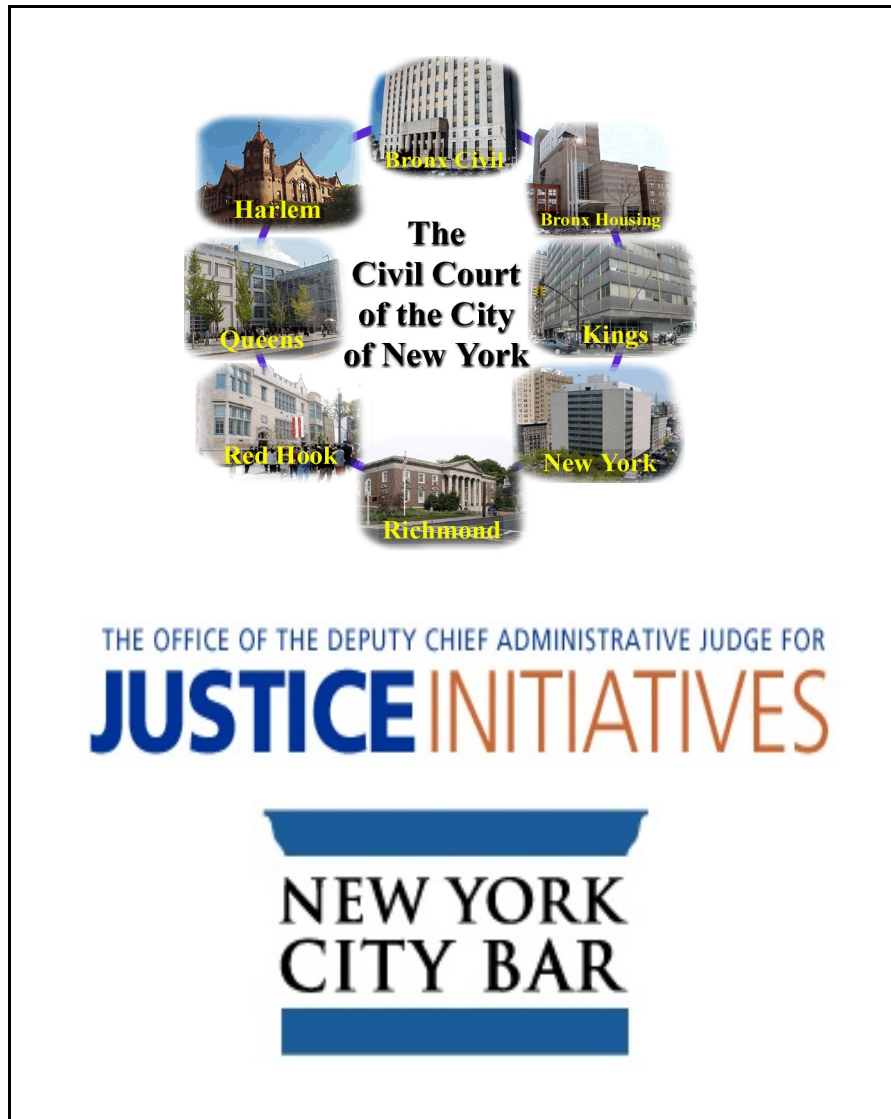


# VOLUNTEER LAWYER FOR A DAY PROJECT REPORT



## A TEST OF UNBUNDLED LEGAL SERVICES IN THE NEW YORK CITY HOUSING COURT

February 2008

A Joint Report by:

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to Persons of Moderate Means

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## SUMMARY OF FINDINGS

In November 2006, The Civil Court of the City of New York, in conjunction with the Office of the Deputy Chief Administrative Judge for Justice Initiatives (“Justice Initiatives”), the New York City Bar Association’s Committee on Legal Services to Persons of Moderate Means, Subcommittee on Unbundled Legal Services (“NYC Bar Committee”), and Fordham Law School Feerick Center for Social Justice and Dispute Resolution (“Feerick Center”), started a joint pilot project, Volunteer Lawyer for a Day (“VLFD”), to test “unbundled” legal services in litigated matters as a means to alleviate unmet legal needs. The Civil Court recruited, trained and supervised volunteer lawyers to represent litigants at their initial court appearance in Housing Court.

Over a four-month period, from November 15 through March 6, 2007, twenty-one volunteer attorneys represented 50 litigants during sixteen morning court appearances in their nonpayment eviction proceedings. Each representation was for one day only.

### Findings

This Report makes the following findings which are discussed in greater detail below.

1. A Lawyer for a Day Program in Housing Court Benefits the Litigants by Improving Access to Justice.
2. A Lawyer for a Day Program in Housing Court Benefits the Litigants and the Court System by Improving Perceptions of Fairness and Accessibility to Justice.
3. A Lawyer for a Day Program in Housing Court Benefits the Judge and Court Staff by Improving Courthouse Efficiency.

4. A Lawyer for a Day Program in Housing Court is an *Attractive Pro Bono* Opportunity for Attorneys.
5. New York City Housing Court Settlement Conferences are an Ideal Arena for Unbundled Legal Services in Factually and Legally Simple Cases.

Based upon these findings, this Report concludes that a Lawyer for the Day Program is a feasible and useful approach to alleviate the overwhelming unmet legal needs of New York City Housing Court litigants.

## INTRODUCTION

“Unbundled” legal services, also known as limited scope or discrete task representation, is a practice in which the lawyer and client agree that the lawyer will provide some but not all, of the work involved in traditional full service representation. Simply put, the lawyers perform only the agreed upon tasks, rather than the whole “bundle,” and the clients perform the remaining tasks on their own.

It is well documented that the majority of housing cases result in settlements that are negotiated by an attorney on one side and a self-represented litigant on the other side. Many of these settlement negotiations take place out of the presence of Court personnel. Even when a Court Attorney is present for the settlement negotiations, the Court Attorney is not permitted to give legal advice to the self-represented litigant. Unbundled representation during the settlement conference is an effort to level the negotiating positions of the parties by providing an attorney to represent the tenant or owner for that part of the “bundle.”

In New York, unbundled legal services in non-litigated matters is commonplace and generally accepted legal practice so long as the services are reasonable under the circumstances and the client gives informed consent. However, unbundled legal services in the courtroom setting is controversial.<sup>1</sup> New York’s Civil Practice Laws and Rules does not provide for limited

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<sup>1</sup> See N.Y. State Unif. Ct. Sys., Report and Recommendations from the New York State Unified Court System’s Pro Bono Convocations (2004) [hereinafter Recommendations] at 21, <http://www.nycourts.gov/reports/probono>, expressing concern over whether unbundling was appropriate in litigated matters; New York State Bar Association Commission on Providing Access to Legal Services for Middle Income Consumers “Final Report and Recommendations on ‘Unbundled Legal Services,’” which recommends that limited appearances in litigated matters

appearances in litigated matters.<sup>2</sup> Thus, if an attorney and client agree to limited representation, there is no guarantee the Judge involved will recognize the agreement when the attorney's representation is completed. This, in effect, bars unbundling in a large number of cases where it would be most helpful, such as landlord-tenant cases.

Believing that unbundled legal services in litigated matters has potential value and should be tested in New York, but mindful that a number of issues have been raised concerning such services, the NYC Bar Committee partnered with the Civil Court of the City of New York,<sup>3</sup> Justice Initiatives, and the Feerick Center to run this pilot project in Housing Court. The pilot project was modeled after a highly successful unbundled lawyer for the day program in San Francisco.<sup>4</sup> In that program, every landlord and tenant, who would otherwise be self-represented, receives free representation during the mandatory unlawful detainer settlement conference in San Francisco Superior Court. These conferences are similar to the settlement conferences held in

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not be permitted, stating that unbundling “raises significant practical and policy difficulties, and could generally prejudice the administration of justice and raise ethical concerns regarding competence.”

<sup>2</sup>See CPLR 321, which provides that if a party appears by an attorney, the party may not act in person in the case “except with the consent of the court” and that an attorney of record may not withdraw or be changed “without an order of the court.” Accordingly, an amendment to CPLR 321 would be required to permit limited appearances.

<sup>3</sup> Administrative Judge Fern A. Fisher of the Civil Court of the City of New York and her court attorney, Rochelle Klempler, have long been interested in the unbundling concept, believing it to hold particular promise in Housing Court. See Fern Fisher-Brandveen & Rochelle Klempler, *Unbundled Legal Services in New York State: Untying the Bundle*, 29 Fordham Urb. L.J. 1107 (2002); Rochelle Klempler, *Unbundled Legal Services in New York State Litigated Matters: a Proposal to Test the Efficacy Through Law School Clinics*, 30 N.Y.U. Rev. L. & Soc. Change 653 (2006).

<sup>4</sup>The San Francisco program is run by the Volunteer Legal Services Program (VLSP), which is a nonprofit provider of free legal and social services founded by the Bar Association of San Francisco. <http://www.sfbar.org/volunteer/opportunities.aspx#anchor03>.



the Resolution Parts of the New York City Housing Court. The partners to this project teamed up to develop and create the VLFD pilot project to mirror the San Francisco model in Resolution Part nonpayment cases.

This Report contains the evaluation, findings, and recommendations derived from the VLFD pilot project. The results and feedback were overwhelming: every litigant, every volunteer lawyer, and the presiding Judge thought this program made a major difference to the litigant and to the administration of justice in Housing Court. This report recommends that the VLFD become a permanent expanded program in the Housing Court.

## HOUSING COURT NONPAYMENT CASES

The New York City Housing Court nearly defies description due to its huge caseload<sup>5</sup> and its vast reach into an essential element of litigants' lives – their homes. For small property owners, the inability to collect outstanding rents can place them at risk of defaulting on their mortgages and the loss of their own home. For tenants, an eviction proceeding may place them and their families at severe risk of becoming homeless since the lack of affordable housing in New York City is at an all time crises. Clearly, the stakes are extremely high for many litigants. Moreover, approximately half of the litigants appearing in Housing Court do not have an attorney, this is a staggering statistic. At least ninety percent of the tenants and fifteen percent of the landlords are self-represented. Not only are these litigants disadvantaged by lack of counsel, but the court is burdened trying to administer justice with large numbers of litigants who are unversed in court procedure and the law.

A landlord starts a nonpayment case by serving the tenant with court papers that require the tenant to file a written or oral Answer containing defenses and counterclaims within five days. The majority of tenants go to the Landlord-Tenant Clerk's Office and verbally tell the Clerk what their defenses are to the proceeding. The Clerks are instructed not to attempt to explore any possible defenses or counterclaims. The Clerks endorse the oral Answers on the files by filling out the court answer forms. At this time a court date for the following week is assigned. Every Housing Court case is initially sent to a Resolution Part where an attempt to

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<sup>5</sup>The Civil Court of the City of New York, Caseload Activity Report 2006 (unpublished), shows that 256,747 nonpayment petitions were filed in 2006 in New York City seeking to evict residential tenants because the owners alleged the tenants were behind in the rent. This is compared to San Francisco that has approximately 3700 hundred petitions filed each year.

settle the case is made.

Most Resolution Parts have two Court Attorneys who are available to help the parties conference the case and arrive at a settlement or to review a stipulation which was negotiated outside the courtroom. When self-represented litigants come to the Resolution Part they check in with the Clerk and are told to take a seat in the courtroom. A Resolution Part video is played in the courtroom that explains the roles of the court personnel and advises self-represented litigants that they do not have to speak to the other side without the assistance of the Judge or Court Attorney.

Nevertheless, despite this video, many self-represented litigants are confused over court procedures and are not sure as to who works for the court and who works for the other side. Typically, self-represented litigants are asked by their adversary's attorney to step into the hallway, which is already crowded with lawyers and litigants discussing their cases. At some point in the discussion the lawyer may present a handwritten stipulation for the litigant to sign, containing terms which contain legal ramifications that the self-represented litigant may not understand. These stipulations of settlement often contain final judgments for the landlord for the amount of rent owed with payment schedules delineating the dates by which the tenant must pay the money. Further, the stipulations often provide for the warrant of eviction to issue forthwith, stayed pending the tenant's compliance with the pay-out provisions. The stipulation may permit the landlord to execute the warrant of eviction without the parties returning to court.

Once the parties have signed the stipulation of settlement, the landlord lawyer may then leave to cover another case in a different Part while the self-represented litigant returns to the courtroom and waits for the Judge to call the case. When the case is called, the Judge allocutes

the case on the record by discussing the terms of the stipulation with the self-represented litigant. Often the attorney for the landlord is not present. If the case cannot be resolved, it is referred to a Trial Part.

While most cases are settled by stipulation in the Resolution Part and the litigants never go to trial, the settlements are often not the end of the case. Many cases come back to court on Orders to Show Cause when either party does not comply with the terms of the stipulation. For example, the tenant may bring an Order to Show Cause to ask for more time to make installment payments or to require the landlord to finish agreed upon repairs. A landlord may need to bring an Order to Show Cause to obtain a final judgment if he or she did not obtain one in the stipulation of settlement. Additionally, if a tenant defaults on a stipulation, the tenant may end up served with a notice of eviction. The tenant would then be required to bring an Order to Show Cause to prevent his or her eviction. Thus, Housing Court cases often require many more court appearances beyond the successful settlement conference in the Resolution Part.

## THE VLFD PILOT PROJECT

The VLFD pilot project was designed to be of limited duration, from November 2006 through February 2007, and small so that it could be properly evaluated and controlled. A total of fifty tenants were represented, approximately five tenants on each court date. The program was in one Housing Court, in one of the Resolution Parts, once a week, at the first calendar call on Wednesdays. To put this in perspective, there are six Housing Courts in New York City with thirty-five Resolution Parts running two to three calendars per day, five days per week. Funding to hire a Program Coordinator was provided by Hon. Juanita Bing-Newton, Deputy Chief Administrative Judge for Justice Initiatives, and Administrative Judge Fern Fisher of the Civil Court of the City of New York hired Marcelle Brandes, Esq., starting on September 21, 2006. Judge Fisher decided that the project should be run in New York County because the pool of existing volunteers was most fertile.

It was decided that attorneys who had already been trained by the Housing Court's Volunteer Lawyer Project (VLP) would be recruited for this new pilot project. The Housing Court's VLP runs a nine-hour CLE course on Fundamentals in Residential Landlord-Tenant Law, which attorneys take and then volunteer in the Court's Resource Centers, giving free legal advice to self-represented litigants. A letter was sent inviting the VLP lawyers to participate, and thirty agreed to attend an additional three-hour CLE course, with free CLE credit in exchange for agreeing to volunteer with the project at least two mornings.

The three-hour course contained training on ethical issues concerning limited scope representation, interviewing, and negotiating techniques, and public assistance issues. The

training was conducted by court personnel, a tenant's attorney and a landlord's attorney. The first presentation was live on November 1, 2006, and there were two subsequent video replays.<sup>6</sup> Over thirty attorneys were trained, and twenty-one attorneys actively participated in the program. Although in exchange for the free CLE credit the attorneys agreed to volunteer at least two mornings in the program, several gladly volunteered more than twice. Some of the attorneys who attended the training failed to volunteer and some were not asked to participate. For the most part, the attorneys who participated in the project were not landlord-tenant practitioners.

In order to facilitate the organization and operation of this initial pilot, the type of cases undertaken was limited to legally and factually simple cases. Only nonpayment proceedings were eligible. Only tenants residing in rent stabilized apartments and only landlords of buildings with three units or less were eligible. Further, there was no income limit,<sup>7</sup> but there was a general policy that the rent should not be above \$1000.00 per month. A self-represented landlord was eligible only if he or she owned no more than one building with three units or less.

