

# Universal Access to Justice Caseload Working Group

REPORT AND RECOMMENDATIONS



August 31, 2023

**UA CASELOAD WORKING GROUP**  
**NYS Office of Court Administration**  
**Report and Recommendations**

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**Executive Summary**

The Universal Access Caseload Working Group<sup>1</sup> was established to develop an objective guideline for the number of cases that can be effectively handled by an attorney under New York City’s first-in-the-nation Universal Access (UA) program. Following extensive investigation and analysis, the Caseload Working Group recommends that an experienced full-time UA attorney can be assigned 48 full legal representations in NYC Housing Court eviction proceedings in a one-year period. This guideline is based on an assumption that the UA attorney works 1,400 hours per year providing UA legal representation.

Our recommendation is based on both quantitative and qualitative data and should be viewed as a benchmark to help the City of New York and its legal services provider partners determine how many attorneys are needed for the program to function effectively, to help in assessing the staffing and resources needed to support and implement the program, and, importantly, for tenants served by this innovative program to receive high quality legal representation.

The Working Group bases its conclusions and recommendations on data and observations drawn from the recent past and present in the New York City housing legal system. This is a period during which the only constant has been change, as the path and pace of eviction proceedings in NYC Housing Court, the variety of legal issues that may arise, and the range of possible outcomes have all been subject to frequent, and at times abrupt, change and evolution. As such, the Working Group can only recommend a caseload guideline based on current circumstances in New York City. The Working Group strongly recommends that these guidelines be revisited on a periodic basis to account for, among other dynamic factors, changes in program design and implementation, UA attorney practice, and court processes.

We also note that a guideline for attorneys in New York City’s eviction defense legal services program may not be applicable to those in other jurisdictions. Under different circumstances of practice, such as the different tenant protections and court procedures in other jurisdictions, different guidelines, and perhaps a different approach to measuring and establishing guidelines for the workloads of attorneys practicing in that jurisdiction, may be more applicable.

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<sup>1</sup> The members of the Universal Access Caseload Working Group are: the Honorable Carolyn Walker-Diallo, Administrative Judge, New York City Civil Court (Chair of the Working Group); the Honorable Jack Stoller, Citywide Supervising Judge, New York City Housing Court; Jordan M. Dressler, Special Counsel, New York State Office of Court Administration; Ignacio Jaureguilorda, Project Director, Center for Justice Innovation; and Neil Steinkamp, Managing Director, Stout Risius Ross LLC. The members of the Working Group thank the NYC Housing Court Working Group, the NYS Office of Court Administration and the NYS Unified Court System for their support and guidance. The Working Group is especially grateful to the leadership and staff of New York City’s UA legal services provider organizations, the NYC Office of Civil Justice and Department of Social Services, and the NYS OCA Department of Technology and Court Research for sharing their time and providing their insights and perspectives with us.

## **I. Introduction and Background**

### **A. New York City's Enactment of 2017 and 2021 UA Laws**

In 2017, New York City (the “City”) became the first locality in the United States to enact a law ensuring access to free legal services for any residential tenant facing an eviction proceeding in court. New York City’s Universal Access legislation (hereinafter “UA”) is a local law requiring the City’s Office of Civil Justice (OCJ) to establish a program that provides access to free legal services – either full legal representation or brief legal assistance, depending on the annual household income of the tenant litigant – to all tenant respondents facing eviction in New York City Housing Court.<sup>2</sup>

Implementation of the UA program was phased in by the City over time; all income-eligible tenant respondents in high-need ZIP codes selected by the City were provided access to free legal representation, via court-based intake as well as through community legal offices. By the end of 2019, the UA program had grown to include 25 ZIP codes across the five boroughs, and thousands of tenant respondents residing in other ZIP codes likewise received free legal representation in Housing Court through the City’s legal assistance programs including UA. According to analysis by OCJ, at the end of 2019, the percentage of tenants appearing in Housing Court who had legal representation in eviction proceedings had reached 38% citywide, and 67% of tenants who appeared in Housing Court in the UA ZIP codes were represented by counsel in court.<sup>3</sup>

### **B. Impact of COVID-19 Pandemic on New York State and New York City Housing Law and Procedure and NYC Housing Court Operations**

In March 2020, New York City’s housing legal system underwent immediate and transformative change as the COVID-19 pandemic dramatically impacted Housing Court eviction proceedings, followed in short order by a series of emergency orders and directives that governed the handling of selected Housing Court proceedings that were permitted to proceed while promoting health and safety during the public health crisis. As the pandemic began, the UA program shifted from a phased-in expansion to providing access to legal services to tenants citywide, regardless of geography/ZIP code. OCJ and UA providers coordinated with the borough Housing Courts to provide legal representation to tenants in actions alleging illegal eviction or lockout and in proceedings seeking emergency repairs such as restoring lost heat or hot water. As

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<sup>2</sup> New York City Administrative Code § 26-1301 *et seq.* In addition to mandating that OCJ make legal services available for tenant respondents in NYC Housing Court, the UA law requires OCJ to establish a program to provide respondents in administrative termination of termination proceedings brought by the New York City Housing Authority (NYCHA) access to free legal services, and also includes requirements for annual reporting and conducting annual public hearings.

<sup>3</sup> *Universal Access to Legal Services: A Report on Year Three of Implementation in New York City*, NYC Office of Civil Justice (2020), retrieved from [https://www.nyc.gov/assets/hra/downloads/pdf/services/civiljustice/OCJ\\_UA\\_Annual\\_Report\\_2020.pdf](https://www.nyc.gov/assets/hra/downloads/pdf/services/civiljustice/OCJ_UA_Annual_Report_2020.pdf).

