



Northeastern University

School of Law 360 Huntington Avenue, 140 Dockser Hall, Boston, MA 02115

February 27, 2024

House Ways and Means Chair Aaron M. Michlewitz
State House
24 Beacon Street
Boston, MA 02133

RE: Access to Counsel Program for Evictions with a Dedicated Line Item in the FY25 Budget Request of \$3.5 million and Passage of H.4360

Dear Chair Michlewitz,

On behalf of the Northeastern University School of Law (NUSL) Housing Rights Advocacy Clinic, I respectfully urge you to **support Access to Counsel Line Item 0321-1800 and pass it in tandem with H. 4360, which provides the framework for an Access to Counsel Program for low-income tenants and low income owner-occupant landlords. H. 4360 was recently reported favorably by the Judiciary Committee to the House Ways and Means Committee.**

The need is urgent. Evictions are on the rise reaching beyond or close to pre-pandemic case filings. The inequity of legal representation in Massachusetts is stark. In 2023, the Trial Court reported that in non-payment cases in Housing Court, **only 2.5% of tenants were represented, while 90% of landlords were represented.** Most concerning is that a large majority of unrepresented litigants enter into agreements for judgment to resolve their cases. While there is a presumption that these agreements are freely entered into, unrepresented litigants enter into the agreements largely under duress, without information or knowledge about their rights, and with little to no understanding about how the agreements operate.

Launched in August 2022, the Housing Rights Advocacy Clinic at NUSL helps fill a gap in legal services in the Boston area. In the past year, the student attorneys and I have had the opportunity to assist low-income tenants in post-judgment work, meaning we began assistance after eviction cases had concluded with an entry of an agreement for judgment. These agreements for judgment are remarkable for the lopsided nature of the terms. They are generally not negotiated between the parties, and tenants sign the neatly typed generic form prepared by landlord's counsel in bulk and after eviction cases had concluded with an



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One such striking case involved a 60-year old woman from East Boston who had fallen behind in rent after her family composition changed and the household income was consequently reduced. While she was entitled to a rent amount reduction based on her subsidy, the program rules required that she provide proof that her household composition had indeed changed, and this took a few months for her to do. In the interim, the amount of rent she owed continued to grow, and she was served with an eviction notice.

She subsequently suffered a bad fall, breaking her femur, and after surgery found herself admitted to a rehabilitation hospital. Her eviction hearing was scheduled while she was in the hospital, and she had to appear from her hospital bed over Zoom. Despite it being apparent to the landlord's counsel, the housing court mediation specialist, and the interpreter that the tenant was unrepresented and trying hard to represent herself while admitted to a hospital, the landlord's counsel proceeded to get the tenant's consent to an agreement for judgment. In the agreement for judgment, the landlord obtained a judgment for possession and for the rental arrears owed, the tenant waived all defenses and counterclaims in the action, the tenant agreed to pay an additional \$500 per month to begin to pay down the back rent she owed (despite informing everyone present that she was not working due to her injury), and further agreed that if she failed to make her monthly rent payments and the extra \$500 as scheduled, the landlord would be entitled to seek an "execution" - a document provided by the court legally authorizing the landlord to begin a swift eviction potentially over the course of 48 hours.

The NUSL clinic agreed to represent the tenant, timely filing a motion to vacate the agreement for judgment on grounds that the extraordinary circumstances under which it had been signed merited relief. In the interim, a pending RAFT application was approved, paying for the arrears owed. After repeated visits to the courthouse and on the eve of an evidentiary hearing on the motion to vacate, the landlord finally agreed to vacate the judgment, enter a dismissal of the action, and reinstate her tenancy. Unfortunately, these are not isolated incidents and not all tenants are fortunate enough to have representation at the 11th hour.

In "*Civil Probation*," a law review article authored by Associate Professor of Law Nicole Summers, Georgetown Law Center, Professor Summers concluded based on an empirical study of Eastern Housing Court cases that nearly 65% of eviction settlement



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agreements in the Eastern Housing Court include onerous conditions that if violated by the tenant, could lead to a swift eviction¹. This kind of agreement is the most common disposition in the cases studied².

Clearly, if a lawyer were present in the first place, agreement for judgments with one-sided terms would not be entered into. Instead there would be a reasonable payment plan and fairer terms that would not put the tenant at immediate risk of eviction. As stated above, 97.5% of tenants in non-payment cases are unrepresented by counsel in Massachusetts. As shown by the case study above and by the recent experience of the NUSL Housing Rights Advocacy Clinic in just one semester of law school, the impact lawyers can have on these types of cases is deep and far-reaching.

Through clinical teaching, NUSL is playing an important role in helping to train the next generation of housing lawyers. But since the pandemic, even at the law school level, these young, housing student attorneys have a harder time envisioning the path from injustice to justice in housing matters. They worry they're spinning their wheels in a system designed for failure. And that's because they're observing firsthand, through their experiences, that the law doesn't necessarily lead to just outcomes. These rubber-stamped agreements for judgment, that can result in the swift eviction of vulnerable, unrepresented litigants, adds to that jaded perspective. Access to Counsel can change these outcomes, keep people housed and give them more time to find a next place to live, and engender more faith in the rule of law.

As you consider your FY25 budget, **we hope that you will include \$3.5 million to start to phase in a statewide Access to Counsel Program and pass it in tandem with H. 4360, which provides the framework for an Access to Counsel Program.**

Sincerely,

A handwritten signature in black ink that reads "Ana Rivera".

Ana Rivera

Director, Housing Rights Advocacy Clinic
Northeastern University School of Law

cc: Blake Webber, Chief of Staff
Tim Sheridan, Legislative Director
Philip Lynch, Committee Legal Counsel

¹ 75 Stanford Law Review 847, 850-861 (2023).

² *Id.*, at 850.