One of the primary concerns with limited scope representation in litigation is that even if the attorney and client have a signed retainer agreement limiting the attorney's involvement in

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<sup>6</sup>The VLFD training materials may be requested by emailing [AdminCiv@courts.state.ny.us](mailto:AdminCiv@courts.state.ny.us).

<sup>7</sup>Of the fifty tenants the VLFD represented, fifty-nine per cent of the litigants had incomes under \$30,000. Twenty-six per cent of the litigants had no income, and an equal percentage had incomes between thirty to forty thousand per year. Fifteen per cent of the households had incomes over \$40,000, and the highest income was for an extended family with a joint income over \$100,000 per year. It is important to note that the income of the project's clients is probably not representative of tenants in nonpayment cases throughout the city. Manhattan experiences more tenants with higher incomes. Tenants in Housing Authority properties and those with Section 8 subsidies were not eligible for VLFD because these cases are legally more complex and the volunteer attorneys were not trained in these areas. Thus, a segment of indigent tenants were excluded from the program.

the case, it is unknown whether the Judge will permit the attorney to stop the representation at the agreed upon time. To address the limitations of the CPLR, the project was confined to one Housing Court Part with one Judge who agreed in advance to accept a limited retainer agreement setting forth that the representation begins and ends on the same date.

Housing Court Judge Jean T. Schneider was asked if she would permit the unbundling pilot project in her Resolution Part by Judge Fisher. After the discussion of the unbundling concept and its potential benefits and issues, as well as the specifics of the project, Judge Schneider agreed to honor the limited retainer agreements. She stated that she had no preconception favoring or disfavoring the project, and she was willing to accept the concept of limited appearances for purposes of the pilot project. Judge Schneider also had no fixed views on the propriety or practicality of limited appearances in litigation generally or about "unbundling" as a concept. A separate calendar designated as "Part J" was established for the VLFD cases and assigned to Judge Schneider.

After meeting with representatives from the Clerk's office, it was decided that the Program Coordinator would sit in the Clerk's office once a week and when a self-represented litigant came in on a nonpayment case, the Clerk would refer the litigant to the Coordinator who would review the court's file and determine if the litigant was eligible. Since the project was conducted in New York county, where there are virtually no self-represented landlords, the project was only able to represent tenants.<sup>8</sup> If the Coordinator determined that the litigant was

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<sup>8</sup> Most buildings in New York county are owned by corporations. Corporations are required to be represented by an attorney in Housing Court (*see* CPLR 321). Kings and Queens counties have a higher concentration of small property owners who are self-represented.

eligible, the Coordinator explained the program to the litigant<sup>9</sup> and asked if they wanted to join.<sup>10</sup>

In the Clerk's office, at a table set up in the public area, either the Program Coordinator or a law student<sup>11</sup> would conduct an intake interview utilizing a detailed intake form.<sup>12</sup> The interview protocol required the intake person to inquire into possible factual bases for defenses or counterclaims. The intake interview took approximately fifteen minutes. The oral answer form<sup>13</sup> was filled out detailing the tenant's defenses and listing any counterclaims. The Coordinator or student then explained to the litigant what documents were necessary to bring back to court the following week. In order to have time to meet with their attorneys, the litigants were asked to arrive at 9:00 A.M., even though their court appearances were scheduled for 9:30 A.M.. At this initial meeting in the Clerk's office, the tenant was also given a list of free Legal Services/Legal Aid offices and the phone number to apply for a grant or loan for rental arrears.<sup>14</sup> Pertinent information would be emailed faxed or phoned to the attorneys scheduled for the following

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<sup>9</sup> The litigant was told that the court was running a pilot project and had volunteer attorneys who could represent them the first time the case was on the court's calendar and that this was different from traditional representation where the attorney represents a client from the beginning to the end of a case. In this pilot project, the attorney would only represent the party one morning, the first time the case was in court. The litigant was then asked if he or she would like to be part of the program and have representation for a few hours on their return date.

<sup>10</sup>Only three litigants declined to participate.

<sup>11</sup>The Program Coordinator was always present if a law student was conducting the interview. Fordham Law School was involved with this project from the beginning, but because of students' schedules, the law students were not able to assist with intake until January 2007.

<sup>12</sup> A copy of the intake form is attached as appendix "1."

<sup>13</sup> A copy of the court's Answer form is attached as appendix "2."

<sup>14</sup> This list was initially given to tenants on the date they returned to court, but at the suggestion of representatives of the Housing Task Force, it was decided that tenants should be given referral information at the initial contact.



week, enabling the volunteer attorneys to conduct a conflict check prior to their court appearance.

In some weeks the Coordinator was unable to obtain a sufficient number of eligible cases in the Clerk's office for the VLFD project.<sup>15</sup> When a sufficient number of cases were not picked up in the Clerk's office, the Coordinator would review Orders to Show Cause in Judge Schneider's Part returnable on the day the project would be running. On the return date, when the self-represented litigants answered the calendar, they were approached by the Coordinator, who explained the VLFD. The self-represented litigants were asked if they wanted to participate, and if so, they were taken into the VLFD room and introduced to the volunteer lawyer who filled out the intake form. Obviously, only those attorneys who did not need to conduct a prior conflict check took these cases.<sup>16</sup>

On the day of the court appearance, the Program Coordinator met with the attorneys and the litigants in the VLFD room and gave the attorneys a file containing an instruction sheet, the completed intake sheet, the Answer, the Notice of Petition and Petition, the Limited Scope

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<sup>15</sup> While there were self-represented tenants coming to the Clerk's office, most were there for Housing Authority cases or filing Orders to Show Cause. Few were coming in to file an answer in a rent stabilized nonpayment proceeding. Housing Authority cases were not taken into the program because these tenants were not perceived to be in as high a risk of losing their apartments for nonpayment as tenants in rent subsidized apartments. No self-represented landlords came in while the Coordinator was conducting in-take or were present in the Part on the program days.

<sup>16</sup> Most of the attorneys were either retired or solo practitioners with a practice area that would not involve the need for a conflict check. However, under the newly adopted joint order of the Appellate Divisions, adopted November 7, 2007, adding a new section 1200.20-a to DR 5-101-a of the New York Code of Professional Responsibility, lawyers participating in limited *pro bono* legal assistance programs are now able to represent clients in such limited circumstances without conducting conflict of interest checks. This joint order is available on the Civil Court's website at: <http://www.nycourts.gov/courts/nyc/civil/volunteer.shtml>.

Retainer Agreement, and the Limited Notice of Appearance.<sup>17</sup> The Coordinator would briefly suggest various strategies regarding that specific case (e.g., an adjournment with a court ordered inspection versus entering into a stipulation that day). The attorney and litigant then met, and the attorney read the Retainer Agreement out loud to the litigant making sure that the litigant understood. After both the attorney and litigant signed the Retainer Agreement, the attorney also filled out the Limited Notice of Appearance form.

After discussing the case with the litigant, the volunteer attorneys were asked to discuss the case again briefly with the Program Coordinator before they started to negotiate with their adversaries. Many of the attorneys were interested in discussing their case with the Program Coordinator. Similarly, the volunteer attorneys were told to bring the negotiated stipulation to the Program Coordinator for review before signing it. While most attorneys did this, not all stipulations were reviewed by the Program Coordinator. Sometimes this step was bypassed due to time pressure to get the stipulation before the Judge before the lunch break at 1:00 P.M; otherwise the attorney and the litigant had to return at 2:15. All stipulations by VLFD attorneys were reviewed by Judge Schneider with the litigants.

Initially, it was thought that the project would represent litigants only once, on the first court appearance whether or not the case settled. From both an administrative and a substantive point of view, there was some concern that petitioners' attorneys might seek to deprive tenants of the benefits of the volunteer attorneys by adjourning cases to a date when the volunteer attorney would not be available. Accordingly, Judge Schneider began granting adjournments in the

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<sup>17</sup> A copy of the Instruction sheet, Retainer Agreement and Limited Notice of Appearance are attached as appendix "3." The Retainer Agreement was also available in Spanish, a copy of which is attached as well.

project's cases only to the next date when volunteers would again be available in the Part.

It was within the Project Coordinator's discretion for the project to represent a litigant on an adjourned date, and it quickly became apparent that many cases were not ripe for settlement the first time the case was on the calendar. Sometimes the landlord's attorney did not have the rent breakdown, or the litigant needed time (to find out if they could obtain a grant, a one-shot deal from the Department of Social Services, or help from family to pay the rent), or the tenant wanted a court ordered inspection. It was also readily apparent that the litigants would be best served if represented by a lawyer when the first substantive stipulation was negotiated, whether it was the first time or the fourth time the case was on the calendar. Many of the volunteer lawyers became involved in their client's cases and wanted to come back on their client's return date. But, whether it was the same attorney or a different volunteer attorney, a new Retainer Agreement and Limited Notice of Appearance were filled out for each subsequent appearance.

The court provided the project with its own small room down the hall from the Part, and this room was an essential element to the project's success. It allowed a space for the litigants and lawyers to meet and discuss the cases. When the landlord's attorneys checked into the courtroom they were told they could find the tenant and the volunteer lawyers in the VLFD room. The litigants did not have to wait in the courtroom or in the hallway, they got to sit in their own room and be assisted by their attorney. The room enabled the litigants to have confidential lawyer-client conferences. The volunteer attorneys were able to meet one another and discuss their cases. The room was busy, but with an air of cooperation and friendliness. During one session, one of the attorneys and two of the litigants had obvious physical impairments. While they sat in the room waiting for the landlord's attorneys, they also exchanged information

regarding Access-a-Rides and where to buy orthopedic shoes and canes. This atmosphere remained consistent throughout the duration of the project.

## EVALUATION CONDUCTED

### In General

This section of the report discusses the extensive evaluation conducted in connection with the VLFD project. As detailed below, surveys were conducted of the volunteer attorneys and litigants after each court date and post-project. Focus group meetings were also held with the litigants and volunteer lawyers.<sup>18</sup> In-depth interviews were conducted with the Judge who presided over these cases throughout the project.

Finally, all of the court files in the fifty cases which were part of the pilot project were examined and reviewed after the cases reached their final dispositions. Due to privacy concerns, the fifty cases have been numbered from 1 to 50 and are referred to by numbers throughout the Report and the corresponding index numbers are not specified. The pilot project Part J cases are a matter of public record and are on file with the Civil Court of the City of New York. The statistics and results, many anecdotal, are set forth in the Findings section below.

### Litigant Interviews

At the end of each project session, the Coordinator or law student asked each litigant to complete a survey regarding his or her experience with their volunteer attorney and about the program. Litigants were asked to rate how helpful their attorneys were and whether they thought the outcome of their case was effected positively or negatively by having a volunteer attorney.

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<sup>18</sup> A video comprised of attorney and litigant focus group comments was produced by the Civil Court of the City of New York to be used for training and educational purposes. The video may be requested by emailing [Admnciv@courts.state.ny.us](mailto:Admnciv@courts.state.ny.us)

Forty-six litigants completed a survey at the conclusion of the one day representation.

Additionally, when the project was completed, each litigant was contacted to complete a post-project survey. Litigants were either reached by telephone, attended the focus group meeting and filled out a survey, or were mailed a post-project survey. A total of twenty-one post-project surveys were completed. Nine surveys were received in the mail, six surveys were filled out over the telephone, and six litigants filled out surveys at the focus group meeting. In this survey, litigants were again asked their opinion of the VLFD, whether they had any negative experiences and what they thought of the program.<sup>19</sup>

#### Volunteer Attorney Interviews

The volunteer attorneys were requested to fill out an exit survey after completing each of their cases, and a post-project survey after completing their service. Background questions were asked about the lawyers, including their areas of practice. Attorneys were asked to rate their own effectiveness, the interactions with their adversaries, and what they thought about the program.<sup>20</sup>

#### Judge Interviews

Judge Schneider was interviewed by John Ritchie, Special Counsel, Justice Initiatives, four times over the course of the Project to solicit her views: before the Project was initiated on

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<sup>19</sup> Copies of the Litigant Exit Survey form, Litigant Exit Survey Results, Post-Project Survey form and Litigant Post-Project Survey Results are annexed as appendix “4.” The completed surveys are on file with the Civil Court of the City of New York Administration.

<sup>20</sup> Copies of the Volunteer Attorney Exit Survey form, Volunteer Attorney Exit Survey Results, Volunteer Attorney Post-Project Survey form and Volunteer Attorney Post-Project Survey Results are annexed as appendix “5.” The completed surveys are on file with the Civil Court of the City of New York Administration.

November 14, 2006; twice during the Project on December 15, 2006 and February 9, 2007; and at the conclusion of the Project on April 20, 2007 (Judge Fern Fisher was also present at this last interview).

As a means of monitoring quality, Judge Schneider allocated all settlement stipulations in which the tenant was represented by one of the unbundled volunteer attorneys (normally she does not allocate when both parties are represented).

### Focus Group of Litigants

All of the litigants served by the Project were sent an invitation by Judge Fisher to attend a Chinese Dinner at the Housing Court to discuss their experience with the program. Of the fifty litigants served, six litigants (some of whom also brought family and friends) attended the evening focus group discussion on Tuesday March 27, 2007 from 6:00 to 9:00 P.M. Also present were Administrative Judge Fern A. Fisher, Marcelle Brandes, Esq., Program Coordinator, Barbara Mule, Esq., Chief of Staff, Justice Initiatives, Jennifer M. McAdam, student member, NYC Bar Committee, and Karen Schwartz, Court Attorney. Video interviews with individual litigants were also conducted.

The litigants were asked to share their individual experiences with their volunteer attorney, whether they had any difficulty understanding that the attorney was only representing them for that one morning, whether they found the project helpful, how the project could be improved, if they had a bad experience, whether there was anything that they did not like about the project, and whether the project should continue. Their feedback is discussed throughout the Findings in this Report.

### Focus Group of Volunteer Attorneys

A focus group of the participating volunteer lawyers was conducted on Wednesday March 28, 2007. An open invitation was sent to the twenty-one volunteer lawyers who actively participated in the program to attend the discussion held at the courthouse from 9:30 to 11:30 A.M. Eight attorney volunteers attended, shared their thoughts and answered questions. Also present were Administrative Judge Fern A. Fisher, Marcelle Brandes, Program Coordinator, Rochelle Klempner, Court Attorney to Judge Fisher, and Carol Salem, Special Counsel for Justice Initiatives. Video interviews were also conducted with the volunteer attorneys.

Attorneys were asked questions about why they joined the project; what they thought of the training; what were their experiences in court; and how the program could be improved. One of the most significant observations highlighted at the attorney focus group was the attractiveness of the VLFD program as a *pro bono* opportunity. This is more fully discussed in the Findings section below. \_\_\_\_\_

The focus group also provided helpful comments on the VLFD training and the running of the program which are discussed more fully in the Recommendations section below.