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the public health situation developed in New York State through 2020 and 2021, state law and local court directives evolved to permit the Housing Court to proceed in select eviction cases, and the UA program coordinated with the Housing Court to assign attorneys to represent unrepresented respondents seeking legal representation in court in these cases, regardless of ZIP code, as UA lawyers continued to represent clients in cases in which they were already serving as counsel.<sup>4</sup> The City's approach was codified by a successor local law enacted in May 2021, NYC Local Law 54 of 2021, which officially accelerated the mandate for UA implementation by more than one year to be effective immediately. As OCJ reports, by the spring of 2021 the UA program offered all tenant respondents with calendared eviction proceedings access to free legal services, and more than 71% of tenants who appeared in NYC Housing Court for eviction cases were represented by attorneys in court.<sup>5</sup>

**C. Challenges Experienced by the UA Providers in 2022**

In early 2022, following the expiration of broad statewide restrictions on eviction case processing and a phased resumption of activity in pending eviction proceedings in Housing Court, the UA program returned in earnest to a NYC Housing Court that had underwent profound changes. First, the number of residential eviction cases filed in Housing Court, although higher than during the pandemic period of 2020 and 2021, substantially diminished compared to the pre-COVID period. As the table below reflects, the number of residential eviction proceedings filed in NYC Housing Court in 2022 was 37% lower than the number of such cases filed in 2019:

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<sup>4</sup> *Universal Access to Legal Services: A Report on Year Four of Implementation in New York City*, NYC Office of Civil Justice (2021), retrieved from [https://www.nyc.gov/assets/hra/downloads/pdf/services/civiljustice/OCJ\\_UA\\_Annual\\_Report\\_2021.pdf](https://www.nyc.gov/assets/hra/downloads/pdf/services/civiljustice/OCJ_UA_Annual_Report_2021.pdf).

<sup>5</sup> *Ibid.*

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**Residential Eviction Proceedings Filed in New York City Housing Court**  
**1/1/19-12/31/2019 and 1/1/22-12/31/2022**

	<b>2019</b>	<b>2022</b>	<b>% Difference</b>
Bronx	62,316	39,300	-37%
Brooklyn	47,476	29,031	-39%
Manhattan	32,694	18,875	-42%
Queens	25,100	18,553	-26%
Staten Island	3,947	2,376	-40%
<b>NYC Total</b>	<b>171,533</b>	<b>108,135</b>	<b>-37%</b>

*Source: Statewide Landlord-Tenant Eviction Dashboard, NYS Unified Court System/Office of Court Administration, retrieved from <https://ww2.nycourts.gov/lt-evictions-33576>.*

Despite the decline in the pace of filings, in March 2022 a number of UA providers began to experience challenges in their ability to provide consistent access to legal representation to all eligible respondents, driven in great part by a shortage of attorneys brought on by unusual levels of attrition across the public interest law field (as well as other sectors, including the court system itself) in the wake of the COVID-19 pandemic. According to data provided to the Working Group by OCJ, as of February 2023, UA providers experienced a 14% gap in staff attorney employment (comparing the number of staff attorneys or full-time equivalents actually employed by providers to the target number of staff attorneys projected to be employed), and more recently several UA providers have reported attorney attrition levels ranging from 20% to almost 40%.<sup>6</sup> By the spring of 2022, several UA providers were unable to provide legal representation to all eligible respondents in court as assigned by OCJ.

For many UA attorneys, attrition by their peers made an already difficult job harder, as active caseloads and intake responsibilities for new cases that had been handled by departing lawyers were necessarily distributed across remaining staff, leading to increased caseloads for those remaining attorney. Furthermore, many of the cases “inherited” by staff attorneys may be relatively old or complicated, requiring attorneys to urgently get up to speed on old cases that are new to them, forge relationships with new clients on a compressed timeframe, and rearrange their remaining workload. Loss of staff and its impact on the UA program have led to participating attorneys feeling, in the words of the Hon. Anthony Cannataro, Acting Chief Judge of the Court of Appeals, “overworked, underpaid, and emotionally drained.”<sup>7</sup>

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<sup>6</sup> *All New Yorkers facing eviction could get free legal help — but it won’t come cheap*, Gothamist (4/10/2023), retrieved from <https://gothamist.com/news/nyc-legal-providers-say-they-need-461m-to-make-right-to-counsel-a-reality>.

<sup>7</sup> *State of Our Judiciary*, Hon. Anthony Cannataro (2023), retrieved from <https://nycourts.gov/ctapps/news/soj2023.pdf>.

**D. Establishment of NYC Housing Court Working Group and UA Caseload Working Group**

To develop solutions to these challenges and to promote and coordinate efforts to increase, improve and stabilize access to justice for litigants in New York City Housing Court, the Housing Court Working Group was formed in May 2022. The Housing Court Working Group is composed of New York City agency leaders overseeing and implementing the UA program, UA legal services providers, and judicial administrators of the NYC Housing and Civil Courts. Developing out of the Housing Court Working Group, the UA Caseload Working Group was convened in October 2022 to assist UA legal providers and the city agencies charged with funding and implementing NYC’s UA program by determining an objective guideline for the number of cases that can be effectively handled by a UA attorney. In meetings of the Housing Court Working Group, providers and the City alike, emphasized that establishing such a guideline would provide helpful guidance to stakeholders for funding and staffing decisions about UA and would be a building block for the stability and success of the program.

**E. The Caseload Working Group’s Recommended Annual Guideline**

In this Report and Recommendations, **the Caseload Working Group recommends that an experienced full-time UA attorney can be assigned 48 full legal representations in NYC Housing Court eviction proceedings in a one-year period.** This guideline is subject to assumptions and caveats about an attorney’s professional experience, the availability of working time for UA casework, and other considerations. To emphasize, our recommendation of 48 representations per UA attorney per year is a *guideline*, and is intended to function first and foremost as a benchmark to help the City and legal services providers determine how many attorneys are needed for the UA program to function effectively, to help stakeholders to assess the staffing and resources needed to support and implement the UA program, and, importantly, for tenants served by this innovative program to receive high quality legal representation.

**II. Methodology and Application to UA**

To determine a reasonable annual caseload guideline for purposes of informing funding and staffing requirements for an eviction defense legal representation program like UA, it is necessary to determine (1) how much time is reasonably available for attorneys to represent clients in eviction proceedings and (2) how much time is reasonably required to provide effective tenant representation for clients. These inputs are then used to determine how many representations can reasonably be handled per attorney annually. Both steps should include review of quantitative measures and qualitative feedback.

