

**Testimony of Beth Mellen Harrison
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**Committee on the Judiciary
Council of the District of Columbia**

**Oversight Hearing – D.C. Access to Justice Commission
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Since its creation in 2005, the D.C. Access to Justice Commission has been a persuasive advocate for the need to increase funding for civil legal services to help the District's poorest and most vulnerable residents. The D.C. City Council began direct funding of civil legal services in 2007 to help to meet these critical needs. My testimony today focuses on the Court-Based Legal Services Project, one of the projects funded with these appropriations.

The Court-Based Legal Services Project, based in the Landlord-Tenant Branch of D.C. Superior Court, provides same-day representation to low-income tenants facing eviction, as well as ongoing representation in many of these cases. The Project addresses the critical and continuing need for legal representation for low-income tenants in eviction cases. Over the past four years, the Project has reduced barriers to legal services for low-income tenants and formed a strong partnership with the courts, including the new Housing Conditions Calendar.

The Court-Based Legal Services Project Addresses the Critical and Continuing Need for Legal Representation for Low-Income Tenants in Eviction Cases.

By representing low-income tenants in housing cases, the Project helps to address a critical and ongoing need for the District's most vulnerable residents. Tens of thousands of tenants are sued in the Landlord and Tenant Branch of D.C. Superior Court every year.¹ While over 90 percent of the landlords in these cases are represented by counsel, only 3 percent of the tenants have attorneys.² Access to representation by counsel is critical in order for a tenant to articulate her defenses and navigate the rules and procedures of the court system. Put simply, when a tenant has an attorney, she is more likely to keep her home and avoid eviction.

Keeping tenants in their homes is essential, particularly for persons living in poverty in the District. Low-income tenants face a continually dwindling stock of affordable housing options in D.C.³ The recession has only deepened poverty in the District, with more tenants

¹ In 2009, landlords filed 41,996 cases with the Landlord and Tenant Branch of D.C. Superior Court. *District of Columbia Courts Statistical Summary 2009 4* (2010).

² D.C. Access to Justice Commission, *Justice for All? An Examination of the Civil Legal Needs of the District of Columbia's Low-Income Community* 76 (2008).

³ The available stock of affordable rental units (\$750 or less per month) in D.C. decreased by a third between 2000 and 2007, while the number of high cost rental units (more than \$1500 per month) more than doubled. D.C. Fiscal Policy Institute, *Nowhere To Go: As DC Housing Costs Rise, Residents Are Left With Fewer Affordable Housing Options Today* (Feb. 2010). Today, the average fair market rent for a two-bedroom apartment in D.C. is

losing ground and placed at risk of eviction, but with fewer resources to find alternative housing. The stakes could not be higher in eviction cases for tenants living in poverty.

The ongoing foreclosure crisis has only amplified the need for legal services. Foreclosure rates in the District have increased dramatically over the past four years, affecting thousands of low-income tenants renting from foreclosed owners; the rates in Wards 7 and 8 are twice as high as those citywide.⁴ While tenants in D.C. have the right to stay in their homes after foreclosure, they often are not aware of these rights and need the help of an attorney to ensure that they are not evicted wrongfully. Tenants living in foreclosed properties also have found that banks too often fail to maintain their properties, resulting in unsafe conditions that violate the Housing Code. With the help of an attorney, these tenants can enforce their rights.

The Court-Based Legal Services Project Expands Access to Attorneys.

The Project has significantly expanded access to attorneys for low-income tenants in the District. The D.C. Bar Foundation funds currently support eight attorneys at the Legal Aid Society of D.C. and Bread for the City. Since the Project's inception in 2007, our attorneys have served over 2,000 individuals or families. We have helped the majority of these tenants avoid eviction and stay in their homes. Many of these tenants also have benefited from improved living conditions, because their landlords were required to repair violations of the Housing Code. While the need for representation remains overwhelming, our Project is making a difference.

The Project provides legal representation for low-income tenants in two ways. First, we provide same-day representation to handle the tenant's immediate needs in their legal cases. During calendar year 2010, we provided same-day representation to tenants and their families in over 600 cases. These services can include everything from helping a tenant stay a writ of restitution or vacate a default judgment to continuing a case to allow more time to consult with counsel to dismissing a case or reaching a settlement agreement. For example, during calendar year 2010, we provided temporary representation to help over 100 tenants settle their cases with their landlords.