### Court File Follow-Up

A review of each of the fifty court files was conducted after the project was closed. The litigants' oral answers were reviewed to see how many litigants raised defenses, other than general denial, and how many raised repair issues. The files were assessed to learn the ultimate disposition of the cases: how many cases settled by court ordered stipulations; how many cases were dismissed or discontinued; how many cases went to trial; how many cases, if any, came



back to court on orders to show cause, and if so, who brought the order to show cause and why; and whether any litigants were ultimately evicted. The cases that resulted in stipulations (with or without the volunteer lawyer) were reviewed to see how many stipulations contained final judgments, how many contained pay-out schedules, how many contained repairs, and how many contained a provision that a warrant would issue immediately.<sup>21</sup>

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<sup>21</sup> Some of these statistics from the stipulations were not considered indicative of any Findings for this Report given that some landlord’s attorneys never seek a final judgment in their stipulations, others are under instructions from their clients to only accept a stipulation with a final judgment. Some landlords instruct their attorneys that all rental arrears have to be paid within thirty days, others give their lawyers wide latitude. Some tenants want to sign any stipulation just to get out of court so they can get to work: the terms are less important than leaving court. Overall, each situation is unique and the stipulation alone should not be the basis to determine the impact of having a volunteer lawyer. The statistics are annexed at appendix “6.”

## FINDINGS

### A Volunteer Lawyer for a Day Program in Housing Court Benefits the Litigants by Improving Access to Justice.

Unquestionably, the most important outcome of the VLFD was that litigants said they learned they had rights, raised issues that may never have been heard in court, and were clearly better informed and prepared to continue the cases on their own, if necessary. The evaluation conducted revealed that the VLFD provided litigants with important information in their cases leading them to obtain greater access to justice.

New York City's landlord-tenant law is extremely complicated. Most self-represented litigants are unaware of their defenses, inexperienced at negotiating, and unschooled in settlement procedures. Critics have long commented on the impropriety of landlord lawyers negotiating with self-represented tenants in the hallways of New York City Housing Court.<sup>22</sup>

This settlement process has been aptly described by then Housing Court Judge Marcy S.

Friedman after conducting allocutions in approximately 5,000 Housing Court cases:

...this court's conclusion is that the stipulations are generally signed without knowledge of possible defenses and out of fear of eviction or the sense that there is no alternative. The overwhelming majority of unrepresented tenants lack even basic understanding about their legal rights and the defenses which they may have to the petitioner's claims for rent. Most have repair problems but do not know that housing code violations may affect their landlords' entitlement to rent. Many

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<sup>22</sup> See e.g. New York County Lawyers Association Report on Protocols for Judges in the Settlement and Trial of Cases Involving Unrepresented Litigants in Housing Court, December 6, 2006, p. 11, available at: [http://nycla.org/siteFiles/Publications/Publications517\\_0.pdf](http://nycla.org/siteFiles/Publications/Publications517_0.pdf); Russell Engler, "Out of Sight and Out of Line: The Need for Regulation of Lawyers' Negotiations with Unrepresented Poor Persons" *New England School of Law California Law Review*, Vol. 85, No. 79, 1997.

are unaware that they may even seek repairs if they are behind in their rent. Few tenants have any idea whether their rents are legal. \*\*\* Many do not seem to be aware that the stipulations are supposed to be the result of negotiations, and that they are not required to sign the stipulations as drafted by the landlords' attorneys. Most tenants do sign whatever is presented to them, frequently without reading it or having it read to them first, and often even when they are not sure whether they owe or dispute the amount the landlord claims is due.<sup>23</sup>

Clearly, Judge Friedman found that litigants without quality representation in Housing Court cannot readily pursue their legal rights and do not have access to equal justice.

Conversely, in allocuting settlement stipulations from the VLFD, Judge Schneider was generally satisfied with the quality of the representation and with the form of the stipulations: for the most part, the terms appeared to be reasonable and realistic. Judge Schneider found that when the project first started there were a couple of instances where it was necessary for her to help clarify stipulations to the tenants in the course of allocutions; one case where she rejected the stipulation presented by the volunteer attorney;<sup>24</sup> and a couple of cases where she suggested changes and helped the attorneys to make modifications. The Judge also found that the volunteer attorneys generally seemed to deal on a level field with the petitioners' bar, and the volunteers seemed to increase in skill and confidence as the project continued and their experience in the court increased. The volunteer lawyers surveyed felt that their adversaries were receptive to their presence, and most said that the training for the program was helpful to very helpful.

The VLFD program provided litigants with information about their cases from the

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<sup>23</sup> *144 Woodruff Corp v. Lucien Lacrete*, 154 Misc.2d 301, 308, 585 NY.S.2d 956, (Civ. Ct. N.Y. Co. 1992).

<sup>24</sup> That volunteer lawyer had not discussed the stipulation with the Program Coordinator and was not asked back by the program. Judge Schneider further stated that she has, on occasion, similarly rejected stipulations presented to her by her Court Attorneys.

moment the litigant entered the program. One hundred percent of the litigants raised defenses, other than general denial in their oral answers in cases in which intake was conducted through the VLFD program.<sup>25</sup> Eighty-four percent of these oral answers raised the warranty of habitability and the need for repairs. Litigants were also given information about where to apply for possible help with rental arrears and where to seek legal help.

Sixty-six percent of the stipulations entered into with the volunteer attorneys in which repairs were raised in the Answer show that repairs were included in the stipulations.<sup>26</sup> The fact that so many cases dealt with repairs is notable in light of litigant survey responses demonstrating that many litigants had no idea the landlord had a duty to provide a habitable apartment and that this defense could be raised in the nonpayment proceeding.

In a post-project survey one litigant expressed surprise, “[t]he volunteer attorney told me that I could get repairs to the apartment – I would never have thought I could talk about repairs in the nonpayment case.”<sup>27</sup>

At the focus group another litigant explained how the VLFD project educated him. He said he had an issue with his stove, but did not think about bringing it up when he came to court because this was a nonpayment case. He said that the law student asked him at the initial

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<sup>25</sup> According to Administrative Judge Fern A. Fisher of the Civil Court of the City of New York this is unusual as a substantial number of oral answers typically contain no defenses other than a general denial.

<sup>26</sup> There are any number of reasons why repairs may not have been included in the other stipulations. For example, in case no. 28, the repairs listed in the Answer were completed by the return date. None of the litigants indicated in their post-project surveys that there was any omission by the volunteer attorney regarding repairs.

<sup>27</sup> Case no. 17.

interview if he had any problems with his apartment, and he told her that his stove did not work because it could not be shut off, and that he had a leak under his sink, but fixed it by turning off the water. The day after he appeared in court with his volunteer attorney, the super came up to his apartment to measure for a new stove. He said that because of the Lawyer For A Day program, people told him “stuff” he never would have known about.<sup>28</sup>

Litigants also learned that they could ask for a court ordered inspection of their apartment. In one case, the litigant said that the volunteer lawyer was able to accomplish something she had been trying to do for years. She explained in her post-project survey:

I needed an adjournment and maybe I could have done that myself, but I couldn't have gotten the repairs. Been to court before and knew about repairs, but never got put into the system -official with HPD getting involved. Today [after the inspection, a] plumber came into my apartment and put in a new faucet and sink – for years it was leaking.<sup>29</sup>

She shared her experience at the focus group meeting, stating that when the landlord knew the [HPD] inspector was coming, he hurried up and tried to fix everything before the inspection.

One litigant at the focus group meeting knew she could get repairs in a nonpayment proceeding, but she was never successful at actually obtaining the needed repairs during her eight year tenancy until she had a volunteer lawyer. She said that she took her landlord to court because he didn't make the repairs and with the Lawyer For the Day program this has been the first time the landlord even made an attempt to make the repairs. In another case, the landlord made the repairs before the return date after it was specifically noted in the tenant's Answer that

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<sup>28</sup>Case no. 45.

<sup>29</sup>Case no 33.

the refrigerator did not work.<sup>30</sup>

Repair issues were not the only defenses that volunteer lawyers successfully raised at the court appearances. In one instance, the landlord's attorney discontinued the case because the volunteer attorney pointed out that there was no rent demand, which is a jurisdictional defect. According to the litigant, the dismissal was helpful because she needed time to pay the rental arrears, and the landlord's attorney would not give her the amount of time requested. The tenant explained in her post-project interview, "[m]y case was not settled because the opposing attorney voluntarily withdrew. However, I must say that the volunteer attorney was very instrumental in the outcome of my case."<sup>31</sup>

Also significant, was that in at least five of the fifty cases handled, volunteer lawyers discovered instances where the amount of rent stated in the landlord's petition was more than the tenant owed.<sup>32</sup> At least two tenants were not aware that they owed less rent.<sup>33</sup> In one case, the litigant at the focus group discussed how her volunteer lawyer discovered that she did not owe all the rent the landlord was suing her for, and she believes she overpaid the landlord in previous proceedings. She said that thanks to the volunteer lawyer efforts, he caught the landlord trying to overcharge her. The volunteer lawyer took his time and went through her money order receipts and calculated the correct amount she owed.<sup>34</sup>

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<sup>30</sup> Case no. 28

<sup>31</sup> Case no. 47.

<sup>32</sup> Case nos. 20, 28, 38, 40, 42.

<sup>33</sup> Case nos. 28, 38.

<sup>34</sup> Case no. 28.

In another case, the volunteer attorney initially went through the litigant's stack of money orders and adjourned the case because the landlord's attorney did not have the rent breakdown. On the return date the volunteer attorney came back, went through the money order receipts with the rent breakdown and established to the landlord's attorney's satisfaction that there was no outstanding rent due. The case was discontinued.<sup>35</sup>

Having a volunteer lawyer for the day further improves access to justice for litigants by empowering them to continue the case on their own. This benefit was observed in a number of cases where the case was followed after the program's representation ended. Eighty-three percent of the litigants said their volunteer lawyer discussed information they needed and explained how they could obtain the information. At the focus group, one litigant summed it up by saying that it was amazing to have someone with you who speaks the language, the legal language, and to help with the paperwork, so you can go on with the rest on your own. A different litigant explained in her post-project survey that her attorney helped to translate the terminology, and suggested options regarding how to proceed on her own. This litigant's adversary would not settle the case and the litigant went to trial representing herself, and ultimately settled the case.<sup>36</sup>

In yet another case there was a dispute as to whether back rent was owed or whether it was just attorney's fees from prior cases. The landlord's attorney did not have a rent breakdown; the volunteer attorney adjourned the case, including needed repairs in the stipulation of adjournment, and gave the tenant advice. Since the program was ending, the tenant represented

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<sup>35</sup> Case no. 38.

<sup>36</sup> Case no. 9.

himself at the next court appearance when the landlord's attorney discontinued the nonpayment case because there was no outstanding rent due. They also entered into a court ordered stipulation providing for repairs. The tenant said he had been to court three times with this landlord over the issue of attorney's fees and this was the first time the problem was straightened out.<sup>37</sup>

In another case, the stipulation provided for payment of arrears and repairs. The tenant stopped paying rent because the landlord failed to finish the repairs outlined in the stipulation. The landlord brought an Order to Show Cause to enforce the stipulation due to the tenant's failure to pay the rent. As a result, the tenant's repairs were ordered. In the post-project telephone survey, the litigant reported that the landlord had finally finished the repairs. The tenant explained that her volunteer attorney told her she could bring the case back to court if she was not satisfied. The tenant was incredulous, she had been to court many times before but explained that she had no idea that *she* could bring the case back for repairs.<sup>38</sup> In two other cases litigants brought their landlords back to court by Order to Show Cause due to the landlord's failure to complete the repairs outlined in the stipulation of settlement.<sup>39</sup>

Many litigants stated in their post-project surveys that the VLFD referred them to the Civil Court's Resource Center, Legal Aid or Legal Services, the private bar, various charities and the Department of Social Services, to obtain assistance. A number of litigants specifically said

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<sup>37</sup> Case no. 42.

<sup>38</sup> Case no. 11.

<sup>39</sup> Case nos. 25 and 30.



they obtained help from a resource that the VLFD program referred them to.<sup>40</sup> For example, three litigants stated that they received various types of assistance from the Resource Center.<sup>41</sup> One litigant stated that he was referred to the court’s website and found it helpful.<sup>42</sup> Another litigant said that she went to Northern Manhattan Legal Services,<sup>43</sup> another litigant said that she went to Catholic Charities,<sup>44</sup> and another litigant went to Department of Social Services and said she obtained a one-shot deal for the rent arrears,<sup>45</sup> all as a result of referrals from the VLFD program.

The VLFD program was also helpful to the litigants who subsequently retained new counsel. Three of the litigants represented for one-day court appearances by VLFD attorneys returned to court on their next appearance with counsel. Court file follow-up revealed that the VLFD project set the stage for the new counsel to take over by raising defenses, obtaining court ordered inspections for the litigants with repair issues, and obtaining adjournments for new counsel.<sup>46</sup>

Notably, at least eighteen<sup>47</sup> of the fifty litigants who received a volunteer attorney through

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<sup>40</sup> Case nos. 9, 13, 29, 39, 42, 45, 50

<sup>41</sup> Case nos. 13, 29 and 45.

<sup>42</sup> Case no. 42.

<sup>43</sup> Case no. 50.

<sup>44</sup> Case no.13.

<sup>45</sup> Case no. 39.

<sup>46</sup> Case nos. 4, 33 and 34. These cases are more fully examined in appendix “6,” footnote 6.

<sup>47</sup> This number may have been higher since four litigant’s annual incomes are unknown.

the VLFD program, and were thereby, assisted, educated and empowered in their cases, are ineligible for free legal assistance programs because their incomes are too high to qualify.<sup>48</sup> Yet, these litigants were about to appear in court on nonpayment cases without an attorney against represented adversaries. Most litigants who can't pay their rent, are unable to afford to retain a private attorney.

In addition, although twenty-eight out of forty-six litigants were eligible to seek free legal services, there is no guarantee that these organizations would have been able to take the cases. One of these income eligible litigants informed the Program Coordinator that she went to a Legal Aid office, but was turned down for representation. Indeed, as Judge Schneider observed, only a small percentage of tenants in rent stabilized nonpayment cases are represented by legal service providers. Thus, the VLFD program provided opportunities for increased access to equal justice for both low-income and middle-income litigants who would have otherwise represented themselves.

Overall, the representation provided by the volunteer lawyers in this pilot project increased access to justice. A thorough review of all fifty of the VLFD court files, revealed that the cases were handled competently. It is important to note that in one case a warrant of eviction was executed and the litigant was evicted.<sup>49</sup> This eviction was an unexpected result based on the

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<sup>48</sup> Pursuant to Legal Services guideline, litigants with incomes below 125% of the poverty level are considered income eligible. Legal Services providers have discretion, with certain exceptions, to accept clients who have between 125% and up to 200% of the poverty level. For this analysis, the higher 200% income level was used to determine whether the litigants might have been income eligible for Legal Services.

<sup>49</sup> Case no. 16.

project's interaction with the litigant and it can only be surmised that she failed to pay her rent.<sup>50</sup> The project represented the litigant four times. At the first appearance the case was adjourned due to the landlord's attorney request because he was unable to cover the Part before the lunch break. The second time the case was adjourned after it was conferenced before the Judge due to the volunteer attorney's request for records. The Judge instructed the landlord to bring in the rent breakdown, a copy of the original lease, and the landlord's file. The tenant wanted to straighten out what her monthly rent should be. She maintained she was never sent a two year renewal lease, and the landlord claimed it was sent and she never returned it. The landlord raised her rent at the one year rate (which is lower than the two year renewal rate, but ultimately costs the tenant more the following year); there was also an issue of a preferential rent expiration due to a J51 tax abatement that expired, and a recent previous nonpayment case in which the parties had settled that included what the agreed upon monthly rent was. At the third appearance the case was adjourned because the landlord failed to bring the required records to court. At the fourth and final appearance, with the assistance of the volunteer attorney, the parties entered into a stipulation that gave the tenant the two year lease she wanted, she signed the two year lease in court, worked out the monthly rent to the tenant's satisfaction, gave the tenant three months to pay \$1277.00 in arrears, and gave the landlord a final judgment, warrant to issue forthwith. The tenant was given information about where to go for rental arrears assistance, but she said she did not need help with the rent.