**A. Dialogue with Stakeholders**

The Working Group held a series of meetings with UA legal services providers and with OCJ to discuss the activities and experiences of an attorney practicing in Housing Court in New York City, and specifically how they pertain to the implementation of the UA program. The informational sessions with UA legal services providers (including organizational leaders, union leaders, and practicing attorneys) and representatives of OCJ and its parent agency the Department of Social Services (DSS) were conducted to gain insight into the practice of an attorney in Housing Court in New York City. These sessions were designed to provide a more comprehensive understanding of the procedures, challenges, and best practices associated with representing clients in Housing Court, particularly in the context of nonprofit organizations providing City-funded legal services. The goal was to gather information about the workload and responsibilities of attorneys, the resources available to them, the challenges they face, and the strategies they use to provide high-quality legal representation. This information is critical to developing recommendations for a reasonable and appropriate caseload guideline that can promote the effective representation of clients in Housing Court.

**1. UA Legal Services Providers**

The meetings with legal services providers were a crucial part of gaining context and information about the practice of attorneys in NYC Housing Court under UA. These providers – including executive leadership, supervising attorneys, staff attorneys, and labor union representatives – possess a wealth of experience in navigating the procedures of the Housing Court system and working with clients who often face significant challenges in housing matters, and generously shared their perspectives with the Working Group in a series of roundtable discussions, as well as through a concept paper submitted by twelve of the city’s UA providers to the City and shared with the Working Group. Through our dialogues with members of the UA provider community, the Working Group gained valuable insight into the pace and complexion of attorney casework, and the resources that UA legal services providers have at their disposal (and those they lack) to manage their workload.

The Working Group also heard from UA attorneys about the challenges they face in delivering high-quality legal services to their clients, such as limited staff resources (e.g., insufficient non-lawyer staff to work with and support attorneys and clients), high demand for services, and time constraints. Nearly every UA provider said that they faced the twin challenges of acute staff attrition during and following the pandemic and the need to reassign existing cases to a diminishing number of remaining staff attorneys, and practitioners described how this dynamic made their practice less predictable and negatively impacted morale.

Attorneys reported that, often, much of their time was spent waiting in court for their cases to be heard or conferenced with opposing counsel. Attorneys practicing in courts across the city expressed that they often must wait for a number of hours to appear for a single case conference,



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and that they are unable to work on other matters while in court. UA attorneys also expressed that spending so much time in court can mean that they need to work at night or on weekends on motions, pleadings, and legal research. Indeed, many of the attorneys expressed that working outside of business hours was common.

Providers also expressed that there were outside factors that affected how long their cases lasted or how much of their time these cases required. According to UA practitioners, delays in response from government agencies, such as those responsible for administering emergency rent assistance or ongoing rental subsidy applications and payments, occur more frequently than in past years and can cause unusual delays. Providers also described how their practice has come to involve increased motion practice, in part driven by the expansion of tenant protections in the Housing Stability and Tenant Protection Act enacted in 2019. Leaders and supervisors at the UA providers also expressed that more time is now spent on the training of attorneys, especially attorneys newer to the field, and that this training affects the amount of time that attorneys are able to spend working on Housing Court cases.

Several legal service providers highlighted that their staff are subject to collective bargaining agreements that set specific limits on attorney caseloads. These agreements can vary depending on the organization and the scope of their work. During the meetings, some providers shared that these agreements can be helpful in ensuring manageable caseloads for attorneys, while others expressed concerns that the limits were not always sufficient to provide quality representation to clients. While understanding the impact of collective bargaining agreements on caseloads is an important aspect of the practice, the Working Group has not made any distinctions between those organizations working under a labor agreement governing attorney workload and those that are not in developing this guideline.

## **2. NYC Office of Civil Justice**

The Department of Social Services' (DSS) Office of Civil Justice (OCJ) is charged with administering the UA program and funding legal services provider organizations to provide UA legal services. In our dialogue, OCJ leadership described to the Working Group how funding is distributed through a competitive grant process, and organizations must demonstrate their ability to provide high-quality legal services to low-income individuals to receive funding.

In assessing funding needs, OCJ takes into account the number of cases that need to be covered, responsibilities related to intake and court coverage, and the complexity of the legal issues involved. OCJ structures its contracts and performance targets around a number of representations<sup>8</sup>

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<sup>8</sup> OCJ contracts with UA providers also include performance requirements for other legal services covered by the UA law including brief legal assistance for eligible tenant respondents in Housing Court eviction proceedings and legal services in NYCHA administrative termination of tenancy proceedings. To date, OCJ contracts with UA providers have also permitted contracted organizations to meet performance requirements to a limited extent through the engagement in legal services for tenants that are not covered under the UA law, such as "HP" (Housing Part) proceedings to compel landlords to perform repairs or address hazardous living conditions.

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that a contracted legal services provider is required to take on, rather than an active point-in-time caseload. This means that OCJ sets expectations and targets via contracts for the number of representations that legal service organizations are expected to take on over a given period of time, typically a fiscal year. Contracted legal services organizations are expected to enter Notices of Appearance at or close to the first court appearance for tenant respondents who are determined to be eligible for full legal representation under the UA law, and to continue such representation until the case is concluded and there are no unresolved issues. The contracts between OCJ and these organizations also include reporting requirements to promote accountability and transparency.

It is important to note that while OCJ structures its contracts and targets around the number of cases taken on by contracted organizations, the agency does not set numerical requirements for the number of attorneys an organization must employ. OCJ does not require individual attorneys employed by a UA contracted organization to take on a defined number of cases or maintain a specific numerical caseload, nor does it mandate any staffing ratios or models. OCJ does not currently collect data about individual attorneys' caseloads. Rather, OCJ sets expectations and targets for UA legal services providers at the organization/contractor level, which allows these providers to determine how to allocate their resources to meet the targets set by OCJ.

