nonprofits that provide legal services to low-income tenants, including Community Legal Services, Philadelphia VIP, SeniorLAW Center, Legal Clinic for the Disabled, Tenant Union Representative Network, and Clarify. The City has funded the project for three years and it provides legal representation in eviction cases, an expanded in-court help center, Lawyer of the Day program, Court Navigators, a live tenant helpline and coordinated intake, and community outreach (including a comprehensive website at [phillytenant.org](http://phillytenant.org)) to assist tenants and prevent homelessness and displacement. Data over the past several years shows that 95% of the tenants helped by PEPP have successful outcomes for their families.
- In November 2018, the Philadelphia Bar Association released a groundbreaking study, [\*"The Economic Return on Investment of Providing Counsel in Philadelphia Eviction Cases for Low Income Tenants."\*](#) The report was prepared on a pro bono basis by Stout

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<sup>1</sup> More information about the Task Force's advocacy efforts to create a right to counsel for low-income tenants in Philadelphia is summarized in the Association's Nomination for the Harrison Tweed Award posted on the American Bar Association's website at [https://www.americanbar.org/groups/legal\\_aid\\_indigent\\_defense/awards/harrison\\_tweed\\_award/harrison\\_tweed\\_current/](https://www.americanbar.org/groups/legal_aid_indigent_defense/awards/harrison_tweed_award/harrison_tweed_current/).

Risius Ross, LLC (“Stout”), a leading valuation advisory, investment banking, dispute consulting, and management consulting firm. The Stout report found that if Philadelphia invested \$3.5 million per year to fund counsel for eligible low-income tenants facing eviction, the city would save \$45.2 million per year in costs and expenses, a return of over \$12 for every \$1 spent. Quantifiable costs that would be saved include costs for evicted and newly-homeless persons; inpatient hospital costs; emergency room treatments; and mental health costs. The study also discusses how evictions lead to less easily quantifiable effects relating to job loss, poor performance by children in schools, higher rates of juvenile delinquency, family instability, other social problems, and an increased administrative burden on the court system.

Stout determined that representation by a lawyer makes an impact on the outcome of an eviction case: with a lawyer, 95% of low-income tenants avoid disruptive displacement – only 5% are displaced; without a lawyer, 78% of tenants are disruptively displaced. Stout also determined that if the city invested \$3.5 million in funding a year for counsel for low-income tenants, approximately 14,000 people (in 4,400 households) will be assisted in avoiding disruptive displacement each year.

- Following the release of the Stout report, on November 14, 2019, Philadelphia City Council passed [Bill No. 190386, \*Legal Representation in Landlord Tenant Court\*](#), creating a civil right to counsel for low-income tenants. The Ordinance is scheduled to be implemented over a five-year period. The process of creating regulations governing the implementation of this Ordinance, which were being vetted by a group of stakeholders including PEPP partner legal aid organizations and members of the Task Force, was stalled early in 2020 due to the outbreak of the pandemic.

COVID-19 has created a national emergency. With its high poverty rate, Philadelphia is being hit hard, both by the virus itself and by its devastating economic consequences. Despite being the sixth-largest city in the U.S., Philadelphia ranks fourth in total evictions, with over 20,000 cases filed each year. Evictions are complicated legal proceedings, which require legal help in order for the rights of tenants to be asserted and protected, but only 11% of tenants facing eviction have a lawyer, in contrast with 80% of landlords.

PEPP has already been enormously successful in using best practices to prevent homelessness and eviction. And throughout the COVID-19 crisis, PEPP has been more important than ever. Because of the city’s investment in PEPP, PEPP advocates were able to immediately respond to the COVID-19 crisis by advocating for the courts to close and for a moratorium on eviction lockouts, as well as continuing access to the hotline by working remotely, responding to tenants, advising on working out payment agreements with landlords and, ensuring emergency repairs. These advocates, led by the long-time provider of eviction representation Community Legal Services, have seamlessly moved community education and outreach online and put together vital informational flyers to alert tenants of their rights. They have connected tenants impacted by COVID-19 with rental assistance programs, a new eviction diversion program, and other resources. During the COVID-19 crisis, PEPP has also assisted hundreds of renters facing illegal lockout evictions, ensuring their homes are safe, and helping Philadelphians who have lost their

income. Philadelphia's tenants have been better able to maintain stable housing and keep safely in their homes during this pandemic due to the advocacy of the PEPP partners.

Legal aid will be crucial in the coming year across the state as Pennsylvania faces a tidal wave of evictions intensified by the pandemic. Rental assistance will be available to help some tenants, but most tenants who are facing overwhelming economic hardship will need legal services to avoid eviction and disruptive displacement. Now, more than ever, counsel is essential to represent tenants, provide critical information, and advocate with the courts to stabilize housing for low income families. In the midst of a dire public health crisis, if renters cannot access legal representation, tenants will experience increased homelessness and will be forced to reside in overwhelmed shelters or overcrowded dwellings with family and friends. This could lead to a spread of the virus and the need to shut down much of our economy, as well as increased harms to tenants and a significant negative impact on local and state budgets.