The tenant did not seek more time to pay the arrears by Order to Show Cause, although she had done so in a previous proceeding. She also did not file a post-eviction Order to Show

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<sup>50</sup> The project has tried but has been unable to contact the litigant.

Cause. The tenant was familiar with Housing Court procedures, having had thirteen nonpayment cases since 1988 with the same landlord. It is further noted that this litigant was not eligible for free legal services and was grateful for the help that she received from the program.

During the interviews with Judge Schneider, she stated that based on the tenants' responses during settlement stipulation allocutions, she expected that tenants' levels of satisfaction with the unbundled representation would be high. As Judge Schneider hypothesized, the litigants were enthusiastically supportive of the program, and very grateful for the services they received. All the litigants spoken with and surveyed found the program helpful, and ninety-three percent found their attorney very helpful. Not one litigant had a complaint either about the program or their attorney. Among the comments generated by the focus group meeting and surveys taken, the litigants explained that having an attorney for just one morning made a big difference. The overriding feeling about the program was best summed up by one litigant at the focus group meeting who said that when you go to court without an attorney as opposed to with an attorney, you feel the landlord's attorney has the power and you don't; but, when you have a lawyer, you have the power too.

A Volunteer Lawyer for a Day Program in Housing Court Benefits the Litigants and the Court System by Improving Perceptions of Fairness and Accessibility to Justice.

It is most evident from all the evaluations conducted that public confidence in the court system was dramatically improved for the participants in this pilot project. The public's trust in the court system is necessary for the court to continue to effectively function as a resolver of disputes. Having a VLFD program in Housing Court strengthens the public policy that the court

is there to serve all litigants, not just those who can afford an attorney. A VLFD program works toward erasing negative images of inaccessibility and uneven treatment, and engenders a feeling that the court is concerned about the problems of ordinary litigants.

In the interviews with Judge Schneider, she repeatedly commented that the unbundled project appears to have generated a great deal of “good will” among otherwise unrepresented litigants, with many such litigants appreciating that “the system” at least seemed to be making an effort to listen, understand, and allow self-represented litigants to present their side of the story. She further stated that tenants served by the project appeared overall to be less fearful and stressed, and more comfortable in at least understanding proceedings and having had their side of the story presented.

Indeed, Judge Schneider’s observations were confirmed by the results and comments made in the post-project surveys. One hundred percent of the litigants that completed the post-project survey said they thought they had a fairer (or better) experience in court because they had a volunteer attorney. Eighty-five percent of the litigants said they felt they were heard and understood in court as a result of having a volunteer attorney. When one litigant was asked if she felt she was treated differently by the Judge or the landlord’s attorney because she had a volunteer attorney, she wrote “[y]es, I feel that I was given more respect and that my response had more validity.”<sup>51</sup> In a post-project telephone survey, another litigant said that having a volunteer lawyer sent a message he is not completely unprotected and changed the whole dynamic, which was very important. He felt he was treated more fairly because he had a

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<sup>51</sup> Case no. 47.

volunteer lawyer.<sup>52</sup> Another litigant wrote in the post-project survey:

I feel to be in better hands with a Lawyer defending me on this Legal matter in Court. It'll be a great difference in my case. The landlord does not pay any attention to me. He'll pay attention to a Lawyer & Judge.<sup>53</sup>

Another litigant similarly wrote that the volunteer lawyer:

Helped management lawyer realize they can't harass you...Made a presence and put pressure on management's lawyers to fix the repairs and for them to take matters seriously.<sup>54</sup>

Early on, when it was still unclear whether the assistance of a volunteer attorney would improve the litigants' access to equal justice, it was immediately clear to the Program's Coordinator, that, in many instances, even if the attorney did nothing but speak to the landlord's attorney or the Judge on the litigant's behalf and adjourn the case, the litigant was extremely grateful. When approached in the Landlord-Tenant Clerk's office, litigants were comforted when they were told that they were eligible for a free attorney for one morning. The look of distress on their faces would slowly ease. One litigant's statement at the focus group captures a common sentiment:

I get nervous when I come to court. I've been here before...My landlord's lawyer is very aggressive and makes me nervous. The volunteer lawyer made me very comfortable.

As previously discussed, navigating through Housing Court is extremely complicated for a non-attorney. Many litigants find the prospect of representing themselves in Housing Court to defend against possible eviction to be overwhelming. Post-project surveys repeatedly contained

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<sup>52</sup> Case no. 42.

<sup>53</sup> Case no. 22.

<sup>54</sup> Case no. 2.

statements that the representation by the volunteer lawyer eased this tension: “I have confidence going to court with a Lawyer. I feel more comfortable, less nervous [sic].”<sup>55</sup> “It was my first time going to Court. I was a bit nervous too it was a lot easier to have you help me and I was most grateful...totally made me feel a lot more comfortable to know someone with experience was helping me.”<sup>56</sup>

Another litigant stated in her post-project telephone survey that having the volunteer attorney made a big difference, that she had never gone through anything like this before and the volunteer attorney put her at ease and made her feel comfortable.<sup>57</sup> Another litigant stated that she felt not alone, she had someone to talk for her. She was more confident and less nervous.<sup>58</sup>

One of the litigants in the post-project telephone survey explained that she filed an Order to Show Cause seeking more time to pay the rent because she signed the stipulation with her volunteer attorney even though she wasn’t sure she could make the payments delineated in the stipulation. Her attorney was not able to negotiate as much time as she thought she needed, but she signed the stipulation and did not want an adjournment because she couldn’t afford to take another day off from work. She has since paid the rent. This litigant is somewhat sophisticated, as she works for the New York City Housing Preservation Department, yet she said, “I wasn’t sure what would happen [when I first went to court], the volunteer attorney helped me and made me more relaxed. The attorney for the landlord was intimidating, so it was good I had a

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<sup>55</sup> Case no. 22.

<sup>56</sup> Case no. 36.

<sup>57</sup> Case no. 50.

<sup>58</sup> Case no. 39.

lawyer.”<sup>59</sup>

Another litigant in her post-project survey explained how important the volunteer lawyer was to her. She stated that the courthouse is not a comfortable environment especially for a tenant without an attorney, and that even if the landlord’s attorney is cooperative, the support and presence of someone at your side even for one morning makes it better.<sup>60</sup>

This appreciation for the VLFD program’s assistance was noted by litigants from a wide spectrum of economic, educational and cultural backgrounds. One litigant, who said that this program was a vital service in light of New York City’s diversity, eloquently wrote:

[a]ny legal system is daunting to one unfamiliar with it. The attorney made clear the process and made the entire experience far less stressful than it otherwise may have been...[t]he court is extremely busy, and for the uninitiated, somewhat confusing. The attorney knew how things worked and facilitated the process, rendering the entire experience far less stressful...it made the system more manageable and transparent than it otherwise would have been.<sup>61</sup>

Most significant were the post-project responses from litigants that had been to Housing Court before without an attorney and now experienced Housing Court with an attorney. Ninety-four percent of these litigants noticed a difference having a volunteer attorney. They felt that their side was being heard. As one litigant stated, “as suppose [sic] to other time without, I felt more secure, protected, heard and fair treated.”<sup>62</sup> Another litigant wrote that, “[b]y having the attorney represent me I felt more comfortable and assured that my point of view was being

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<sup>59</sup> Case no. 17.

<sup>60</sup> Case no. 9.

<sup>61</sup> Case no. 45.

<sup>62</sup> Case no. 9.



addressed.”<sup>63</sup>

Other litigants described how the landlord’s attorneys treated them differently now that they had representation. One litigant stated in a post-project telephone survey that the first two times she had been to court without an attorney she had felt run over, she had thought she got a good deal but didn’t knowing what she knows now. She stated that the landlord’s attorney was very different when she had an attorney compared to when she did not. The landlord’s attorney was inflexible when she had no lawyer.<sup>64</sup> Another litigant who was also in Housing Court for the third time stated in a post-project telephone survey that before the landlord’s attorney would never talk with him, that Housing Court is a minefield alone, but with this program someone takes you by the hand.<sup>65</sup>

Another litigant said in her post-project interview that she doesn’t understand legal ramifications and having an attorney takes care of that for her. She doesn’t speak the language and doesn’t understand the legal terms. With the volunteer lawyer she felt better protected, and empowered. She said it takes away the fear of not being able to defend yourself.<sup>66</sup>

In all of the courthouse litigant surveys, post representation surveys, as well as the litigant focus group meeting, the litigant opinion was nearly unanimous: having an attorney for just one morning made a tremendous difference both emotionally and practically to all litigants. One hundred percent of the litigants said they would participate in the program again if it was

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<sup>63</sup> Case no. 47.

<sup>64</sup> Case no. 13.

<sup>65</sup> Case no. 42.

<sup>66</sup> Case no. 33.

available. In fact, the only problem litigants expressed with the program was that it was not helping everyone.

Therefore, this Report finds that a VLFD program in Housing Court can be beneficial to both the justice system and the litigants by improving perceptions about the court. As one relative of a litigant explained at the focus group meeting, this was the first time he saw his sister come back from court so happy.

#### A Volunteer Lawyer for a Day Program in Housing Court Benefits the Judge and Court Staff by Improving Courthouse Efficiency

Overall, the VLFD pilot project benefitted the court by improving efficiency.

In Resolution Parts, a Housing Court Judge and for the most part, two Court Attorneys employed by the Civil Court, are available to help facilitate a settlement. On average, there are 50-60 cases on each day in a New York City Resolution Part. Most cases with attorneys on both sides are able to discuss settlement amongst themselves, with the availability of court personnel to assist in settlement discussions, if necessary. However, the majority of cases do not have attorneys on both sides. Based on the volume of cases, it is extremely difficult to imagine that every case involving a self-represented litigant can be conferenced by court personnel. One of the tenants in the focus group meeting stated what its like to come to court without an attorney: “You come to court completely unprepared and you can’t explain your situation in 2- 3 minutes. There’s only so much time.”

For the most part, the cases represented by the volunteer attorneys were not conferenced with court personnel. The lawyers met with their adversaries in the hallway to discuss the cases.

Accordingly, the presence of the unbundled attorneys freed up the Court Attorneys' time to attend to other cases, and reduced courtroom staff time required to answer litigants' questions or explain procedures.

In addition, Judge Schneider said that the volunteer attorneys enabled fuller presentation of their litigants' cases by organizing and evaluating evidence, such as by going through rent receipts or cancelled checks, as well as formulating positions, articulating defenses, etc., as lawyers are expected to do. This increased the Judge's ability to make decisions on the merits based on properly presented information.

Judge Schneider also gave very high marks to the intake procedure created for this project. The Judge believes the initial intake interviews and the Answers generated at the initial interview more fully developed relevant facts and identified potential defenses that would not have been possible without the project. The intake procedure also included referral information and a list of documents litigants should attempt to bring to Court. Ultimately this made the first appearance in the Resolution Part, at which an unbundled volunteer attorney would be available, more useful and efficient. The initial intake procedure also served to defray litigants' questions from the Landlord-Tenant Clerk's office personnel and Resource Center staff to the VLFD staff, freeing up court staff time to assist other litigants.

A Volunteer Lawyer for a Day Program in Housing Court is an Attractive *Pro Bono* Opportunity for Attorneys

According to a 2003 survey of attorneys throughout New York State, the main reason for non-participation in *pro bono* activities is concern over the time and resources the *pro bono* work

might demand.<sup>67</sup> Clearly, the unbundled one-day court appearance in the VLFD program demands far less of the volunteer attorney's time and resources than traditional full representation entails.

According to the post-project attorney surveys, the primary reason the volunteer attorneys chose to participate in the VLFD project was a desire to do *pro bono* work.<sup>68</sup> The most significant finding to come out of the attorney focus group was that the universal attraction of the *pro bono* work in the VLFD project was the assurance that their involvement in the case would be finite and manageable. Their willingness to volunteer their free legal services was directly connected to the fact that the limited retainer agreement and limited notice of appearance guaranteed they would not be drawn into protracted litigation from which they would not be able to withdraw. When the volunteer attorneys were asked if they would keep a case on a *pro bono* basis outside the VLFD program, most said they had given this some thought, but chose not to do so. They raised time constraints and liability issues<sup>69</sup> as factors for the decision and reiterated the attractiveness of the limited nature of the representation.

While many of the volunteer lawyers in the pilot project were solo practitioners, the VLFD program is an attractive *pro bono* opportunity to big law firms as well. The allure of what

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<sup>67</sup> See Unified Court System, the Future of Pro Bono in New York Volume II: Report and Recommendations from the New York State Unified Court System's Pro Bono Convocations (2004), [http://nycourts.gov/reports/probono/proBono\\_Vol2\\_report.pdf](http://nycourts.gov/reports/probono/proBono_Vol2_report.pdf).

<sup>68</sup>Free CLE was the second reason. Attorneys also expressed interest in the free landlord-tenant training.

<sup>69</sup>As per Attorney General Formal Opinion 2000-F1, volunteer attorneys working in a court sponsored and court supervised program are eligible for defense and indemnification by the State pursuant to Public Officers Law sec. 17. Attorney representation beyond the VLFD limited retainer agreement would not be covered.

has been coined “bite-size litigation” was confirmed by three large size law firms who upon hearing of the pilot project expressed interest in participating in a permanent program. Their interest was bolstered by a desire to provide legal services in Housing Court that may assist in the prevention of homelessness. The VLFD program is also an attractive *pro bono* opportunity for corporate lawyers who otherwise might never visit the inside of a courtroom. A lawyer at the attorney focus group put it best when he said “it is a great opportunity for a non-litigator to get an idea how court works and still be finished by lunch.”

Interestingly, the focus group attorneys universally felt that their representation in the courtroom was far more useful and beneficial to the litigants than providing limited advice and consultation in the Civil Court’s Resource Center. Since 1997, the Civil Court has run a Volunteer Lawyers Project that recruits, trains and supervises attorneys who volunteer their time and provide brief services in the Resource Centers. These volunteer lawyers do not go to court with the litigants. All of the volunteer lawyers who attended the focus group had previously volunteered at one time or another in a Resource Center. One attorney stated that litigants in the Resource Center are overwhelmed with information and material, but they leave with only a rough idea of their rights. The attorneys stated that the VLFD project was an excellent extension of the services provided in the Resource Center.

The lawyers at the focus group meeting agreed with the litigants, they thoroughly enjoyed their participation in the program. A sampling of their many favorable comments about the experience included: how rewarding it is to help someone on a one-on-one basis; how the experience develops your expertise and gives you greater self-confidence as an attorney; how they were able to see how important having a lawyer really is - how it makes a difference; how

important it is to have an attorney for holding on to your home; and how good they feel when they leave the courthouse.

All of the lawyers in the focus group said they would gladly volunteer again if the program was restarted. All would recommend the program to others. An unbundled lawyer for a day program in Housing Court is clearly an attractive *pro bono* opportunity.

### New York City Housing Court Settlement Conferences Are an Ideal Arena for Unbundled Legal Services

As previously discussed, landlord-tenant matters are an ideal setting to employ unbundled legal services because there is so much at stake for the litigants and there is an overwhelming need for legal representation. Yet, reservations concerning unbundled legal services in litigated matters presently impede its acceptance. A goal of setting up this specific pilot project was to examine and determine whether or not there are legitimate objections to an unbundled volunteer lawyer for the day program in nonpayment settlement conferences in Housing Court. This Report finds that there are no significant reasons to bar the use of unbundled legal services in such appearances.