**B. Estimating the Number of Hours Required per Representation**

**1. Background**

With regard to estimating the number of hours required per representation, quantitative information typically considered can include:

- Data on the duration of eviction cases (and when possible, factors contributing to any variation) from the time of the commencement of representation to the disposition of the case, and considering post-disposition activities, when possible; and
- Case time data recorded in legal services providers' case management systems. In the absence of case time data recorded by staff attorneys, in some instances an activity-based model can be developed to estimate the weighted average number of hours required for representation considering the frequency and time required for each activity.<sup>9</sup>

Qualitative information related to the hours required per representation should include feedback from staff attorneys and supervising attorneys at legal services organizations representing tenants. When possible, using qualitative feedback to complement quantitative analyses of case time leads to a more nuanced and contextualized understanding of the quantitative observations

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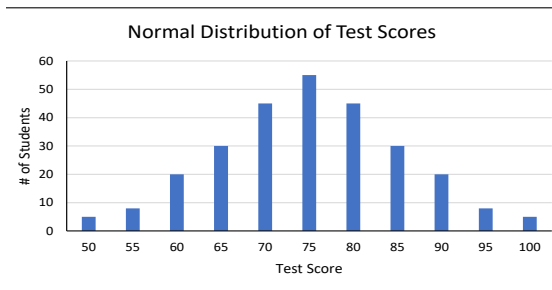
<sup>9</sup> If detailed time records do not exist, or if the data in them is believed to be materially incomplete or incorrect, an activity-based estimate for the number of hours required per case can be developed by estimating the number of hours required per task, the type of task, the typical duration of the task, and the frequency with which each task occurs in the course of a case or representation. The Working Group was able to review and analyze sufficiently voluminous attorney time records in establishing the guideline recommended in this report and thus did not develop an activity-based estimate.

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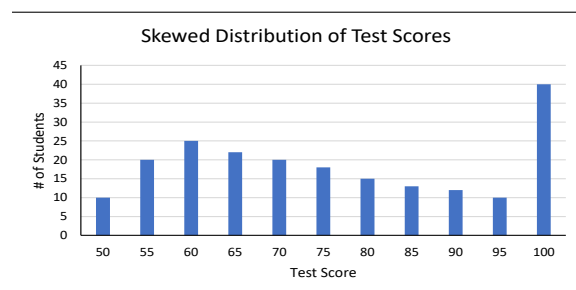
and findings. For example, analysis of time entry data is imperfect as attorneys do not always record all case time and supervisors may spend small increments of time on many cases and do not always record this time. Learning from the experience and expertise of staff attorneys who are working daily on these cases also informs how to interpret the time entry data that is collected. Activity-based analyses are also imperfect as they require a significant number of subjective inputs, each of which have an undefined margin of error. In combination, the quantitative analyses of time entry data informed by qualitative feedback from attorneys results in a more nuanced and reliable measurement of the estimated number of hours per case.

Recognizing these imperfections, analyses of time entry data can still be informative. When analyzing time entry data, measures of central tendency and distribution are often used to develop estimates of the average and median number of hours for eviction cases. Average and median are both measures of central tendency.<sup>10</sup> An average is calculated by adding all the data points and dividing the sum by the number of data points. One consideration when calculating an average is that it is particularly susceptible to the influence of outliers. Outliers are values that are unusual compared to the remainder of the data set by being significantly larger or smaller in numerical value such that they skew the distribution of data, making it not normal.<sup>11</sup> The median is the middle of the data set when arranged in order of magnitude. When the data set follows a normal distribution, the average and median are the same. In a normal distribution, data is symmetrically distributed without any outliers. When visualized on a chart, a normal distribution of data is in the shape of a bell. Most data points are in the middle of the chart and taper off to the left and right of the center. For example, Figure 1 below shows what a normal distribution of test scores among students would look like, and Figure 2 shows a skewed data distribution.

**Figure 1**



**Figure 2**



With respect to legal representation time data, it is not uncommon for the data sets to represent a skewed distribution and for there to be significant differences between the average and median. This is often the case because some cases can be particularly complex and can require many more hours than the typical case. In addition, it is not unusual for many cases to require relatively few hours, creating a gradual distribution from small numbers of hours toward the

<sup>10</sup> "Measures of Central Tendency." Laerd Statistics (n.d.). Retrieved from: <https://statistics.laerd.com/statistical-guides/measures-central-tendency-mean-mode-median.php>

<sup>11</sup> *Ibid.*

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average or median. In addition, in recent years, the COVID-19 pandemic has created representation time data that can be difficult to interpret. In certain instances, time for cases that were opened but not closed before pandemic-related court closures, or those that were opened during periods when evictions and eviction case processing were restricted or pandemic-related court closures, may experience recorded representation time (as well as duration from start to completion) that may not be indicative of the time expected for those cases that opened after the courts resumed operations and began operating at a normal pace. Further, new systems and processes (such as emergency rental assistance and virtual proceedings) altered the amount of time cases may have required – in some ways that may be continuing, and in others that may not. When possible, it is important to assess the reasonable expectations going forward, mindful of the limitations of interpreting and applying data from the past.

The presence of outliers or skewed distributions in case time data should be carefully considered when estimating funding and staffing requirements for a sustainable eviction defense legal representation program. For example, when developing an estimate of the funding necessary, it can be reasonable and appropriate to use an average, even when there is a skewed distribution, if there is a reasonable expectation that the program will continue to experience a portion of cases that require significantly more hours than the average or median. If so, a comprehensive funding estimate for the program will need to include funding for the time required to service these cases. On the other hand, a median may be considered the number of hours required for representation in the common or typical case and may be most appropriate to inform programmatic or organizational staffing expectations.

## **2. Analysis of UA Data and Information**

The Working Group reviewed and analyzed records provided by two UA providers – Provider 1, a large legal services nonprofit providing UA legal services across New York City, and Provider 2, a smaller borough-based organization providing UA legal services in New York County (Manhattan) alone.<sup>12</sup> These records detailed the number of hours spent by UA attorneys representing clients in approximately 8,500 NYC Housing Court eviction cases in cases that were concluded in 2019 and 2022.<sup>13</sup> The Working Group examined cases closed in both years to observe any impacts the Housing Stability and Tenant Protection Act (which became law in June 2019), the pandemic and its legal and administrative aftermath, and other changes in NYC Housing

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<sup>12</sup> The Working Group understands that Providers 1 and 2 are the only UA providers that regularly record attorney time.

<sup>13</sup> The Working Group also reviewed the results of a study conducted in 2018 by advisory firm Stout on behalf of a large citywide UA provider. According to the results of the study, UA legal representations by provider attorneys in 2018 were estimated to take between 10.5 hours and 98.7 hours of attorney time to reach completion, and that it was expected that a UA representation would take 23.1 hours of attorney time for this provider.