While Philadelphia's work to provide counsel to tenants has already made a critical difference in housing stability, sustained future funding by the city is uncertain. It is time for the state government to step in and assure that all tenants across the state are provided with counsel to prevent evictions where tenants have rights that need to be enforced. The model Philadelphia has established and the work that Philadelphia has begun can be replicated across the Commonwealth with support from the legislature. This is a matter of justice as well as public health.

We urge this committee to recognize that the right to counsel for tenants is a growing national movement. Our study has shown that providing counsel is not simply money well spent, but indeed money that will show a positive financial return in the reduction of other costs that result from evicting families and causing hardship and trauma that health care, education and social service providers must later deal with.

The details of the provision of a right to counsel are not simple, as experience shows both in New York City where the right is still being rolled out, and in Philadelphia where the program regulations have yet to be finalized. We urge your committee to work with experienced legal aid providers across the state to establish the details of a program and quickly unroll a program to provide equal justice across the Commonwealth.

The Task Force stands ready to participate in future policy hearings and a stakeholders' process to share our experiences and further explore the design of a statewide right to counsel program, which would include adequate and equitable funding statewide.

Thank you for holding this hearing and for this opportunity to provide testimony on this critical issue.

Respectfully submitted,

Catherine Carr, Esq.  
Co-Chair of the Philadelphia Bar Association's Civil Gideon and Access to Justice Task Force

Pennsylvania House of Representatives  
House Democratic Policy Committee  
Hearing on Legal Aid for Tenants Facing Eviction  
October 9, 2020

Testimony of Stephanie Libhart, Executive Director, Pennsylvania IOLTA Board

Honorable Mike Sturla, Chairman, and Members of the House Democratic Policy Committee:

The Pennsylvania Interest on Lawyer Trust Accounts (IOLTA) Board is a non-profit organization whose members are appointed by the Supreme Court of Pennsylvania. Our mission is to financially support the delivery of civil legal services to low-income people without charge. To that end, the PA IOLTA Board makes grants to 35 legal aid organizations and each of Pennsylvania's nine law schools annually. The funding we administer is strategically allocated across the Commonwealth according to poverty census data to ensure that funding is available proportionately and fairly.

The legal aid organizations that receive grant awards from the IOLTA Board are professionally staffed, non-profit poverty law offices with a primary purpose aligned with the Board's mission, the delivery of civil legal services to low-income people without charge. Every county in Pennsylvania is covered by one or more IOLTA-funded legal aid organizations.

The law schools use their IOLTA grants to offer poverty law clinics and legal aid externships to their law students. Providing law students with an opportunity to participate in these activities helps inculcate a pro bono ethic early in their legal careers and offers legal aid organizations a viable referral option.

IOLTA grantees only handle cases where a basic human need, such as access to housing, food and medicine, is at stake. The case types supported with IOLTA grant funding run the gamut from housing to public benefits to family law and everything in between. In our most recently completed fiscal year, nearly 18,000 cases were handled for low-income Pennsylvanians as a result of our grant awards.

The IOLTA Board's contribution to the specific focus of today's hearing - evictions - is based upon what we have heard from our grantees. Many of our grantees have shared stories of clients that, now unemployed due to the pandemic, are struggling to pay their bills including rent. Throughout the pandemic, our grantees have provided legal assistance to clients when landlords have attempted to effectively evict tenants without a court order by changing the locks on the tenants' doors. Our grantees have reported that they are preparing for what they anticipate will be mass eviction filings when the moratorium ends.

In the current fiscal year, IOLTA grant awards total nearly \$26.5 million. IOLTA's principal funding sources are the interest income on IOLTA accounts and magisterial district judges' custodial accounts (IOLTA revenue) and the Access to Justice Act (AJA revenue). The AJA revenue is derived from surcharges on court filings; in our

most recently completed fiscal year, AJA revenue totaled \$16 million. IOLTA revenue, however, is dependent upon the principal balances in the accounts and the interest rate applied to the accounts by the financial institutions approved by the Supreme Court of Pennsylvania to offer attorney trust accounts. In our most recently completed fiscal year, IOLTA revenue totaled \$8.1 million, but since interest rates dropped to near zero in March 2020, we are anticipating a significant reduction in IOLTA revenue in the current year and several years to come. Currently, we are projecting a 30 - 50% decrease in IOLTA revenue this year.

On a final note, we would like to remind the committee that the availability of legal aid has a significantly positive economic impact. The IOLTA Board commissioned a study by Franklin & Marshall College that resulted in the issuance of report in February 2020. The researchers at Franklin & Marshall College found a \$12 return to the client and the community for every \$1 invested in legal aid. The report, 'Economic Impact of Civil Legal Aid in Pennsylvania', may be found on our website, [www.paiolta.org](http://www.paiolta.org), under Other Reports.