At the onset of this pilot project the Housing Task Force, an association of tenants' attorneys and advocates comprised of attorneys from Legal Services of New York (LSNY), Community Services Society (CSS), The Legal Aid Society, The City-Wide Task Force on Housing Court, and private tenant attorneys, met with the Program Coordinator to express its concerns about the project. The group raised two issues: (1) whether the volunteer attorneys would be adequately trained and supervised, instancing that outcomes for tenants are potentially

dire and that stipulations entered into without an attorney are difficult to vacate; and (2) their objection to the concept of unbundled legal services and their belief that full representation was necessary in all housing cases.

The pilot project has addressed both of these issues. First, the VLFD provided appropriate training and supervision. The Program Coordinator closely monitored the cases and the number of cases was intentionally kept low so that they could be properly reviewed. This Report recommends that any future program maintain a high standard of training and supervision, as well. Second, whether or not traditional full representation is preferable in all housing cases, there is no current plan to provide self-represented litigants with complete representation and this is unlikely in the foreseeable future. The reality is that the pilot project's litigants came to court without an attorney. The Findings in this Report clearly demonstrate that they were better served by the VLFD than if they had represented themselves.

Nor does this Report find that the objections to unbundled legal services in litigated matters raised in the New York State Bar Association (NYSBA) Commission on Providing Access to Legal Services for Middle Income Consumers report should serve to bar the use of unbundled legal services in nonpayment settlement conferences in Housing Court. The 2003 NYSBA report objected to limited court appearances for two reasons: 1) that it would prejudice the administration of justice, and 2) that it raises ethical concerns regarding competence.<sup>70</sup>

The presence of the VLFD program did not impede the administration of justice in the courtroom. Unbundled critics fear that “the orderly processing of cases would be extremely

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<sup>70</sup> N.Y. State Bar Ass'n, The Report of the New York State Bar Association Commission on Providing Access to Legal Services for Middle Income Consumers: Final Report and Recommendations on "Unbundled" Legal Services (2003).

difficult, if not impossible,” if attorneys and their litigants start fading in and out of the courtroom proceedings “at various stages and for various purposes.”<sup>71</sup> Unbundled opponents are concerned that limited appearances may lead to miscommunications when both the litigant and the lawyer are each performing separate tasks in the litigation.

Judge Schneider’s comments were favorable with respect to the project’s impression on the administration of justice. She experienced no negative effects on courtroom administration stemming from the presence of the volunteer attorneys. It appeared to the Judge that petitioners’ counsel generally treated the unbundled attorneys like any other attorneys, and there was no negative feedback about the project, its attorneys, or the unbundled concept (except brief comments early on from a few petitioners’ attorneys to the effect that the pro bono attorneys “ought to be required to stay in the case”). Initially, there were a very few instances of mild confusion over whether or not the unbundled attorneys should be served in the future with papers in any cases that were not resolved in the Resolution Part. Any such confusion was readily resolved.

Potentially, confusion can arise in litigation if both the litigant and his or her attorney are handling different aspects of the case at the same court appearance, or if an attorney is hired to handle certain issues of complex litigation and some papers should be served on the attorney and some on the litigant. The VLFD program in Housing Court does not give rise to this type of confusion. With the finite one-day representation in court it is clear to the court, the litigant, and the adversary that the lawyer is responsible solely for matters at that court appearance and is not

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<sup>71</sup> *Id.*, at Exhibit #2, Letter, Steven M. Citrelli, Chair, New York State Bar Association Committee on Civil Practice Law and Rules, January 2, 2002, pg 2-3 [hereinafter Citrelli letter].



in the picture for any further litigation. Furthermore, many landlord-tenant proceedings are resolved in one-court appearance, so the nature of these proceedings lends itself to unbundled representation. Thus, this Report finds that the risk of prejudice to the administration of justice should not be a bar to a VLFD program in Housing Court.

The NYSBA report was also concerned that permitting unbundled legal services in litigated matters raises ethical concerns regarding competence. In 2000, the American Bar Association amended its Model Rules of Professional Conduct to explicitly permit a lawyer to limit the scope of representation as long as the limitation is “reasonable under the circumstances and the client gives informed consent.”<sup>72</sup> Critics of unbundled legal services in litigated matters believe attorneys engaging in unbundled representation have greater difficulty assessing these criteria in litigated matters. The VLFD evaluation focused on the specific criticisms raised by these critics of the use of unbundled legal services in a litigation context.

The evaluation shows that the litigants understood the limited nature of the representation and gave “informed consent.” From the focus group meetings, it is clear that even if it was not what the litigant would have preferred, the litigants understood the limited nature of the representation. One litigant said that the retainer agreement was strange because the idea of having an attorney to represent you for one time and not from beginning to end went against the grain and that this was troubling because the agreement was really a release. The litigant knew that if he didn’t sign the agreement he wasn’t going to get a lawyer, and felt that the retainer was written in legalese, which made it less friendly. A different litigant disagreed and said he didn’t

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<sup>72</sup>See Model Rule 1.2[c]. Many states have amended their ethical rules with similar language. The State Bar Final Report, *supra*. note 70, 9-12, has recommended that New York adopt a new Ethical Consideration similar to the ABA’s Model Rule in non-litigated matters.

feel that way about the retainer form. He understood he would be getting a lawyer for one day only and not for longer, but usually a housing case takes more than one day, so he was scared. He was pleased when he had a volunteer lawyer for his second appearance. This litigant's situation was not unusual, because most VLFD cases were adjourned to another VLFD date. One litigant explained that she had four separate volunteer lawyers and each one gave her advice, so she benefitted each time even though there were four lawyers. She signed four different retainers. She said she knew she was only getting a lawyer for a day and that nothing else was promised. At the end, the lawyer explained how to follow-up.

Critics of unbundled litigation point out that the competence of the attorney's participation in the case rests in large part upon the legal work performed by the client, such as where the attorney argues a motion or serves as trial counsel, and the client has written the motion papers or conducted the discovery, or investigated the facts. Opponents of limited appearances contend that the attorney who consents to this type of arrangement runs the risk of making his or her job dependent upon the product of the client's work, "with all its baggage."<sup>73</sup> However, this danger does not apply in Housing Court nonpayment proceedings where there has been no discovery prior to the court appearance in the Resolution Part and the VLFD program has assisted with the tenant's Answer. The volunteer attorney is generally able to pick up the case without having his or her competency rest on the client's work product.

While this Report does not conclude that unbundled legal services is an acceptable substitute for full representation, it does find that Housing Court appearances in the Resolution Part on the types of cases accepted into the program are well suited for unbundling. When a

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<sup>73</sup>Citrelli letter, *supra.*, note 71, at 2-3.

program is carefully limited in tasks and objectives, where the training is specific and sufficiently detailed, and where performance is well supervised and monitored, there are great benefits to be gained from a volunteer lawyer for the day program in Housing Court proceedings. Thus, for the reasons stated above, this Report finds that nonpayment proceedings in the Housing Court's Resolution Part are an ideal arena for an unbundled legal services program.

## RECOMMENDATIONS FOR A PERMANENT EXPANDED PROGRAM

### In General

Based upon the findings of this Report, it is recommended that the VLFD be expanded throughout the City of New York and become a permanent program run either by the court system, a bar association or a not-for-profit organization. Any of these scenarios would require the support of Court Administration and the Housing Bench to be successfully implemented. As previously discussed, the procedural impediments to unbundled representation in litigated matters require that the Housing Court Judge presiding over the lawyer for the day case agree to recognize the validity of the Limited Notice of Appearance filed by the unbundled attorney. If a Judge were to refuse to excuse an attorney from the case when the day is over, the pool of attorneys willing to provide unbundled assistance would dry up and the program would not be viable.

In addition, the court system's assistance would be required for intake of cases into the program. It is best to choose the cases in the Landlord-Tenant Clerk's Office. Volunteer lawyers can then receive intake information prior to the first court appearance and check for conflicts. The court system's assistance would also be required to provide space for the Coordinator, attorneys and litigants to meet within each courthouse.

### Widespread Recruitment

Clearly, the number of days per week and the number of Parts in which a permanent VLFD program would run depends on the recruitment of a pool of volunteer attorneys. Given

that 250,000 plus nonpayment cases are filed each year in the Civil Court of the City of New York, the recruitment efforts to run this program city-wide would need to be substantial. As previously discussed, the pilot project recruited and trained volunteer lawyers from the Civil Court's existing pool of volunteers already participating in the Housing Court's successful Volunteer Lawyer Project. Recruitment for a permanent expanded program should be considerably more widespread.

It is recommended that a city-wide Program Coordinator be hired to oversee recruitment. Given that the majority of the attorneys participating in the program were retired or solo practitioners, and given the number of attorneys needed for a successful program, it is recommended that large firms be recruited to agree to "staff" specific days on a regular basis. This method is employed in the San Francisco model, which has significant participation from large law firms, including Morgan, Lewis & Bockius LLP, Nixon Peabody LLP, Orrick, Herrington & Sutcliffe LLP, Gibson-Dunn, McKenna, Long, Morrison Forester, and Seyfarth, Shaw, which all have offices in New York City, as well. As found in this Report, the VLFD's discrete limited representation is an attractive pro bono opportunity to large firms who may not wish to see their associates embroiled in protracted litigation.

Equally alluring is the opportunity to work in New York City's Housing Courts where the assistance provided may save the litigant from eviction and homelessness. Recruitment efforts should also seek out corporate non-litigators, who may enjoy the opportunity to experience courtroom drama first hand.

Lastly, it should be noted that the majority of volunteer attorneys who participated in the program had little or no familiarity with Housing Court. VLFD program recruitment can target

any type of attorney. It may also attract practitioners looking to expand their practice and area of expertise through completion of the program's free CLE training and court appearances where there is a Coordinator to act as a mentor.

### High Quality Training

As explained previously, due to time constraints, only attorneys who had already received the Housing Court's VLP training in the "Fundamentals of Residential Landlord-Tenant Law" on Nonpayment Proceedings and Ethics were eligible to participate in the pilot project. A "booster package" of three additional hours of CLE credit was offered for attending one night of VLFD training which included Interviewing, Negotiating, Stipulation Writing, and Ethics. Attorneys volunteering for the VLP are trained to cover a broader range of topics including holdover proceedings and HP proceedings, which is not necessary for the VLFD program. Additionally, attorneys trained for the VLFD program need to be trained in interviewing, negotiating and stipulation writing techniques. Since the VLP and the VLFD projects differ, it is recommended that an entirely new training program be devised for a permanent VLFD program solely for attorneys interested in volunteering for the VLFD. This training would combine the nonpayment training from the VLP program with the booster package of the VLFD pilot project.

Based on some of the feedback from the attorney focus group, additional training in courtroom procedures in the Resolution Part of the Housing Court should be added, mindful that many volunteers are non-litigators. Another excellent suggestion was that the attorneys break out into smaller groups for role playing of stipulation negotiations during the training.

For the most part, the attorneys that participated in the focus group found that the training

was sufficient preparation for their appearance in Housing Court. Similarly, Judge Schneider found that the volunteer attorneys generally seemed to deal on a level field with their adversaries. Most of the attorneys stated that they consulted their training materials before coming to court, or brought them with them. Review of the court files exhibits a general competence in the handling of the cases.

Well trained volunteer attorneys are the essential element of this program. The standard of care for an attorney performing unbundled representation is the same as if those services were being performed for full service representation. This report emphasizes that it is critical for the success of an expanded permanent program that the volunteer lawyers in the VLFD continue to be well trained by those overseeing the program.

#### Tightly Structured Program

It is recommended that an expanded program be run in a similar fashion to the pilot project evaluated herein.

Specifically, any expanded program must employ thorough intake of the litigants. It was clear that identifying possible defenses and counterclaims through intake at this early stage helped the litigant to return to court better prepared and to obtain the best possible outcome, and helped the unbundled volunteer attorneys be prepared to jump right into the case. Expanding the program would require regular intake days employing numerous trained people. One suggestion is to concentrate on the greater use of trained law student or paralegal volunteers to assist with

intake in the Clerk's offices.<sup>74</sup>

An expanded program must be overseen by a Program Coordinator with an extensive landlord-tenant background. The importance of having an experienced Program Coordinator present at the courthouse and accessible to the volunteer attorneys so that they could ask questions was emphasized by the participating attorneys and the Judge. It is recommended that the Program Coordinator review all negotiated stipulations before they are allocuted by the Judge. The Program Coordinator also must have a general sense of the level of competency of each volunteer so as to be able to assign the cases properly, and evaluate attorneys' performance. If a performance is inadequate, the attorney's participation in the program could be discontinued.

Should the program expand to multiple counties, it would be essential to employ experienced Coordinators for each courthouse. Judge Schneider felt that the quality of the work performed in an expanded permanent project would be highly dependent on having enough excellent Coordinators to supervise the volunteer attorneys in the courthouse and assist with intake. It is possible that volunteer attorneys could graduate into the role of Coordinator after gaining more experience in the Part and be available to assist fellow volunteers.

While most Housing Court Judges do not allocute stipulations that are submitted with attorneys on both sides, it was clearly helpful that Judge Schneider did so in the pilot project, since all of the volunteers were newly trained. This provided another level of oversight. Therefore, it is recommended that the Housing Court Judges assigned to VLFD Parts agree to allocute the stipulations of volunteer attorneys new to the program. As an attorney gains

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<sup>74</sup> Currently, the Administrative Judge of the Civil Court has recruited over fifty law students to participate in the RAP program. These students may provide a ready pool for intake.



experience and becomes more seasoned, the Judge could dispense with the review. This would also provide the Program Coordinator with another mechanism for on-going evaluation of the program.

It is further recommended that any future program devise a short exit pamphlet which would be given to each litigant at the end of the representation by the volunteer attorney. This pamphlet would explain in plain language what the litigant should do under a variety of circumstances; how to get more time to make payments; what to do if a notice of eviction is received; how to return to court if the repairs are not completed; and a list of additional resources for community and rental assistance.

Additionally, it is recommended that the program continue to be limited to less complicated cases. Due to the complex nature of landlord-tenant law in New York City it was decided that it would not be possible to train the volunteers to handle cases other than simple nonpayments. Once underway, an expanded program could provide additional training for its more experienced volunteer lawyers to test and experiment providing representation in other areas.

### Social Workers

Social workers serve as an invaluable resource to the elderly, mentally impaired, and disabled appearing in Housing Court. Currently, there are social workers available to work as a team with the Housing Court's Assigned Counsel Project (ACP) attorneys and with Guardians Ad Litem (GALs) in their efforts to prevent eviction by securing entitlements, grants, or subsidies such as SCRIE and Section 8. These social workers are trained to identify underlying

psycho-social needs affecting the tenant that may, if addressed, lessen recidivism in Housing Court. For example, social work students placed in the GAL and ACP programs have helped tenants secure food stamps, obtain social security benefits, mental health services, and veteran's benefits, etc.

The presence of social workers in the court is also advantageous in that social workers are skilled at eliciting information, negotiating between systems, and facilitating communication between relevant parties. This is important because many tenants are overwhelmed and reluctant or unable to share needed information, even when doing so would assist the attorney to advance their position. Finally, social workers are able to assist with advocacy efforts to prevent eviction by accompanying tenants to appointments necessary to secure money to pay for arrears and can provide needed guidance and support to ensure compliance with any expected follow-up.