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Court in recent years may have had on the time required to provide legal representation in these matters.<sup>14</sup>

The table below shows the average (mean) and median number of hours spent by UA attorneys at Provider 1 and Provider 2 engaged in legal representations that were closed in 2019 and 2022.

	Representations Closed in 2019			Representations Closed in 2022		
	# of Representations	Average Hours Per Representation	Median Hours Per Representation	# of Representations	Average Hours Per Representation	Median Hours Per Representation
Provider 1	4,254	25.6	15.3	3,322	28.9	17.7
Provider 2	662	23.4	15.0	238	32.9	21.3

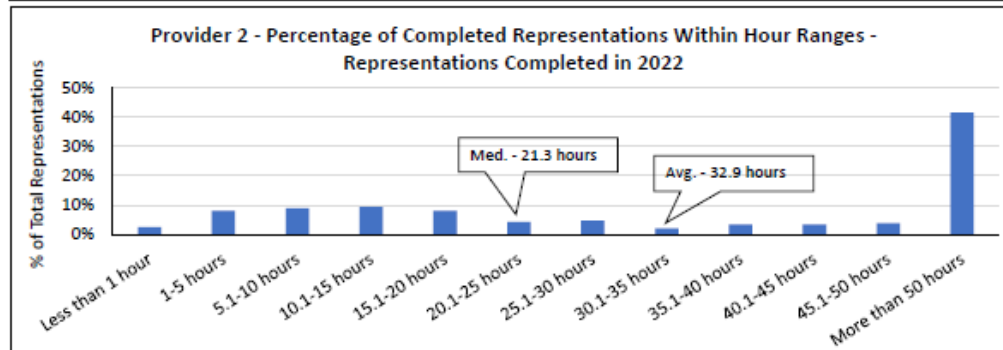
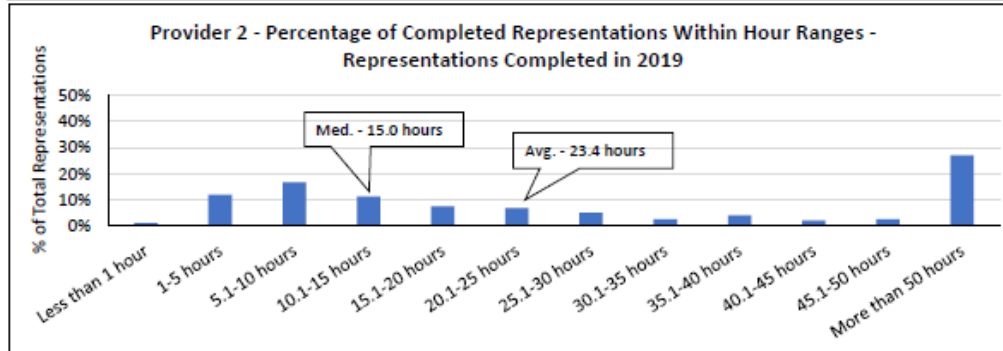
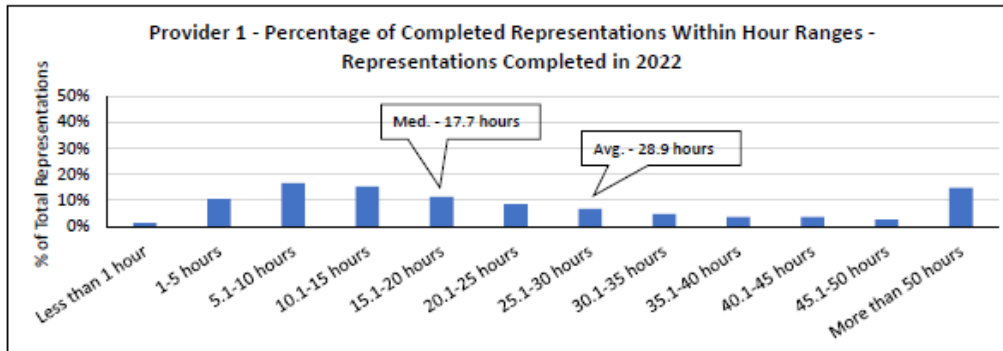
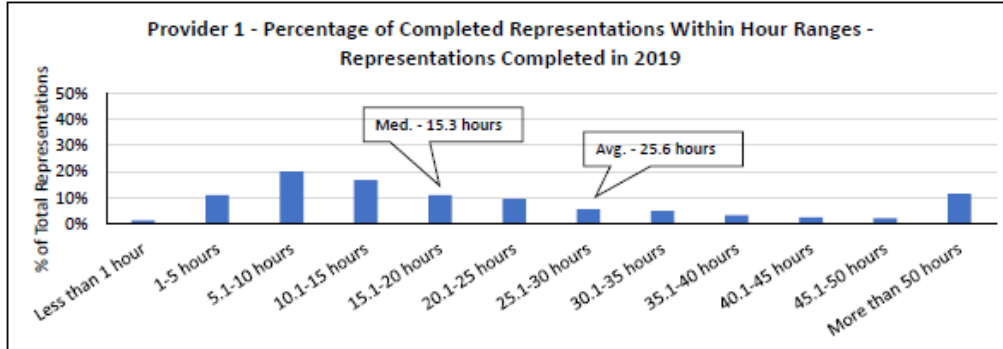
The Working Group observed significant differences between the average hours per representation and median hours per representation for both providers and in both years analyzed; averages were between 54% and 67% larger than medians. The Working Group reviewed the providers’ data and concluded that a small number of representations in which an exceedingly large number of hours were spent, consistently distorted the averages by driving them disproportionately upwards. For example, the Working Group found that, for Provider 1, the 10% of representations analyzed with the largest number of hours spent per case – 758 representations out of 7,576 representations closed in 2019 and 2022 – accounted for 40% of all hours spent by Provider 1 attorneys in all cases. Similarly, for Provider 2, the top 10% of representations in terms of hours spent – 90 representations out of 900 representations closed in 2019 and 2022 – accounted for 40% of all hours spent by Provider 2 attorneys in all cases.

