

**H.B. 6531 – Right to Counsel**  
**Testimony of Raphael L. Podolsky**  
Housing Committee public hearing – March 4, 2021

**Recommended Committee action: APPROVAL OF THE BILL**

This bill would provide defendants in eviction cases with the right to appointed counsel if they are indigent. We support the bill because of the fundamental nature of the potential loss to the defendant – a place to live – combined with the systemic unfairness that results when one party usually has an attorney and the other party usually does not.

Defendants have a constitutional right to appointed counsel in criminal cases, but in civil cases they do not. There are, however, a number of well-established civil case exceptions based on constitutional requirements or public policy. For example, indigent defendants have a right to appointed counsel in paternity cases; parents have a right to counsel in child abuse and neglect cases and in terminations of parental rights; and an attorney is mandated in probate court cases such as those involving conservatorship.

Eviction cases raise many of the same issues. The loss of housing to the tenant is especially severe, attorney participation is heavily on one side, and the capacity for defendants to represent themselves effectively is limited. Judicial Branch data for Fiscal Year 2020 found that 81% of landlords had lawyers in eviction cases while fewer than 7% of tenants did, leaving 93% unrepresented. Even if the calculation is limited to tenants who filed an appearance (about one-third of tenants defaulted), only 11% of those who appeared had lawyers while 89% were self-represented. This makes a huge difference in the results for two reasons. First, unrepresented tenants often do not know their rights, do not understand court procedures, and are not able to present their cases effectively at any stage of the process, especially with experienced attorneys on the other side. This affects both mediations and courtroom appearances. Second, a significant number of unrepresented tenants fail to show up at all. During the pandemic, when legal aid programs reached out to tenants eligible for the eviction moratorium, we saw how many were unaware not only that such a protection existed but even that an actual physical eviction was imminent. Every study of the right to counsel in the cities which have adopted it has found that the presence of an attorney

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for the defendant significantly improves the likelihood of a better result for the tenant. There is no question that having an attorney makes a difference.

H.B. 6531 assures the ability of indigent defendants in eviction cases to obtain counsel. While the bill places responsibility for the program on the Judicial Branch, it is expected that there will be revisions to the bill that will place that responsibility elsewhere. We hope, however, that the underlying substance of the bill will be preserved. We therefore urge support for the bill.