Beyond this same-day representation, our Project attorneys also provide ongoing representation to hundreds of tenants every year, ensuring that the client will have an attorney through the conclusion of her court case. About one-third of the tenants that we meet with are able to resolve their case through our same-day representation. For the remaining tenants, we are able to successfully place approximately two-thirds of the cases for extended representation, either by representing the client ourselves or referring the client to another legal services or pro bono attorney.

For more details about the services provided by Project attorneys, please see the attached statistical summary for calendar year 2010.

nearly \$1,500, far out of reach for most low-income tenants. National Low Income Housing Coalition, *Out of Reach 2010* (D.C. dataset), <http://www.nlihc.org/oor/oor2010/data.cfm?getstate=on&state=DC>.

⁴ Peter Tatian, Urban Institute, *Foreclosures and Renters in Washington, D.C.* (2010), <http://www.urban.org/publications/411882.html>.

The Court-Based Legal Services Project Reduces Barriers to Legal Services for Low-Income Tenants.

Even when civil legal services are available, individuals living in poverty often face barriers to accessing these services, including geographic isolation, disability, and limited English proficiency. By locating our services in the courthouse and working closely with interpreters, social services providers, and the court system, our Project attorneys successfully reduce these barriers to access.

Our office location in the courthouse significantly reduces geographic barriers. Put simply, we are where the clients are. We have found that although the office is located in downtown D.C., far from many of our clients' homes, we draw in tenants from all parts of the city. In 2010, more than 65% of the intakes conducted at the courthouse office were for clients who live in the District's poorest Wards (5, 6, 7, and 8). A review of Legal Aid's own intakes shows that a significantly higher percentage of clients from those wards come through the courthouse office than our main Northwest office, even though both offices are downtown and located within a mile of each other.⁵

Low-income tenants with disabilities or limited English proficiency often are most in need of legal representation to navigate the court process. To address language barriers, both Legal Aid and Bread for the City employ bilingual staff. We also work closely with the Community Legal Interpreter Bank to secure interpreter services for languages that our attorneys do not speak, for example Amharic and American Sign Language. Through staff and outside resources, we are able to serve low-income tenants in their language.

Project attorneys also are trained for and experienced at working with individuals with disabilities. We often are able to secure critical services for these clients through a network of social services providers across the District. Judges, mediators, court personnel, and even opposing counsel often refer tenants with disabilities to the Project for representation because of the high-quality services that we provide for these individuals.

The Court-Based Legal Services Project Works in Partnership with the Court, including the new Housing Conditions Calendar.

During the past four years, the Project has worked in partnership with the court system, other legal services providers, and the D.C. Bar Pro Bono Program to enhance the fairness and efficiency of the Landlord and Tenant Branch's operations. Judges, mediators, and even landlords' attorneys have come to rely on Project attorneys to provide advice and representation to tenants who have questions about their cases or present a particular need for representation because of disability, limited English proficiency, age, or other factors. The Legal Aid Society

⁵ During 2010, 68% of Legal Aid's applicants were from wards 5, 6, 7, or 8; 42% were from wards 7 or 8. At our main office in Northwest, 48% of applicants were from wards 5, 6, 7, or 8; 18% were from wards 7 or 8. At the Courthouse office, 70% of applicants were from wards 5, 6, 7, or 8; 44% were from wards 7 or 8.

and Bread for the City also coordinate closely to refer clients between each other and to other organizations as needed to ensure that tenants receive services whenever possible.

Our presence in the courthouse also allows us to monitor trends and respond to systemic issues. When Project attorneys see an emerging issue with a particular landlord or landlord's attorney or notice a problem at a particular property, we can monitor those cases and coordinate our response. We track new case filings and conduct outreach to tenants in particular types of cases, including those living in foreclosed properties. Project attorneys also participate on court committees and in ongoing discussions about changes to court operations and other systemic issues.

Attorneys from the Legal Aid Society and Bread for the City, along with other organizations, were involved in the creation of the Housing Conditions Calendar in May 2010. This new docket on the civil calendar allows tenants to seek summary, injunctive relief for violations of the Housing Code, a reform long sought by our organizations and other providers. Since the opening of the new court, we have been working closely with community organizations and other partners to receive referrals and provide representation to tenants in need. Project attorneys sat in on the court's operations for the first few months to monitor its implementation and to be available as a resource for tenants in need of representation.