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<sup>14</sup> The data received by the Working Group included legal representation time information about both holdover and nonpayment eviction proceedings. The guideline established by the Working Group is reflective of the mix of holdover and nonpayment cases for the two providers able to supply the Working Group with detailed legal representation time data, which was consistent with the distribution of such cases in NYC Housing Court as well as in current UA provider caseloads, in which the majority of cases heard by the Court and handled by attorneys through the UA program are nonpayment proceedings. The guideline contemplates a mixed caseload of both eviction proceeding types consistent with this distribution.

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The charts below provide additional detail on the distribution of hours spent by Provider 1 and Provider 2 attorneys in these cases:



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The Working Group observed that both the average and median hours per representation notably increased for cases closed in 2022 compared to those closed in 2019. As reflected in the table above, for Provider 1, the median hours per representation rose by 16% (from 15.3 hours to 17.7 hours), and the average by 13% (from 25.6 hours to 28.9 hours). For Provider 2, the increase was even sharper: median hours per representation increased by 42% for 2022 closed cases compared to 2019 (from 15.0 hours to 21.3 hours), and average hours per representation increased by 41% (from 23.4 hours to 32.9 hours).

These findings are consistent with feedback from UA leadership and staff during the Working Group's listening sessions, in which participants described how their cases were taking more time to complete and required more engagement in tasks including but not limited to legal research and motion practice as well as advocacy with government agencies compared to the period before the HSTPA and the pandemic changed Housing Court practice. It is also reasonable to assume that unusually extended periods of case pendency caused by stays in Housing Court eviction proceedings led to more frequent client contacts, further increasing the time needed to represent clients in UA representations.

As a result, the Working Group determined that legal representations concluded in 2022 offered the most applicable insights into the UA program of today and the near future, and particularly focused its analysis on these representations.

**C. Estimating the Number of Hours Available for Casework/Representations**

**1. Background**

After developing a reasonable estimate of the number of hours required to provide effective representation in an eviction case, the annual number of working hours must be calculated. The estimated annual number of working hours should be developed in a way that contemplates the need to prevent costly staff burnout and turnover. Furthermore, collective bargaining agreements and labor market dynamics should be considered when estimating a reasonable number of annual working hours. When possible, the estimate should be calculated through a trauma-informed lens that appreciates the challenges of this work and the toll it may take on attorneys. Again, input from the attorneys performing this work is essential.

If possible, after the total number of annual working hours is estimated, an estimate of the annual number of hours for vacation, holidays, personal days, meetings, trainings and continuing education, mentorship and professional development, travel time, and wait time at court (and other non-case activities) should be developed and subtracted to leave the total number of annual hours available for casework. However, these components become difficult to reliably estimate if a diversity of legal services organizations in which there is variation in the allocation of time to these activities are analyzed and evaluated collectively.

## 2. Analysis of UA Data and Information

Based on a review of collective bargaining agreements and employee handbook materials provided by the majority of UA legal provider organizations to the Working Group, there is consensus that the expectation is that a UA attorney works approximately 1,400 hours per year. This number is based on assumptions of a workweek of 35 hours and 52 weeks per year, producing 1,820 hours per year, with reductions for time off including holidays, vacation and personal leave, and paid sick leave. Information shared by UA providers on this point was notably consistent. Consequently, the Working Group assumes for the purposes of our analysis that a UA attorney has 1,400 available working hours per year.<sup>15</sup>

There is less consistency across providers, however, as to how many of the working hours per year should be considered available for UA legal representation. The Working Group acknowledges that the UA program currently includes attorneys who spend all, some, or little of their professional time representing clients in NYC Housing Court eviction proceedings. Indeed, many providers indicated in listening sessions that UA attorneys do not – and should not – engage exclusively in UA-covered legal representations in Housing Court, but should and do instead devote a meaningful portion of their working time to other activities, such as brief legal assistance, tenant education, outreach efforts in the communities their organizations serve, and representation/case handling in affirmative litigation such as HP actions (which are not covered under the UA law) and legal assistance in administrative proceedings to terminate a public housing tenancy brought by the New York City Housing Authority (which are covered under the UA law).

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<sup>15</sup> The Working Group acknowledges that previous caseload standards for attorneys providing mandated legal representation in New York State in other sectors have been based on a different assumption for available working hours per year. The New York State Office of Indigent Legal Services (ILS) assumed 1,875 working hours per year in establishing caseload standards for mandated criminal defense representation and mandated parental representation, based on an assumption of 250 working days per year and 7.5 working hours per day. See *An Estimate of the Cost of Compliance with Maximum National Caseload Limits in Upstate New York*, NYS Office of Indigent Legal Services (2013), at 6, retrieved from <https://www.ils.ny.gov/files/An%20Estimate%20of%20the%20Cost%20of%20Compliance%20with%20Maximum%20National%20Caseload%20Limits%20in%20Upstate%20New%20York.pdf>; *Caseload Standards for Parents' Attorneys in New York State Family Court Mandated Representation Cases*, New York State Office of Indigent Legal Services (2021), retrieved from <https://www.ils.ny.gov/files/Caseload%20Standards%20Parents%20Attorneys%20NYS%20Family%20Court.pdf> (establishing a set of seven weighted “Maximum Proceedings Per Year” standards covering the range of case types handled by parents’ attorneys [e.g., 300 paternity matters per year; 75 custody/visitation matters per year; 33.3 termination of parental rights proceedings per year] assuming 1,875 available working hours per year); *A Determination of Caseload Standards pursuant to § IV of the Hurrell-Harring v. The State of New York Settlement*, New York State Office of Indigent Legal Services (2016), retrieved from <https://www.ils.ny.gov/files/Caseload%20Standards%20Report%20Final%20120816.pdf> (creating seven weighted “Maximum Proceedings Per Year” standards covering the range of case types handled by assigned criminal defenders [e.g., 300 misdemeanors or violations per year; 50 violent felonies per year; 35 appeals of guilty pleas per year] assuming 1,875 available working hours per year).



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The variation in approaches to attorney time allocation across different UA providers was reflected in a study prepared collectively by the UA providers and shared with the Working Group. This study was conducted by surveying UA attorneys at seven different organizations about the allocation of their time over a three-week period in December 2022 to categories including UA casework, intake tasks, other substantive legal work, and non-legal activities. The survey found that, *on average*, UA attorneys spent approximately 77% of their working time on UA casework and intake. However, time spent on casework and intake varied widely across different provider organizations, from 48% at the low end to 84% at the high end, as detailed in the table below.

