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HB1038

**Foreclosure Proceedings – Residential Mortgagors and Grantors –
Access to Counsel**

House Judiciary Committee

Support with Sponsor Amendments

The Maryland Access to Justice Commission (A2JC) is an independent entity supported by the Maryland State Bar Association (MSBA) that unites leaders to drive reforms and innovations to make the civil justice system accessible, fair and equitable for all Marylanders. Prominent leaders from different segments of the legal community in Maryland – including the deans of the two law schools, the attorney general, law firm partners, heads of the legal services providers and funders, corporate counsel, academics, legislators, the state bar and judiciary comprise the A2JC.

A2JC supports HB1038 and is heartened by the recognition in this body that increasing access to counsel in civil proceedings is a beneficial investment that has far-reaching benefits to constituents beyond success in the particular case.

A2JC has been a thought-leader and has advocated for implementing the right to counsel in civil legal cases that implicate basic human needs cases for many years. In 2011, A2JC authored a report entitled, [“Implementing a Civil Right to Counsel in Maryland.”](#) Thereafter, in 2013, it staffed the [Task Force to Study the Implementation of a Civil Right to Counsel in Maryland.](#)

The Civil Right to Counsel Task Force concluded that “Maryland would benefit significantly by making a commitment to ensure that low-income Marylanders have a right to counsel at public expense in those categories

of cases where basic human needs are at stake, such as those involving shelter, sustenance, safety, health, or child custody.”

A2JC was also the lead partner in the [The Maryland Attorney General’s COVID-19 Access to Justice Task Force](#), which released its final report entitled [Confronting the COVID-19 Access to Justice Crisis](#) in January, 2021. That report also recommended a civil right to counsel in eviction proceedings as an important part of broader housing justice reforms as a viable and cost-effective means to prevent the projected tsunami of COVID-19-related evictions.

Last year, we were successful in passing HB18, to become the second state in the nation to pass a statewide access to counsel in evictions law.

Right to counsel is a potent and cost-effective access to justice solution

Legal Representation is the key to case outcomes in civil cases

Legal representation is the key to more just outcomes in court.

In eviction cases, for example, only 1% of tenants have legal representation, compared to 96% of landlords. However, when those 1% of tenants are able to get representation, the result is impactful. Ninety-two percent of tenants are able to avoid disruptive displacement when a right to counsel is implemented. More than any other factor, the inequities in legal representation have proven to lead to evictions.

These findings in eviction cases are supported by findings in other types of civil legal cases. Research shows that representation by counsel results in markedly better outcomes for litigants. One Maryland study found that in appeals where public benefits were denied, the rate of reversal for the unrepresented was 40 – 45%, whereas the rate of reversal for the represented doubled to 70 – 80%.¹ In another Maryland study looking at the impact of counsel on consumers sued by debt buyers, the rate of dismissals or judgments for the consumer dropped from 71% for the represented to 23% for the unrepresented.² In yet another Maryland study, the rate of acquiring a protective order with counsel was 83%, but without counsel was 32%.³

¹ ADVISORY COUNCIL OF THE MARYLAND LEGAL SERVICES CORPORATION, ACTION PLAN FOR LEGAL SERVICES TO MARYLAND’S POOR (1988), 12.

² PETER HOLLAND, EVALUATION OF THE PRO BONO RESOURCE CENTER CONSUMER PROTECTION PROJECT (2013), at 6-7, on file with the Maryland Access to Justice Commission.

³ Jane C. Murphy, Engaging with the State: The Growing Reliance on Lawyers and Judges to Protect Battered Women, 11 AM. U. J. GENDER SOC. POL’Y & L. 499, 511 (2003).

ROI may be high based on ROI in other types of civil legal cases

The right to counsel in evictions is both impactful and cost-effective. A report from [Stout Risius and Ross \(The Stout Report\)](#) shows a return on investment of 624% from implementing a right to counsel in eviction proceedings. Not only would a right to counsel in evictions avert the tragic human toll that hundreds of thousands of evictions in Maryland, but the state will spend less money doing so. While there is not a similar study in the foreclosure context, it is likely that preventing an individual from losing their home through foreclosure would be a cost-effective measure.

Access to Counsel delivers results

Many other jurisdictions that have implemented a right to counsel have seen impressive results. New York City began a phased implementation of a right to counsel in evictions in 2018. Evictions have since dropped 29% in zip codes where the right to counsel was implemented. In zip codes with right to counsel, tenants remained in their homes in 84% of the cases.

Right to Counsel is being implemented in other jurisdictions including Philadelphia, San Francisco, Cleveland, and Newark. It is also being considered in numerous others, including state-wide efforts in California, Connecticut, Massachusetts, Minnesota, New Jersey, Ohio, Washington state; and city-wide efforts in Los Angeles, Santa Monica, Boulder, D.C., Kansas City, Detroit, Jersey City, New York City, Toledo, Oklahoma City and San Antonio.

1. More innovations are needed to address the stark “justice gap”

The role of civil legal aid is to help clients avoid problems that, if unchecked, can cascade into a negative spiral of other difficulties that affect not only these individuals and their families, but impact the state of Maryland as a whole. A network of online resources, law libraries, self-help centers, pro bono and staff attorney programs comprise the current civil legal services delivery system in Maryland. It is a system designed to deliver the most efficient and least costly service necessary for each client. Despite being a leader in trying to address the “justice gap,” and engaging in many of the significant funding and service delivery innovations, Maryland meets only about 20% of the current demand for civil legal service in the state.

More needs to be done to supplement, not supplant the current delivery system. A right to counsel in eviction proceedings moves us in the right direction by providing all Marylanders and their families a powerful mechanism they can use to leverage their rights under existing law. The existence of counsel in these high stakes cases levels the playing field, increases fairness and provides greater access to justice to Marylanders.

For the reasons stated, the Maryland Access to Justice Commission requests the House Judiciary Committee to issue a FAVORABLE report with SPONSOR Amendments on HB1038. For more information, please contact Reena K. Shah, Executive Director of the Maryland Access to Justice Commission, at reena@msba.org.