When appropriate, the Court has referred tenants directly to our organizations for services. Both Bread for the City and the Legal Aid Society have filed or accepted cases on the Housing Conditions Calendar. We have found that tenants living in foreclosed properties owned by banks are among those tenants most in need of the summary relief provided by the new court. Although the court is designed to be accessible and user-friendly to pro se tenants, the assistance of a lawyer remains critical to ensure that tenants receive a fair result and, in particular, that the court will sanction landlords who continue to neglect a property.

Our clients' stories tell the impact of the Court-Based Legal Services Project.

The impact of the Project is perhaps best understood by hearing the stories of clients helped by our attorneys. The following are the stories of clients recently assisted by Legal Aid:

Building Case

Legal Aid received an informal referral from Housing Counseling Services to represent tenants at a three-building property in Southeast, D.C. Conditions at the property had been deteriorating for some time. The former landlord was foreclosed at the end of 2009. Because of poor communication by the bank, however, many of the tenants continued to pay their rent to the old landlord. Other tenants were withholding rent because of bad conditions on the property, including mice, roach, and bedbug infestation; water leaks and structural damage; malfunctioning appliances; insecure doors; and trash all over the property. After several months, the bank sued tenants at the property for nonpayment of rent.

Legal Aid first met with 15 tenants who had been sued through our office at the courthouse. We entered appearances in their individual cases to defend against the allegations of

nonpayment of rent. At the same time, we represented the tenants to negotiate with an investor who wanted to purchase the property from the bank. The tenants agreed to assign their right to purchase the property under the Tenant Opportunity to Purchase Act to the investor. In exchange, the new owner agreed to make significant renovations to the entire property and to maintain affordable rents for all existing tenants. Once the sale of the property became final, the bank agreed to dismiss all of the court cases against the tenants.

Alleged Lease Violations

Ms. Q is a single mother of three young children, ages 2, 8, and 10, who lives in a subsidized apartment. She helps to take care of her mother, who has cancer and also lives on the property. Ms. Q came to our office in Landlord Tenant Court because she had been sued by her landlord in three separate cases. The landlord claimed that she had violated her lease by disabling a smoke detector, having poor housekeeping, and causing excessive noise. Under D.C. law, the landlord must give a tenant 30 days to fix a lease violation. Ms. Q had fixed each of the three problems within the 30 day period, so the landlord never should have sued her.

Although Ms. Q knew that she was right, she was scared and overwhelmed by the number of lawsuits and the idea of having to deal with the court process in all three cases. Even though losing her apartment would mean losing her housing subsidy, her only hope for securing affordable housing with her limited income, Ms. Q was ready to give up and move into a shelter with her three children. We ultimately convinced her to accept our help and fight the cases. It soon became clear that the landlord did not have any evidence and had not actually investigated whether Ms. Q had cured before it filed the three lawsuits against her. The landlord quickly dismissed all three cases against Ms. Q. Without a lawyer, Ms. Q would not have been able to navigate the court process and might have given up her subsidized housing, even though the landlord had no cause to evict her.

Post-Foreclosure Non-Payment of Rent

Ms. S and her husband, whom she had just lost to cancer the week before, had lived in the same apartment building for 13 years when the property was foreclosed. Ms. S had not paid rent for some months, because the bank that took over the foreclosed building never gave her information on where to send the rent. Because Ms. S's only income was public benefits for her disability, she could not pay the many months of back rent that the bank was claiming. In addition, the bank had allowed Ms. S's apartment to fall into disrepair while her husband was losing his battle with cancer. By the time she came to Legal Aid for help, there was no hot water or heat in her apartment; several of the building's windows had missing panes of glass; there was no trash collection or maintenance of the building's yard; and there was no working mailbox, smoke detectors, oven, or shower.

Through mediation, we were able to get the case resolved. The bank forgave the back rent and made all of the repairs necessary to bring the apartment into compliance with the DC Housing Code. Ms. S was able to stay in her rent controlled apartment with a monthly rental obligation that was manageable for her.