Similarly, the providers' study reflected wide variation in the time spent by attorneys on supporting non-legal activities, ranging from 2% for one provider to 26% for another, as detailed in the table below.

**UA Survey: Attorney Time Allocation, December 1-December 23, 2022**

	Casework	Intake	Substantive Legal Work (Unrelated to Casework)	Supporting Non-Legal Activities
Provider A	53%	5%	29%	14%
Provider B	73%	8%	13%	6%
Provider C	84%	0%	14%	2%
Provider D	70%	4%	13%	13%
Provider E	78%	5%	7%	10%
Provider F	40%	7%	26%	26%
Provider G	73%	6%	10%	11%

Based on these findings, which are reflective of the variety of program and staffing models in use by UA provider organizations, the Working Group did *not* quantify the amount of time of an attorney's work time that actually is, or optimally should be, spent on non-representation activities in recommending an annual guideline. Instead, the Working Group assumes for the purposes of these guidelines that *all* of an attorney's available working time is spent providing full legal representation to clients in Housing Court eviction proceedings through the UA program, and thus the guideline should be used as a benchmark which will allow providers and the City to make decisions on how to allocate time, staffing, and funding resources to promote or preserve flexibility for the range of program models that currently exist.

**D. Estimating the Number of Representations Per Year – The Annual Guideline**

**1. Background**

The annual number of hours available for casework is divided by the estimated number of hours per representation to arrive at an estimate of a reasonable annual caseload for each attorney. Again, it is important to seek feedback from attorneys with experience handling these cases in a particular jurisdiction to assess the reasonableness of the estimate. In jurisdictions with more than one legal services organization providing eviction defense services, the estimated number of cases per year represents a blended expectation for all programs involved and is intended to assist with overall programmatic funding and staffing expectations. The number of cases per year that may be appropriate for any individual organization can vary from the overall estimate developed using this methodology.

If the output of these analyses can be compared to data from legal services organizations or funders regarding the number of cases actually handled by staff attorneys each year, this data may confirm or contradict the analyses described above.<sup>16</sup>

**2. Analysis of UA Data and Information**

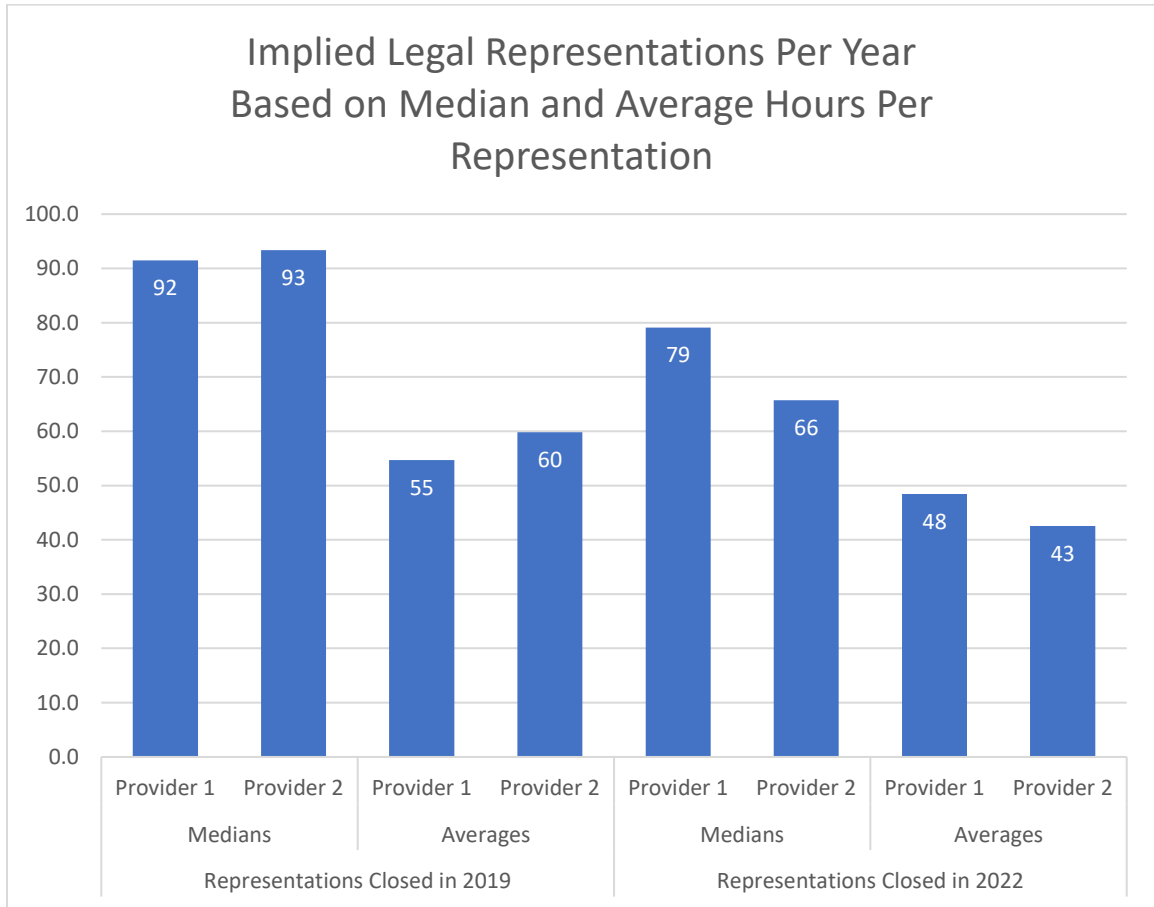
The Working Group sought to establish a guideline for the number of assignments that a UA attorney devoting the entirety of their professional time to providing legal representation in Housing Court eviction proceedings can effectively handle and complete in a one-year period, and used multiple sources of data and information (quantitative and qualitative) about the two components for this analysis, as described above – the number of hours required for a full legal representation in a Housing Court eviction proceeding to reach resolution and the number of hours available for work on such representations by a UA attorney in a one-year period.

