

December 16, 2014

Ronnie Lowenstein, Director
Independent Budget Office
110 William Street, 14th Floor
New York, New York 10038

Dear Ms. Lowenstein:

We write, as faculty members of New York City law schools, with regard to the IBO report dated December 15, 2014, entitled, "Estimate of the Cost of Legal Counsel in Housing Court and Potential Homeless Shelter Savings Due to Averted Evictions." The need for legal representation for low-income tenants facing eviction is a timely and enormously important public policy issue and we greatly appreciate that this research has been undertaken. However, for the reasons set forth below, we believe that the research is incomplete and the findings in the report are inaccurate, and we urge the IBO to undertake a more thorough and in-depth research analysis and to revise its findings.

Funding a right to counsel for all low-income tenants who face eviction is good public policy because of the many important benefits it would provide to represented tenants. Legal representation helps tenants avert eviction and displacement and the resulting trauma and disruption to their lives and livelihoods, including interruption in children's schooling, difficulty in retaining and obtaining employment, severing of important social bonds, and a detrimental impact on mental and physical health with potential long term consequences. Legal representation helps tenants navigate a complex maze of housing laws and effectively assert the right to a habitable home, rights under rent regulation and housing subsidy programs and rights that set limitations on how, why and when an eviction can be executed. And, at a time when faith in the justice system is shaken and the gulf between the wealthy and the poor is growing, providing legal representation in eviction proceedings furthers access to justice, due process and equity and sends a strong message that two systems of justice – one for the haves and the other for the have-nots – is intolerable.

We understand, of course, that the IBO report addresses the costs of and savings from providing counsel in eviction cases to New York City, not the consequences of providing counsel to the tenants themselves. Cost-benefit analysis is an important driver of public policy, and the IBO report findings will inform public debate. We are therefore concerned that the report, as written, will skew that public debate by considerably underestimating the actual cost-savings to New York City. Our concerns are two-fold – 1) the report focuses on homeless shelter savings to the exclusion of all other cost savings, and 2) it bases its

findings on inaccurate assumptions that, if corrected would show– even looking at shelter costs alone – that the costs of providing counsel would be offset by the savings.

Savings in addition to homeless shelter costs should be researched and considered in the cost-benefit analysis. These additional costs will be incurred for households that become homeless, and in many instances, for households that are evicted but do not end up homeless or who move out of their homes even though they are not actually evicted. They include:

- *Short- and long-term municipal costs associated with homelessness other than shelters*, such as: physical and mental health care in emergency rooms and elsewhere; special education, schools suspensions and other costs related to the education of homeless children; costs of police and jails/prisons due to incarceration of individuals made homeless through eviction; and welfare benefits for individuals who lose their employment. The report acknowledges some of these costs, but makes no effort to estimate them.
- *Impact on the overall need for affordable housing.* The mayoral administration has made a commitment to addressing the deficit in affordable housing. Most low-income tenants who face eviction live in rent regulated housing or otherwise affordable units. When a low-income tenant is evicted, there is generally a dual impact on the need for affordable housing: the unit becomes unaffordable for subsequent tenants because the owner raises the rent, and the evicted household adds to the growing number of household in need of affordable housing. Constructing a new unit of affordable housing is generally thought to cost in excess of \$250,000, so factoring this impact of eviction prevention into the cost-benefit equation would substantially alter the findings.
- *The financial impact of compliance with housing laws.* When tenants are represented in eviction proceedings, they are far more likely to reap the benefits of the warranty of habitability, rent regulations and other laws that were adopted to protect their rights. When rent levels are kept at their legal rate and tenants are not forced to spend their own money on repairs the landlord is required to make, tenants have more disposable income that in turn gets invested in their communities, and when homes are made more livable, the City saves money in enforcement efforts.

Further research and more accurate assumptions would significantly alter the findings of costs and benefits. Areas that need further research or revised assumptions include:

- *The failure to fully explore whether the costs of providing counsel could be shared by the state and federal governments.* The report attributes the full cost of providing counsel to New York City and the majority of the cost savings to the state and federal governments. While it does acknowledge that the cost as well as the benefits of providing counsel might be able to be shared with these other levels of

government, this possibility is not fully explored and could substantially affect the findings.

- *The failure to account for funding other than City funding as an offset to the cost of providing counsel.* The report concludes that the overall cost of providing counsel would be \$173 million and then offsets that cost by \$20 million in city funds that are already spent on eviction prevention legal assistance. However, the report fails to consider other existing funding for eviction prevention legal assistance from the federal Legal Services Corporation, the Interest on Lawyer Account Fund, the Office of Court Administration and other sources that also offsets the total incremental cost of providing counsel to low-income tenants.
- *The failure to look at the rise in percentage of homeless families entering shelters due to evictions and the increasing length of stay in shelters.* The report acknowledges, but fails to take into consideration in its calculations, the fact that the percentage of homeless families who enter the shelter system due to evictions has been rising. It fails to acknowledge the fact that the average duration of shelter stays has also been increasing. IBO should examine these trends and take them into consideration in projecting costs saved.
- *The failure to obtain accurate data or a reasonable basis for estimating the extent to which people entering the shelters from doubled-up situations were previously evicted.* The report estimates, without any articulated basis, that only 10% of the families and individuals who enter the shelter system after living in overcrowded situations had been evicted prior to entering their overcrowded situations. We believe that this arbitrary figure is low and that the IBO should be able to obtain empirical data on this from studies of precipitating factors for shelter entry or extrapolate a more accurate figure from other data. Obtaining an accurate figure is especially critical because the city pays a significant amount of the costs of sheltering individuals (73%), making this figure play a significant role in the potential cost savings.

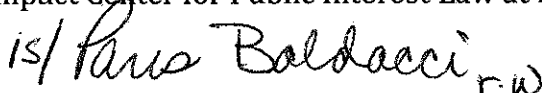
We appreciate the difficulty in obtaining relevant data and making the types of assessments that were needed to produce this report. However, the number of homeless families entering shelters is increasing, evictions are a growing precipitating cause of homelessness, and the cost of shelter for homeless families and individuals now exceeds \$1 billion. Moreover, the provision of counsel in eviction proceedings is a measure with a great deal of public support and important public policy ramifications well beyond the cost-benefit balance. Thus, it is enormously important to have the most accurate possible estimate of the potential cost savings of legal representation in eviction cases to inform the public discourse. We offer our comments in that spirit.

Thank you very much for taking these concerns into consideration. We would be happy to meet with you to discuss this. If you have any questions or would like to arrange a meeting, please contact Andrew Scherer at 212-431-2144 or ascherer@nyls.edu or by mail at 185 West Broadway, New York, NY 10013.

Sincerely,



Andrew Scherer, Policy Director
Impact Center for Public Interest Law at New York Law School



Paris Baldacci, Clinical Professor of Law and Director of the Housing Rights Clinic
Cardozo Law School



Paula Galowitz, Clinical Professor of Law Emerita
NYU School of Law

cc: Councilmember Mark Levine