In the San Francisco unbundled landlord-tenant project, a social worker is on staff to meet with the litigants in court, providing assistance and follow-up to the litigants after the court date. This arrangement has proven to be extremely beneficial to the litigants.<sup>75</sup> Due to the limited funds available for the VLFD pilot project in New York City, there was no social worker on staff to assist the litigants. It is recommended that a permanent program contain a social work component.

### Litigant Eligibility

This Report also has some recommendations about litigant eligibility. First, a permanent

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<sup>75</sup> The Civil Court is a co-sponsor of two full representation programs: Housing Help Program, and Senior Citizen Assigned Counsel Program, which use social workers and lawyers. These programs have found the social worker component to be essential.

VLFD program for Housing Court nonpayment cases should not institute income requirements for the litigants it serves. Many of the litigants who participated in the VLFD program would not have qualified for free legal services from programs that accept litigants based upon income levels. Yet, these litigants could not afford to pay their rent and were in no position to hire a private attorney. They were all coming to court to defend themselves without an attorney and faced represented adversaries. None of them were aware that the court would provide any legal help, such as a lawyer for the day.

Secondly, the Report emphasizes that any permanent program of this type be structured to accept both landlords and tenants. This pilot project was not tested in an area where there is a great need for landlord representation. However, that need exists in other parts of the city. Small property owners often have a great deal at stake and would benefit from a VLFD program. They should not be excluded from a program based upon income or a narrow interpretation that only those in danger of eviction should be assisted.

### Courtroom Priority

Finally, this Report recommends that some sort of priority be given the VLFD cases in the Resolution Part. At the attorney focus group and in many of the attorney surveys, lawyers complained that they were forced to spend the entire morning waiting for the landlord's attorney to return to the courtroom to appear before the Judge, despite having agreed upon a stipulation of settlement hours earlier. One lawyer wrote:

[t]here is too much down time while waiting for signed stips to be approved. Since attorneys are volunteering, there should be a fast-track on access to the Judge, once a stip is executed. Also, the LL's attorneys should be required to

promptly check in to expedite case handling. It's in everyone's best interest for these cases to move quickly. The volunteer lawyer could handle a greater volume of cases if a fast track access to the Judge or a Court Attorney is available.

Another lawyer stated that she spent most of the time sitting around and that, "this is going to be a deterrent for repeat volunteers."

At the focus group a number of attorneys also stated that they believed their adversaries left to attend to cases in other Housing Parts and made them wait until the end of the morning on purpose. They felt this was a negotiating ploy to force them and their client to settle because many litigants could not afford to take more time off from work to return to the courthouse in the afternoon, and because their adversaries knew they were volunteering their time. This Report recommends that the Civil Court Administration consider whether and how to give priority to the VLFD cases.

## CONCLUSION

Full legal services in litigated matters is the preferable method of representation.

Unbundled legal services provides less than full representation. Unbundled legal services alone is not the solution to the lack of legal assistance in New York State civil matters, which has reached epidemic proportions.

With that in mind, the findings of this report establish that the unbundled legal services provided in this project greatly benefitted the litigants, the Judge and courtroom staff, and the court system.

Accordingly, this Report concludes that a Lawyer for the Day Program in Housing Court is a viable alternative to traditional full legal representation and an excellent means to alleviate unmet legal needs in New York City.

Respectfully Submitted,<sup>76</sup>

- ▶ Office of the Administrative Judge of the Civil Court of the City of New York Fern A. Fisher, Marcelle Brandes, Esq., Program Coordinator and Rochelle Klempner, Court Attorney to Justice Fern A. Fisher,
- ▶ Office of the Deputy Chief Administrative Judge for Justice Initiatives Juanita Bing Newton, John Ritchie, Special Counsel, Justice Initiatives, and
- ▶ The New York City Bar Association Committee on Legal Services to Persons of Moderate Means, Christine M. Fecko, Esq., Committee Chair,

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<sup>76</sup> The names of the people who assisted with this Project and Report are acknowledged in appendix “7.”

APPENDIX “1”  
VLFD INTAKE FORM

## Law Student Client Intake Sheet - Tenant

**Client Name:** \_\_\_\_\_

**Address:** \_\_\_\_\_

\_\_\_\_\_

**Phone Number(s):** \_\_\_\_\_

### RENT

1. Do you have, or have you ever had any type of rent subsidy for this apartment? e.g. Section 8? Was your rent ever much lower, or tied to your income, and then it increased? (IF YES, ask what kind of subsidy and SEE PROJECT COORDINATOR IMMEDIATELY)
  
2. Do you have a lease? (**TELL TENANT TO BRING LEASE AND/OR LEASE RENEWAL ON RETURN DATE**)
  
3. Was there a proper renewal and notice of renewal?
  
4.
  - a) Is the owner of the building the same as listed on the petition
  - b) Are there any other names on the lease besides your own?
  - c) When does or did the lease expire?
  
5. Did the Landlord ask you orally or in writing for the rent? (What and How)
  
6. Have you had any other nonpayment proceedings in the last 3 years?  
If yes, How many?  
What was outcome?
  
7. How many apartments in building?
  
8. When did you move into the apt?

9. Who else lives in apartment?  
 How many children  
 How many adults
10. Do you think you owe rent?  
 If so, How much?
11. a ) Is the monthly rent the petition asks for what you believe your monthly rent is?  
 b) How do you pay your rent?  
Cash  
 Money Order? Postal or other  
  
 Check: DSS checks Two party Direct vendor  
 (Get printout from HRA - Room 105)
12. Do you have any receipts? Does the Landlord give you receipts? (Required to by law unless rent paid by personal check)  
**(BRING IN RECEIPTS ON RETURN DATE)**
13. Does anyone else pay some or part of the rent (e.g., Section 8 or HRA)  
 If yes, DETAILS: How much –  
 (Get printout from HRA - Room 105)

What is your income?

What is income of other people in the apartment?

Is anyone disabled who lives in the apartment?

Does anyone in the apt receive SSI?

Is anyone over age 62?

What outcome do you want from law suit? (e.g., stay in apartment, time to move out): (If client says wants to move out, find out if there is a realistic plan that can be effectuated. Many tenants hate their landlords and/or their apartments, but that doesn't mean they have anywhere else to go)

14. Are you in the military or dependent on someone in the military?



**SERVICE:**

**GO OVER SERVICE of PROCESS.** If client wants to raise this issue (Explain): **VERIFY WITH CLIENT** for rent demand and Petition

**REPAIRS:**

- 15. Do you need repairs to the apt?
- 16. Have you ever asked the landlord (or super or anyone for the LL) about repairs?  
If so, How did you make the request for repairs?

TELL CLIENT TO BRING IN PICTURES ON RETURN DATE.  
If heat is a problem, have client keep a diary: Date, Time and Temperature

**LAW STUDENTS STOP HERE**

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**TO DO:**

**HPD PRINTOUT** violations history and MDR

- 1. How large is the apt?
- 2. How many bedrooms?

**Room by room repairs needed:**

Kitchen \_\_\_\_\_  
Bathroom \_\_\_\_\_  
Livingroom \_\_\_\_\_  
Diningroom \_\_\_\_\_  
Bedroom 1 \_\_\_\_\_  
Bedroom 2 \_\_\_\_\_  
Bedroom 3 \_\_\_\_\_

ANY PEELING PAINT? (Age of building and ages of children)

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Dates/Times client can provide access for repairs:

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# APPENDIX “2”

## CIVIL COURT ORAL ANSWER FORM



## APPENDIX “3”

VLFD INSTRUCTION SHEET,  
RETAINER AGREEMENT,  
LIMITED NOTICE OF APPEARANCE,  
AND SPANISH  
LIMITED NOTICE OF APPEARANCE

# **WELCOME**

to the

## **LAWYER FOR A DAY PROJECT**

### **Instructions:**

1. After you introduce yourself, **review the Retainer Agreement with your client**, and make sure every section is read and explained. Give the client a copy, the original stays in the file.

2. REVIEW and complete the Client Intake Sheet with your client. Make necessary changes.

3. Assess client's case, and decide if an adjournment is necessary. [E.G., Does client have proof of payment? Need a DHCR printout? Obtain better documentation of apartment conditions? Does the Answer need to be amended? (As of right within 10 days of the Answer)].

If client needs to go to the HRA office for a rent printout, have law student accompany client to the office.

4. Fill out and file the **Notice of Limited Appearance** with the Court. The Court gets the original, serve your adversary with a copy, and a copy stays in the file.

5. GET A RENT BREAKDOWN FROM THE LL'S ATTORNEY

6. NEGOTIATE (make sure you are clear what your client's needs are, and what is feasible.)

7. Go over Stipulations of Settlement with client, make sure client understands and agrees to terms.

8. Bring Stipulation of Settlement to Marcelle for discussion/review.

9. If you are unable to negotiate a settlement, you may ask to see the Court Attorney or the Judge for help in resolving the case.

**10 . When you are finished, bring client to a law student for an exit interview, to help assess the program.**

VOLUNTEER LAWYER FOR A DAY  
LIMITED SCOPE RETAINER AGREEMENT

THIS IS AN AGREEMENT BETWEEN

(NAME OF CLIENT) \_\_\_\_\_ and

(NAME OF LAWYER) \_\_\_\_\_

(Name of Case) \_\_\_\_\_

Index No. \_\_\_\_\_ on (Today's Date) \_\_\_\_\_

*Limited Services Agreement :*

Lawyer agrees to represent Client on Today's Date ONLY in the Resolution Part for the case listed above. Lawyer's services may include an assessment of the strengths and weaknesses of the case based upon the information provided by Client, legal advice, and possible negotiation of a settlement on Today's Date in the Resolution Part. Lawyer agrees to provide this service on Today's Date in the Resolution Part to Client free of charge. **Lawyer's services automatically terminate after today's appearance in the Resolution Part without any further act or communication by any party.**

*Client's Responsibilities:*

Client agrees to cooperate with Lawyer regarding the case on Today's Date in the Resolution Part. Client has read and reviewed the Client Intake Sheet with Lawyer, and agrees the information on the Sheet is accurate. Client further agrees that Lawyer may discuss this case with the Project Coordinator for the Lawyer for a Day Project. Client agrees and understands that even if a stipulation is entered into today, and the Client wants to return to Court, or is brought back to Court for any reason, the Client will not be represented by Lawyer. Client is solely responsible for handling all aspects of the case beyond Today's Date and complying with any agreement that is made. **The representation by Lawyer begins and automatically ends on Today's Date in the Resolution Part.** Client has been advised and understands, that if this proceeding continues and Client needs legal or procedural information, Client may go to the Resource Center, Room 104, New York County Housing Court, 111 Centre Street, New York, New York.

**Lawyer's obligations and responsibilities do not extend beyond Today's Date in the Resolution Part.** Client understands that if the case is adjourned, or settlement efforts continue past Today's Date, Lawyer is not authorized or obligated to represent or assist Client in the future.

**Client has carefully read this Agreement and understands that this is an Agreement for limited-service representation that automatically terminates with Lawyer's appearance in the Resolution Part on Today's Date.**

DATED: \_\_\_\_\_

\_\_\_\_\_  
(SIGNATURE OF CLIENT)

\_\_\_\_\_  
(SIGNATURE OF LAWYER)

**Civil Court of the City of New York**

County of \_\_\_\_\_ Part \_\_\_\_\_

Index Number \_\_\_\_\_

\_\_\_\_\_ Petitioner(s)  
against

**LAWYER FOR A DAY  
LIMITED NOTICE  
OF APPEARANCE**

\_\_\_\_\_ Respondent(s)

I am an attorney admitted to practice in the State of New York. You are hereby notified that in the above-entitled action I represent:

Petitioner \_\_\_\_\_  Respondent \_\_\_\_\_

On this \_\_\_\_\_ day of \_\_\_\_\_ in the Resolution Part.

**My representation automatically terminates after today’s appearance in the Resolution Part without any further act or communication by any party. My client has specifically agreed to this limited-service representation, and understands that my representation begins and ends today with my appearance in the Resolution Part and that s/he is participating in a special project.**

BY \_\_\_\_\_  
(Print Your Name)

ADDRESS \_\_\_\_\_  
\_\_\_\_\_

PHONE NO. \_\_\_\_\_

\_\_\_\_\_  
(Date)

\_\_\_\_\_  
(Signature)

**ABOGADO VOLUNTARIO POR UN SOLO DÍA  
ACUERDO DE CONTRATO LIMITADO**

ESTE ACUERDO ES ENTRE:

(NOMBRE DEL CLIENTE) \_\_\_\_\_ y

(NOMBRE DEL ABOGADO) \_\_\_\_\_

(Nombre del caso) \_\_\_\_\_

No. de expediente \_\_\_\_\_ (Fecha de hoy) \_\_\_\_\_

*Acuerdo de servicios limitados:*

El abogado acuerda representar al cliente **EXCLUSIVAMENTE** en la fecha de hoy y en la Sala de Resoluciones en la cual ha sido asignado el caso antes mencionado. Los servicios de dicho abogado podrían incluir una evaluación de los pros y los contras del caso, basada en la información suministrada por el Cliente, consulta legal y posible negociación de un acuerdo a llevarse a cabo hoy, en la sala de resoluciones. El abogado acuerda suministrar este servicio, hoy día, en la sala de resoluciones, de manera gratuita al cliente. **Los servicios del abogado caducan automáticamente después de la comparecencia de hoy ante la sala de resoluciones, sin ningún tipo acción ni de notificación adicional a ninguna de las partes litigantes.**

*Responsabilidades del cliente:*

El cliente acuerda cooperar con el abogado con relación al caso de hoy, en la sala de resoluciones. El cliente ha leído y ha revisado la Hoja de Aceptación del Cliente con el abogado, y está de acuerdo en que la información contenida en dicho documento es correcta. El cliente acuerda, adicionalmente, que el abogado pudiese dialogar el caso con el Coordinador del Proyecto de Abogados Voluntarios por un Día. El cliente acuerda y entiende que aunque se firme una estipulación hoy día, y el cliente deseara regresar al tribunal, o si le otorgasen una nueva fecha de comparecencia por cualquier motivo, el cliente no será representado por el abogado voluntario. El cliente es exclusivamente responsable de la resolución de todos los aspectos del caso, los que se encuentren más allá de la fecha de hoy, y es también responsable en cumplir con el acuerdo firmado hoy día. **El ser representado por un abogado voluntario se inicia y caduca automáticamente el mismo día de hoy, en la sala de resoluciones.** El cliente ha sido aconsejado y entiende que si éste procedimiento ha de continuar, y el cliente tuviese necesidad de información legal o sobre el proceso judicial, el cliente podrá dirigirse al Centro de Recursos Legales, sala 104 del tribunal civil del condado de Nueva York, localizado en la calle Centre #111 , Nueva York, NY.

**Las obligaciones y las responsabilidades del abogado no se extienden más allá del día de hoy en esta sala de resoluciones.** El cliente entiende que si el caso es aplazado, o si los esfuerzos por llegar a una resolución continúan después del día de hoy, el abogado voluntario no está autorizado ni comprometido a representar al cliente en el futuro.

**El cliente ha leído cuidadosamente este acuerdo y entiende que el mismo es una acuerdo de servicios limitados de representación, los cuales caducan automáticamente luego de la comparecencia del abogado voluntario en la sala de resoluciones, en el día de hoy.**

FECHA: \_\_\_\_\_

\_\_\_\_\_  
(FIRMA DEL CLIENTE)

\_\_\_\_\_  
(FIRMA DEL ABOGADO)



## APPENDIX “4”

# LITIGANT EXIT SURVEY, POST- PROJECT SURVEY, AND LITIGANT SURVEY RESULTS

Housing Court Pilot Project

**SURVEY QUESTIONS FOR TENANT-CLIENTS AT CONCLUSION OF ONE-DAY REPRESENTATION**

**(Survey to be conducted by in-person interviews)**

(Except where otherwise indicated, all questions seek yes/no answers.)

