



**Testimony of the Boston Bar Association
Before the Joint Committee on Judiciary
In Support of H. 1731 (Rogers, Day):**

An Act promoting access to counsel and housing stability in Massachusetts

May 10, 2023

The Boston Bar Association, an organization with more than 15,000 members, offers this testimony as a proud member of the broad-based Massachusetts Access to Counsel Coalition, in support of their efforts to establish access to counsel for low-income tenants and landlords in eviction cases.

Indeed, this is an issue that has been a long-standing priority of the Boston Bar.

In 2006, the American Bar Association passed a resolution supporting access to counsel in civil adversarial proceedings where basic human needs are at stake. The BBA adopted that resolution and also created a task force composed of stakeholders from across the state with deep knowledge and experience concerning issues of access to justice for low-income people.

In 2007, that task force recommended implementation of access to counsel in cases involving basic human needs, like housing. And in 2010, we began two pilot projects—one in Quincy District Court and one in Northeast Housing Court—that showed it could work, successfully reaching agreements and keeping two-thirds of people with full representation in their homes.

As part of the projects, we engaged in a cost-savings analysis¹ which later was used in connection with legislation in New York City for access to counsel in eviction cases. The Massachusetts Attorney General at that time was impressed with the work and agreed to fund an additional two pilots in Worcester and Framingham for certain eviction cases.

In 2014, the BBA released another task-force report² that showed:

- how legal-services providers in Massachusetts were forced to turn away nearly two-thirds of qualified applicants because of a lack of resources,
- how the numbers of self-represented litigants threaten the delivery of justice throughout the court system,

¹ *The Importance of Representation in Eviction Cases and Homelessness Prevention*, Boston Bar Association Task Force on the Civil Right to Counsel, March 2012, <https://bostonbar.org/docs/default-documentlibrary/bba-crtc-final-3-1-12.pdf>

See also D. James Greiner, Cassandra Wolos Pattanayak, & Jonathan Phillip Hennessey, *The Limits of Unbundled Legal Assistance: A Randomized Study in a Massachusetts District Court and Prospects for the Future* (Oct. 23, 2011), <https://harvardlawreview.org/2013/02/the-limits-of-unbundled-legal-assistance-a-randomized-study-in-a-massachusetts-district-court-and-prospects-for-the-future>

² *Investing in Justice: A Roadmap to Cost-Effective Funding of Civil Legal Aid in Massachusetts*, Boston Bar Association Statewide Task Force to Expand Civil Legal Aid in Massachusetts, October 2014, <https://bostonbar.org/docs/default-document-library/statewide-task-force-to-expand-civil-legal-aid-in-ma--investing-in-justice.pdf>

- and most importantly for purposes of this legislation, how providing an attorney for people in housing cases actually saves the state money.

That finding was confirmed in June 2020, when a follow-up study by the prestigious Analysis Group demonstrated that, at an estimated annual cost of \$26 million, full legal representation would allow an estimated 16,000 Massachusetts people to stay in their homes, and result in a minimum annual saving of \$63 million in costs³. In other words, the state stands to save at least \$2.40 for every \$1 invested in providing counsel in eviction cases.

This is because every person who can stay in their home is one less person in shelter, on the streets, or in the emergency room. Every child who can stay with a parent is one less child in foster care or who will suffer trauma or other adverse effects from homelessness.

A growing body of research has found that evictions are associated with negative outcomes for tenants leading to homelessness, poor mental and physical health, unemployment, and family instability. And these negative outcomes disproportionately impact children, women, and people of color, further exacerbating long-standing inequities that have been exposed by the COVID-19 pandemic.

It is important to emphasize that the Access to Counsel Coalition proposal that we support includes not only qualified tenants but also owner-occupant landlords. That was a recommendation of the BBA's 2007 task force, and we are pleased to see it included here. The BBA's Lawyer for the Day program at Housing Court similarly offers assistance to both tenants and landlords.

Additionally, the timing is right, not only with renewed public attention on housing instability and its negative effects on entire communities, but also following an important decision by the Supreme Judicial Court, the *Adjarkey* case⁴, in which the late Chief Justice Ralph D. Gants, writing for a unanimous SJC, laid out the complexity of a summary process eviction case designed to unfold in a short period of time. As Chief Gants understood, this creates a tremendous set of hurdles for parties without a lawyer to overcome.

That case is Exhibit A as to why we need access to counsel for landlords and tenants. Otherwise, we cannot be certain that justice will be achieved, given all the intricacies of the system.

Finally, this effort makes sense only if it is built on new investment, rather than reallocating existing legal-aid and housing-stabilization resources. Fortunately, as the BBA has demonstrated—and as other organizations have corroborated—the Commonwealth will see a positive return on that investment.

³ *Investing in Fairness, Justice and Housing Stability: Assessing the Benefits of Full Legal Representation in Eviction Cases in Massachusetts*, Boston Bar Association, June 2020, <https://bostonbar.org/docs/defaultdocument-library/rtc-report-for-web-or-email.pdf>

⁴ *Ruth Adjarkey & others v. Central Division of the Housing Court Department & others*, 481 Mass. 830, <http://masscases.com/cases/sjc/481/481mass830.html>

In sum, access to counsel in eviction proceedings will prevent the trauma of eviction for thousands of people every year. It is now more important than ever, to assist our court system, promote justice, and—as we have shown—save the state at least \$2.40 for every \$1 spent on full representation.

We also thank Rep. Rogers and Chair Day, as well as Sen. DiDomenico (S. 864, Housing Committee), for filing legislation designed to ensure access to counsel in eviction cases and for focusing on this critical issue, as well as our partners in the Access to Justice Coalition for their leadership.

The BBA stands ready to work with the Judiciary Committee on legislation establishing that access and on building housing stability statewide.