1. If a pro bono attorney had not been available, would you have handled your case yourself today? \_\_\_\_\_

2. Why did you decide to work with the pro bono attorney?  
(check all that apply and describe “other” reason, if any)

a. Free \_\_\_\_\_

b. Expected better result \_\_\_\_\_

c. Other \_\_\_\_\_

3. Did your pro bono attorney help you reach a settlement of your case today? \_\_\_\_\_

4. If your case settled today, how satisfied are you with the settlement?  
(circle one number on a scale of 1 to 5, where **1 = fully satisfied** and **5 = not at all satisfied**)

1

2

3

4

5

Do you think the result was better than you could have gotten by yourself? \_\_\_\_\_

5. If your case was not settled today: has your pro bono attorney helped you to be better prepared to handle your own case in further proceedings? \_\_\_\_\_ If yes, describe how the attorney helped with respect to further proceedings:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

What do you expected to happen with your case in further proceedings? \_\_\_\_\_

\_\_\_\_\_

6. Today, did your pro bono attorney do any of the following?  
(check all that apply)

a. Explain the law \_\_\_\_\_

b. Discuss any needed additional information and tell you how to get it \_\_\_\_\_

- c. Refer you to another program for **legal** assistance \_\_\_\_\_
- d. Refer you to any social service or other program for **non-legal** assistance \_\_\_\_\_
- e. Tell you how to deal with court procedures on your own \_\_\_\_\_
- f. Tell you how to deal with the landlord or the landlord's attorney on your own \_\_\_\_\_
- g. Help you fill out any forms or prepare any documents \_\_\_\_\_

Write a letter for you \_\_\_\_\_

Make a phone call for you \_\_\_\_\_

7. How helpful was the pro bono attorney?  
 (circle one number on a scale of 1 to 5, where **1 = most helpful** and **5 = not at all helpful**)

1                      2                      3                      4                      5

8. Did you feel more comfortable coming to court today because you knew you would have a pro bono attorney to help you? \_\_\_\_\_
9. Do you think the result today was better than it would have been if you had not had the help of the pro bono attorney? \_\_\_\_\_
10. If you had another Housing Court case, and this pro bono attorney program were available, would want to participate again? \_\_\_\_\_

## LITIGANT EXIT SURVEY RESULTS

Forty-six litigants completed a survey at the conclusion of the one day representation.

The results are as follows:

1. Thirty-seven litigants said they would have handled their cases themselves if they did not have a volunteer attorney.
2. When asked why they decided to work with the volunteer lawyer twenty litigants said it was because the services were free and twenty-seven litigants said they expected a better result. Other responses included: litigants that said they get nervous in front of lawyers and Judges; said they needed guidance on how to proceed in court; or needed legal assistance; or had on-going battles with the landlord and wanted someone with more knowledge on the case; or felt they were being taken advantage of; or needed help to determine the correct amount of the rent.
3. Thirty-one litigants said the volunteer lawyer helped them settle their case that day. Ten said the case was not settled. Four said that either progress was made or an interim settlement was reached. One litigant said that the case was discontinued.
4. Of the thirty-one cases that were settled, twenty-four litigants said they were mostly to fully satisfied with the settlement. Six litigants said they were satisfied. No litigants said they were not satisfied at all.

Twenty-nine of the litigants said they thought that the result was better than they could have gotten themselves. Four litigants said they didn't know if it made a difference.

Eight of the litigants said they thought the result was not better than they could have

gotten themselves; however, one litigant said that it would have been more stressful if he handled the case solo.

5. Twenty-one litigants said the volunteer attorney helped them to be better prepared to handle the case in further proceedings. Only two litigants said they did not.
6. Forty litigants said the volunteer lawyer explained the law to them. Six said they did not. Thirty-eight litigants said their volunteer attorney discussed with them any information they needed and how to obtain it. Five said they did not. Three said it was not applicable.

Sixteen litigants said their volunteer attorney referred them to another program for legal assistance. Twenty-six litigants said they did not and four said it was not applicable.

Sixteen litigants said their volunteer lawyer referred them to a social services or other program for non-legal assistance. Twenty-seven said they were not and three said it was not applicable.

Twenty-litigants said the volunteer attorney told them how to deal with court procedures on their own. Twenty said they did not and one litigant said it was not applicable.

Twenty-five litigants said their volunteer attorney told them how to deal with the landlord or the landlord's attorney on their own. Seventeen said they did not and four were not applicable.

Twenty-one litigants said the volunteer attorney helped them fill or prepare documents. Seventeen said they did not and eight were not applicable.

Three litigants said their volunteer attorney wrote a letter for them.

Three litigants said their volunteer attorney wrote a letter for them.

7. Forty-two litigants said the volunteer attorney was very helpful. Two litigants found the volunteer attorney helpful and one litigant said the volunteer attorney was somewhat helpful.
8. Forty-two litigants said they felt more comfortable coming to court because they knew they would have a volunteer attorney to help them. One litigant said it made no difference.
9. Thirty-six litigants said they believed they got a better result with the help of the volunteer attorney. Two said they did not think so and three litigants said they were not sure/didn't know yet.
10. Forty-five of the litigants said if they had another housing court case they would want to participate in this program again. No litigants said they would not participate.

**SURVEY QUESTIONS FOR CLIENTS  
VOLUNTEER LAWYER FOR A DAY PROJECT**

TODAY'S DATE \_\_\_\_\_

Your Name \_\_\_\_\_

1. Was your case settled by Stipulation with the help of a Volunteer Attorney?

\_\_\_\_ Yes  
\_\_\_\_ No (Go to question 3)

2. If the case was settled by Stipulation with the help of a Volunteer Attorney:

A. What happened:

1. If you were to make rent payments under the Stipulation, were you able to make the payment on time?

Yes \_\_\_\_\_ No \_\_\_\_\_

2. If not, why not? \_\_\_\_\_

3. Did you think you would be able to make the payments at the time you signed the Stipulation of Settlement? Yes \_\_\_\_\_ No \_\_\_\_\_

4. If the Landlord had to make repairs, were they done? \_\_\_\_\_

5. Is the case finished? \_\_\_\_\_

EXPLAIN: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

B. Did you or the LL have to bring the case back into court (motion or order to show cause)?

Yes \_\_\_\_\_ No \_\_\_\_\_

EXPLAIN: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

3. If the case was **not settled** with the Volunteer attorney:

A. Did the Volunteer attorney provide advice and suggestions to you for when you returned to court? \_\_\_\_\_ If yes, Did you follow the Volunteer attorney's advice? \_\_\_\_\_

What advice/suggestion did you find







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16. Did the Volunteer attorney (including anyone working in the program, e.g., Marcelle or law student) refer you to:

Court's Resource Center

Legal Aid or Legal Services office

Private Bar

Other Help, such as a place to go to get rent arrears or other services (please state where \_\_\_\_\_)

DSS (welfare)

17. Did you obtain help from any source you were referred to?

If so, from where and what help did you receive:

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18. If you have another housing court case, would you want to participate in this program again?

Yes  NO

ADDITIONAL  
COMMENTS:

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## LITIGANT POST-PROJECT SURVEY RESULTS

Twenty-one of the litigants completed post-project surveys, either in-person, by telephone or by mail. The results are as follows:

1. Thirteen of the litigants said their case was settled by Stipulation and eight said it was not.
2. Litigants were only supposed to respond to this question if their case was settled with the help of a volunteer attorney. However, a number of litigants did not understand the question and filled in answers as if the case was settled and was not settled, the results are skewed. However, the outcome of the cases is fully set forth in the court file follow-up in appendix “7.”
3. Litigants were only supposed to respond to this question if their case was not settled in court with the help of the volunteer attorney. A number of litigants did not understand the question and the results are skewed. Of the ten litigants who responded, nine said that the volunteer attorney provided advice and suggestions for them when they returned to court. One litigant said the volunteer attorney did not.
4. Twenty out of twenty responding litigants said the having an attorney for one (or more) morning(s) made a difference in their cases. A sampling of their explanations are incorporated into the Findings of this Report.
5. Given the facts and circumstances of their case, thirteen litigants said they did not think a better result could have been reached. Three litigants did not respond to this question. Of the litigants that felt they could have gotten a better result: one litigant said she should

- have explained to the Judge about her workers comp., one litigant said it would have been better if she had gotten an abatement and made counterclaims, two litigants blamed the landlord for failing to take care of their responsibilities, and one litigant said that she rushed the case and didn't think enough because she just wanted to get out of there.
6. As a result of having the volunteer attorney, sixteen litigants said they better understood their housing case; fourteen said they better understood the legal system with respect to housing issues; and eighteen said they believed people in the legal system heard and understood their side of the case.
  7. Sixteen litigants said that having a volunteer attorney made a big difference in how they felt about coming to court, two said it made a difference, one said a little difference and one litigant said it made no difference in how he felt; however this litigant later said it made a big difference in how he felt. The identical question was asked in question "11" with slightly different results.
  8. Fourteen litigants responded that they were either completely uncomfortable or mostly uncomfortable talking with the landlord's attorney. Three responded that they were completely comfortable and three were somewhat comfortable.
  9. The results of the question about how comfortable the litigants were about talking to the Judge were mixed. Only two said they were completely uncomfortable, one not very comfortable and five responded that they were somewhere between completely comfortable and comfortable. Ten said they were mostly comfortable to comfortable. The litigants may have been responding to how they felt about appearing before Judge Schneider, in particular.

10. All of the nineteen litigants that responded to the question about whether they found it helpful to have the volunteer attorney talk to the landlord's attorney or the Judge on their behalf found it helpful to very helpful. This was universal regardless of whether they had answered that they were comfortable talking with the landlord's attorney or the Judge.
11. Sixteen of the nineteen responding litigants said that having the volunteer attorney made a big difference in how they felt about coming to court, two said it made a difference and one said it made somewhat of a difference. No litigants felt that it made no difference.  
Note: this question was identical to question "7," yet generated a different result.
12. Sixteen of the litigants said they had been to Housing Court before without an attorney. Fifteen of the seventeen litigants said they noticed a difference having a volunteer attorney. The sole litigant that checked she did not notice a difference wrote that this was because the case was still on-going because she is waiting for Catholic Charities to pay the landlord. She also said this was her first case in Housing Court.
13. Twenty litigants said it was helpful to have the one-time volunteer attorney's help. The one litigant who checked no, also wrote in Spanish that it is much easier for him to write in Spanish and left much of the survey incomplete.
14. Thirteen litigants said that they thought they were treated differently by the landlord's attorney and/or Judge because they had a volunteer attorney and six said they did not think they were treated differently.
15. Seventeen of the seventeen litigants that responded to the question of whether they thought they had a fairer (or better) experience in court because they had a volunteer attorney said yes.

16. Ten litigants said that the VLFD program referred them to the Civil Court's Resource Center, eleven litigants said the VLFD program referred them to Legal Aid or Legal Services, two litigants said they were referred to the private bar, one litigant said he was referred to DSS, and seven litigants said they were referred to other resources, including various charities and the court's website.
17. Seven litigants said they obtained help from a resource that the VLFD program referred them to.
18. Eighteen of the eighteen responding litigants said that if they had another housing court case they would want to participate in this program again. No litigants said no.

## APPENDIX “5”

### VOLUNTEER ATTORNEY EXIT SURVEY, EXIT SURVEY RESULTS POST-PROJECT SURVEY AND POST- PROJECT SURVEY RESULTS

**VOLUNTEER LAWYER FOR A DAY PROJECT**  
**PARTICIPATING ATTORNEY SURVEY—To be completed for each Client assisted.**

We appreciate and recognize your efforts in participating in this Project. Please take into consideration the actual benefit to the Client (and not your efforts in obtaining such benefits). Thank You!

1. How prepared and capable of appearing pro se in this matter do you think the Client was?  
(1 = most prepared and capable and 5 = not at all prepared and capable)

1                      2                      3                      4                      5

2. Did the Client have any defenses to the proceeding?

Yes \_\_\_\_\_ No \_\_\_\_\_

If yes, what defense(s)? \_\_\_\_\_

3. What was the ultimate outcome?

Adjourned \_\_\_\_\_ Stipulation: \_\_\_\_\_ Other \_\_\_\_\_

4. What was the landlord's attorney's reaction to your presence?

(1 = most receptive and 5 = not at all receptive)

1                      2                      3                      4                      5

5. If this matter was settled during the course of your appearance, how likely do you think it would have been for the client to achieve a similar settlement without your assistance?

(1 = most likely and 5 = not at all likely)

1                      2                      3                      4                      5

6. How fully do you think the Client comprehended the proceeding and the outcome?

(1 = total comprehension and 5 = no comprehension at all)

1                      2                      3                      4                      5



## VOLUNTEER ATTORNEY EXIT SURVEY RESULTS

Volunteer attorney Exit Surveys were returned in thirty-eight of the fifty cases. The results are as follows:

1. The survey responses showed that the volunteer attorneys felt that their clients exhibited varying degrees of preparedness and capability to represent themselves. Responses ran fairly equally from most prepared to not prepared at all.
2. Volunteer attorneys said the litigants had defenses in twenty-seven of the thirty-eight cases; including, overcharge, warranty of habitability, defective service, payment, constructive eviction, laches, and no rent demand.
3. The ultimate outcome of the days' court appearance was reported as follows:
  - sixteen cases had adjournments
  - stipulations were signed in twenty-three cases
  - one case was dismissed
  - one case was set down for trial
  - one case was dismissed with prejudice
  - one case was voluntary discontinued by the petitioner
4. Only three volunteer attorneys said that the landlord's attorney was not receptive to their presence. One attorney explained that her adversary was unreceptive at first, but improved considerably over the course of the negotiation. In a little more than half of the cases, the volunteer attorneys found their adversaries to be receptive, in eighteen cases the

attorneys said they were most receptive.

5. Significantly, in the cases that were settled, only two of the volunteer attorneys said they believed that the litigant would have been able to achieve a similar settlement without their assistance. Many said that it was unlikely to not at all likely.
6. Nineteen of the volunteer attorneys felt that their clients had total comprehension of the proceeding and the outcome. Another nine felt they had good comprehension. Only three attorneys felt that their clients did not understand.

**VOLUNTEER LAWYER FOR A DAY PROJECT**  
**Survey Questions of Volunteer Attorneys Upon Completion of Their Participation**

NAME: \_\_\_\_\_

1. Describe the nature of your practice. \_\_\_\_\_

2. Prior to the training for this program, how familiar were you with Housing Court issues?  
\_\_\_\_\_

3. How many clients did you assist? \_\_\_\_\_

4. Did you obtain client information in enough time to check for conflicts?

A. Yes, every time \_\_\_\_\_

B. Some of the time \_\_\_\_\_

C. No \_\_\_\_\_

5. How helpful was the training that you received prior to your Court appearances?  
(1 = most helpful and 5 = not helpful at all)

1                      2                      3                      4                      5

6. How helpful do you think you were to the clients?

(1 = most helpful and 5 = not helpful at all)

1                      2                      3                      4                      5

7. How receptive were the clients to the legal advice that you gave them?

(1 = most receptive and 5 = not receptive at all)

1                      2                      3                      4                      5

8. How receptive was the adversary's attorney to your presence and representation?

(1 = most receptive and 5 = not receptive at all)

1                      2                      3                      4                      5

9. Would you be interested in volunteering for this kind of project again?

Yes \_\_\_\_\_ No \_\_\_\_\_

10. How might the program be improved?  
\_\_\_\_\_  
\_\_\_\_\_

11. Why did you volunteer with this project? (Circle all appropriate answers)

Free CLE \_\_\_\_\_ Wanted to Learn Housing Law \_\_\_\_\_ Pro Bono Work \_\_\_\_\_

Other \_\_\_\_\_

## VOLUNTEER ATTORNEY POST-PROJECT SURVEY RESULTS

Thirteen of the twenty-one attorneys who volunteered in the program returned the Exit Survey upon completion of their participation. The results are as follows:

1. The majority of the attorneys said they were general practitioners.
2. The majority of the attorneys said they had little to no familiarity with Housing Court issues.
3. The volunteer attorneys said they represented from 1-6 clients throughout the program.
4. The majority of attorneys said they received client information with enough time to check for conflicts.
5. Twelve out of the thirteen volunteer attorneys said that the training they received prior to their court appearances was helpful to very helpful. No attorneys found the training not helpful at all.
6. Eleven out of the thirteen volunteer attorneys said they thought they were helpful to very helpful to their clients. No attorneys felt they were of no help to their clients.
7. All of the volunteer attorneys said their clients were receptive to very receptive to the legal advice they gave them.
8. Seven volunteer attorneys said their adversaries were receptive to their presence and representation and six attorneys said their adversaries were less receptive.
9. All of the volunteer attorneys would volunteer for this type of project again.
10. When asked how the program can be improved:

- four attorneys said that some type of priority for the Judge to hear the cases involving the volunteer lawyers would improve the program
- five attorneys said that the program might be improved if the attorneys continued their representation until the end of the case
- three attorneys had no response
- one attorney said nothing needed to be done to improve the program.

11. When asked why the attorney volunteered with this project (they could choose multiple reasons):

- twelve attorneys said they wanted to do *pro bono* work
- eight attorneys said they wanted free CLE
- five attorneys said they wanted to learn housing law

APPENDIX “6”  
COURT FILE STATISTICS

## COURT FILE FOLLOW-UP STATISTICS

This appendix explores what happened in the fifty cases in which a volunteer attorney filed a Limited Notice of Appearance with the court. Since intake was an important factor in the success of the program, the Answers are analyzed first.

### Answers

In forty-five cases the court's oral Answer form was completed by the Coordinator or a law student working with the litigant. Five cases were picked up in the Part on the return date of an Order to Show Cause, hence the VLFD program did not assist in the preparation of those Answers. All Answers that the project assisted with contained at least one jurisdictional or other defense,<sup>1</sup> and thirty-eight cases raised necessary repairs as a defense.<sup>2</sup> In the five cases that were picked up in the Part, only one raised repairs as a defense in the *pro se* Answers.<sup>3</sup> An analysis of the outcome is written in the sections below.

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<sup>1</sup> These defenses include, *inter alia*, latches, improper service of the Petition and/or rent demand, and partial payment of rent.

<sup>2</sup> Case nos. 5, 6, 8, 9, 10, 11, 13, 14, 15, 16, 19, 20, 21, 23, 24, 25, 26, 27, 28, 30, 31, 32, 33, 34, 35, 37, 38, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50.

<sup>3</sup> Case no. 22.

## Final Dispositions

Listed and explained below is the final disposition of the pilot project's fifty cases:

	<u>50</u>
DISCONTINUED	9
SETTLED BY STIPULATION	12
SETTLED BY STIPULATION final judgment for landlord <sup>4</sup>	26
TRIALS <sup>5</sup>	
CASES COMPLETED BY NON-VLFD COUNSEL <sup>6</sup>	3

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<sup>4</sup> Only one of the twenty-two final judgments resulted in an eviction.

<sup>5</sup> Case no. 9 was settled by stipulation in the Trial Part.

<sup>6</sup> Three cases were adjourned by the volunteer attorney and the litigants returned with counsel at their next appearance. The outcomes of these cases are not included in the statistics discussed in the body of the Report. In each of these cases, VLFD program set the stage for subsequent counsel.

In case no. 4, the tenant answered *pro se* indicating "disputes amount." The VLFD attorney negotiated a stipulation which provided an adjournment for the respondent to seek counsel, included repairs and raised a DHCR rental amount dispute issue. Subsequent stipulations with new counsel followed through with the rental amount dispute, but do not mention repairs. It is assumed that the repairs were completed per the stipulation entered into with the VLFD attorney. The case is marked off calendar for resolution of the rental dispute issue.

In case no. 33, the tenant with the VLFD's assistance raised service, rent demand, payment, repairs, laches and general denial. The VLFD attorney negotiated a stipulation providing for an inspection, time to obtain an attorney and that the landlord provide a rent breakdown. An inspection was conducted and two violations found. Subsequently, new counsel filed an amended answer raising, in addition to the issues already raised, improper verification, res judicata based on a prior proceeding and counterclaims for breach of warranty of habitability. Tenant's counsel served a bill of particulars. The tenant moved for summary judgment based on the fact that all the rent sued for was paid. The motion was granted without prejudice to either side seeking relief pursuant to the prior proceeding. There is nothing in the file regarding the outcome of the inspection report and if the repairs were made. It appears from the file that the tenant's counterclaims were not addressed.



## Discontinuances

Of the nine discontinued cases, five were discontinued with the volunteer attorney. Four of these cases were discontinued because the rent had been paid, either because the tenant paid the rent<sup>7</sup> or in two cases because fees and other charges were being sued for as rent.<sup>8</sup> One of the discontinuances included a stipulation regarding necessary repairs.<sup>9</sup> One case was discontinued without prejudice because of a jurisdictional defect, there was no rent demand.<sup>10</sup> Of the four discontinuances by the litigants not represented by the VLFD on their adjourned date, at least one case had been adjourned by the volunteer attorney because the tenant maintained he was being improperly sued for attorney's fees in previous nonpayment cases. On the adjourned date, the nonpayment case was discontinued and the stipulation provided for the landlord to do repairs.

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In case no. 34, the tenant with the VLFD program's assistance answered: service, payment, improper rent demand, and repairs. The VLFD attorney negotiated a stipulation which provided for time to obtain legal counsel and for an inspection. An inspection was conducted and numerous violations found. New counsel filed a notice of appearance and an amended answer on behalf of a different named respondent, however it appears that this may have been in error since the stipulation entered into by new counsel was for the original respondent. The amended answer added counterclaims based on breach of warranty of habitability and for legal fees. Subsequently, new counsel waived traverse on the service of the rent demand and the petition. New counsel arranged for the tenant to move out while repairs were completed and for the tenant to receive compensation for the time she was forced to be out of the apartment. The final stipulation provided for an abatement, a month to pay the rent and a provision that the petitioner would inspect and repair as necessary upon request by counsel. It is assumed that all violations were corrected, although it is not clear from the stipulations in the file.

<sup>7</sup> Case nos. 45, 49.

<sup>8</sup> See case nos. 38, 40.

<sup>9</sup> Case no. 49.

<sup>10</sup> Case no. 47.

## Stipulations of Settlement

Thirty-eight of the project's cases ended by stipulation of settlement. The following is an analysis of final judgments awarded in the stipulations of settlement:

STIPULATIONS OF SETTLEMENT WITHOUT FINAL JUDGMENT	12
STIPULATIONS OF SETTLEMENT WITH FINAL JUDGEMENT	28
warrant to issue forthwith	22
warrant to be applied for	6
STIPULATIONS NEGOTIATED WITH VOLUNTEER ATTORNEY	28
STIPULATIONS NEGOTIATED WITHOUT VOLUNTEER ATTORNEY	10

Of the twenty-eight stipulations negotiated by the volunteer attorneys, ten stipulations did not provide for a final judgment.<sup>11</sup> Eighteen provided for a final judgment<sup>12</sup> and in fourteen of these cases the warrant issued forthwith.<sup>13</sup> Of the cases with final judgments, only one warrant was executed and the tenant evicted and this is discussed in the Findings.<sup>14</sup> In another case the

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<sup>11</sup> See case nos. 2, 8, 11, 18, 19, 24, 27, 28, 37, 44.

<sup>12</sup> See case nos. 3, 6, 7, 10, 12, 13, 14, 15, 16, 17, 23, 25, 26, 29, 30, 31, 43, 50

<sup>13</sup> See case nos. 3, 6, 12, 13, 14, 15, 16, 17, 25, 26, 30, 31, 43, 50

<sup>14</sup> Case no. 16. This eviction was an unexpected result based on the project's interaction with the litigant. The litigant failed to pay her rent according to the stipulation; however, it is not known why this happened. The litigant sought to clarify what her monthly rent actually was. There was a dispute with her landlord because she alleged she never received a renewal lease (she wanted a two year lease, her landlord set her yearly rent increase at the one year level alleging she never returned the renewal). There was also an issue as to how the expiration of a J51 tax abatement would effect her future rent, and the effect of a previous stipulation in a recent

tenant voluntarily moved out after failing to make the payments.<sup>15</sup>

The ten stipulations entered into by the self-represented tenants,<sup>16</sup> eight provided for a final judgment<sup>17</sup> with seven providing for the warrant to issue forthwith.<sup>18</sup> In one of these cases, the litigant gave the landlord possession in exchange for waiving \$11,000 in rent arrears.<sup>19</sup>

Of the eighteen cases negotiated by the volunteer attorneys that provide for a final judgment, two litigants were given 6-7 months to pay the arrears,<sup>20</sup> six litigants were given three months,<sup>21</sup> nine litigants were given one-two months,<sup>22</sup> and one litigant had two weeks.<sup>23</sup> Six of these eighteen cases had been adjourned at least once before being settled,<sup>24</sup> and these litigants were represented by volunteer attorneys at each adjournment. Because this Part had a very active

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nonpayment case. After four court appearances, the litigant agreed to a stipulation straightening out to her satisfaction what her monthly rent was, and set forth a three month schedule for paying the rental arrears. The following month the warrant of eviction was executed. The litigant did not file an Order to Show Cause either before or after the eviction and it is not known what happened; the project has been unable to contact her.

<sup>15</sup> Case no. 15.

<sup>16</sup> Case nos. 1, 5, 9, 21, 22, 32, 36, 39, 41, 48.

<sup>17</sup> Case nos. 1, 9, 22, 32, 36, 39, 41, 48.

<sup>18</sup> See case nos. 1, 9, 22, 32, 36, 39, 41.

<sup>19</sup> Case no. 22.

<sup>20</sup> Case nos. 13, 26.

<sup>21</sup> Case no. 7, 15, 16, 23, 25, 43.

<sup>22</sup> Case nos. 3, 6, 10, 14, 17, 31, 50, 53, 54.

<sup>23</sup> Case no. 29. In this case, the volunteer attorney negotiated a lower amount of rent for the tenant. The tenant did not come back to court seeking more time to pay the arrears.

<sup>24</sup> Case nos. 6, 13, 16, 25, 29, 30.

caseload, each adjournment was for at least one month, which also afforded the litigants additional time to pay the rental arrears. Two cases were adjourned three times,<sup>25</sup> one case was adjourned twice,<sup>26</sup> and two cases were adjourned once for a court ordered inspection before they were settled.<sup>27</sup>

### Repairs

Of the twenty-eight stipulations of settlement entered into by the volunteer attorneys, the project assisted litigants with the Answer in twenty-six cases. In twenty-one cases, the Answer raised repairs as a defense. In fourteen of those cases in which the Answer raised repairs as a defense, needed repairs was part of the negotiated stipulation.<sup>28</sup> In seven cases, repairs were raised as a defense, but not contained in the stipulation.<sup>29</sup> In one of those answers, the item needing repair, the refrigerator, was specifically mentioned on the oral answer form, and it was fixed before the first return date in court.<sup>30</sup> It is not known why repairs were not mentioned in the

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<sup>25</sup> Case nos. 11 and 16. Case no. 11 involved a landlady in her nineties who always appeared in court with her attorney, except she was unable to attend the first time on and her attorney obtained an adjournment. On the second date the tenant came in but was extremely ill and needed to go to the doctor, the volunteer attorney obtained an adjournment. On the third date the parties agreed to a court ordered inspection; the parties had been sparring for years regarding repairs, and how the repairs should be completed. The parties entered into a stipulation on the fourth court date, the tenant represented by her fourth volunteer attorney. Case no. 16 is explained in footnote 14.

<sup>26</sup> Case no. 29.

<sup>27</sup> Case no. 25, 30.

<sup>28</sup> Case nos. 10, 11, 13, 14, 15, 19, 23, 25, 27, 44, 30 31, 43, 50.

<sup>29</sup> Case nos. 6, 8, 16, 24, 26, 28 37.

<sup>30</sup> Case no. 28.

remaining six cases.<sup>31</sup>

In one case the Answer did not raise repairs as a defense, but repairs was negotiated into the stipulation.<sup>32</sup> In the two cases in which the Answer was entered by the self-represented litigants, the Answers did not raise repairs but the stipulation contained repairs.<sup>33</sup> In five cases the volunteer attorneys requested, and the litigants received, court ordered inspections by a city agency, Housing Preservation Department (HPD).<sup>34</sup>

Of the ten stipulations of settlement entered into by the self-represented litigants without a volunteer attorney, seven cases raised repairs in the Answers.<sup>35</sup> Two cases raised repairs in the Answer and repairs were included in the stipulation,<sup>36</sup> three cases raised repairs in the Answers, but repairs were not contained in the stipulations,<sup>37</sup> and one case did not raise repairs in the Answer, but repairs were raised in the stipulation.<sup>38</sup>

### Orders to Show Cause

\_\_\_\_\_ Of the forty-seven cases (the three cases subsequently represented by counsel are not \_\_\_\_\_

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<sup>31</sup> It is noted that this information was not contained in post-project surveys.

<sup>32</sup> Case no. 17.

<sup>33</sup> Case no. 2, 3.

<sup>34</sup> Case no. 22, 25, 30, 33, 34.

<sup>35</sup> The court files are missing in case nos. 5 and 9, so this Report is unable to review these stipulations.

<sup>36</sup> Case nos. 21, 32.

<sup>37</sup> Case nos. 31, 41, 42.

<sup>38</sup> Case no. 36.

include in this analysis), orders to show cause were filed in thirteen cases.<sup>39</sup> Eleven orders to show cause were filed by tenants;<sup>40</sup> nine tenants sought additional time to pay the rental arrears,<sup>41</sup> two were filed to enforce the repair provision of the stipulation.<sup>42</sup> One was filed by a tenant who alleged the rent had been paid, and the case was discontinued on the return date.<sup>43</sup> In one case, the tenant needed additional time because she is a real estate agent who was counting on collecting a fee that was overdue.<sup>44</sup> Two orders to show cause were filed by landlords seeking final judgments.<sup>45</sup> In both these cases, the parties eventually entered into new stipulations of settlement.

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<sup>39</sup> Case nos. 3, 6, 7, 12, 11, 14, 17, 25, 27, 30, 31, 32, 33.

<sup>40</sup> Case nos. 3, 6, 7, 12, 14, 17, 25, 30, 31, 32, 33.

<sup>41</sup> Case nos. 2, 3, 6, 7, 9, 14, 31, 32, 41.

<sup>42</sup> Case nos. 25, 30.

<sup>43</sup> Case no. 17.

<sup>44</sup> Case no. 31.

<sup>45</sup> Case nos. 11, 27.

APPENDIX “7”  
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