Using *average* number of hours per representation *alone* reflected in Provider 1's and Provider 2's data about representations closed in 2022 would produce a guideline range of 43 to 48 representations per year (28.9 to 32.9 hours per representation; 1,400 available working hours per year). Using the *median* number of hours per representation *alone* would produce a guideline range of 66 to 79 representations per year (17.7 to 21.3 hours per representation; 1,400 available working hours per year). Looking at representations closed in 2019, using *average* number of hours per representation *alone* would produce a guideline range of 55 to 60 representations per year (23.4 to 25.6 hours per representation; 1,400 available working hours per year) and using *median* number of hours per representation *alone* would produce a guideline range of 92 to 93 representations per year (15.0 to 15.3 hours per representation; 1,400 available working hours per year). These findings are reflected in the chart below.

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<sup>16</sup> Such data was not made available to the Working Group in a manner that permitted reliable comparison between the number of UA representations handled by employed attorneys and the number of such attorneys.

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Given that the Working Group determined that a small number of representations accounted for a significantly and disproportionately large number of hours spent by attorneys, the Working Group concluded that using the average hours per representation measure *alone* would provide a misleading and distorted guideline for the number of cases a UA attorney can handle in a year. By the same token, using the median hours per representation *alone* for our calculations might produce a benchmark for the number of “ordinary” representations that a UA attorney can be assigned in a year, but would not account for the additional work required of the UA attorneys handling a small number of cases that are extraordinarily complex, difficult, or time-consuming.

The substantial difference between the median and mean hours spent reflects the fact that about half of all cases are resolved quickly — with less than 20 hours of attorney time, but a significant number of cases take more than 50 hours, with some taking more than 200. That distribution suggests that the mean is the most appropriate measure on which to base the caseload, because use of the median would fail to account properly for those matters that take an unusually large amount of effort to resolve because they are extraordinarily complex, difficult, or time-consuming.

### **III. Annual Guideline for UA Recommended by the Caseload Working Group**

Based on the foregoing analysis and on the qualitative input received from stakeholders, **the Working Group concludes at this time that 48 full legal representations per year for a full-time UA attorney is the appropriate guideline.** This approach is consistent with the Working Group's mission to establish a caseload guideline that takes into account both the quantitative data received and analyzed by the Working Group as well as the qualitative information we received in our dialogues with OCJ and with UA provider staff and leadership. These discussions underscored the challenges currently experienced by the UA program and the attorneys practicing within it; how these challenges can drive staff attrition and the ability of providers to attract, retain, and support skilled and dedicated attorneys; the toll these staffing gaps take on the professional and personal lives of attorneys who remain part of the program; and, above all, how these factors may affect the quality of the legal services provided through UA to eligible tenants facing eviction in court. Our guideline is presented as a benchmark for decisionmakers to use to assess the UA program in its current state, as well as to inform planning and funding decisions for the immediate future of the initiative.

Furthermore, as discussed above, the Working Group determined that legal representations concluded in 2022 offered the most applicable insights into the UA program of today and the near future, and predominantly relied on the analysis of these datasets in reaching our conclusion. As noted, our findings about representations concluded in 2022 reflected the perspectives of UA provider leadership and staff that legal representation requires more time and engagement today than compared to before the pandemic because of increases in motion practice and in advocacy with government agencies.

In addition to the proviso that this guideline assumes a UA attorney spending all of their available working time on legal representation in Housing Court eviction cases as detailed above, it is also important to emphasize that this guideline assumes that an attorney has sufficient experience and training to handle a full caseload. The Working Group does not define or establish what level of experience or what quantity or content of training is sufficient to enable an attorney to handle a full caseload, because we understand that it may vary widely depending on the individual attorney and the office that employs them. We acknowledge that a substantial number of attorneys in the UA program are relatively new to legal practice generally and eviction defense in NYC Housing Court in particular, and as such that they are handling smaller caseloads than an experienced attorney does. By the same token, attorneys with robust experience in eviction defense may be ready and willing to handle caseloads in excess of the recommended guideline. We believe that it is best for each UA provider to assess the experience levels of its attorneys, and to work closely with the City to determine how this influences its organizational capacity, and to make collaborative planning and funding decisions based on these assessments.

Finally, it is important to note that the guideline presented herein is not intended to apply as a firm maximum or a firm minimum governing the caseload of any individual attorney

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practicing within the UA program. In addition to the variations in individual attorneys' working time that is available for UA representations and in levels of relevant professional experience and associated ability to handle a full caseload, there are variations across different legal services organizations in approaches to case assignment and staffing models (including but not limited to the use of supervising attorneys and non-lawyer staff in case-handling roles), as well as the range of individual attorneys' life circumstances and particularities of actual caseloads. As such, it would be inappropriate to apply this guideline as a "one-size-fits-all" standard applicable to an individual attorney. Instead, the number of cases to be assigned to an individual attorney is best left to the attorney and the legal organization that employs them.

**IV. Additional Recommendations of the Caseload Working Group**

During the course of researching and developing the caseload guideline presented herein, the Working Group identified a number of key areas where we believe the UA program's implementation could be further strengthened and supported. The following recommendations are respectfully made based on our observations as well as drawing on the feedback received from system stakeholders throughout the Working Group's work:

- Devise and implement a plan for all UA provider organizations to collect uniform data about the time spent by attorneys on full representations, broken down by attorney activity over the course of legal representation. The Working Group acknowledges that the recording of case- and attorney-level time and activity data on a full-time basis may not be viable for all UA providers to undertake. A shorter "sprint" approach in which each provider's attorneys record these data points for defined periods in order to produce representative samples that can be compared across organizations and over time may be more feasible. Regardless of approach, a key component for the collection of time and activity data will be adoption of a uniform set of categories and definitions to ensure "apples to apples" comparisons. These data can and should inform periodic reassessments of this guideline.
- Collect a broader array of data points about the UA program and make such data publicly available via periodic reporting, including information about the number of full representations in Housing Court eviction proceedings taken on by UA provider organizations along with the number of UA staff attorneys who took on such representations, to enable monitoring of compliance with the Working Group's caseload guideline as well as broader assessment of the program's effectiveness and efficiency.
- Provide financial and organizational support for legal services staffing models that increase use of trained and supervised non-lawyer staff and thus extend the reach of a limited supply of attorneys. Many UA staff attorneys identified tasks that they were obliged to handle alone while representing a client, ranging from interacting with government bureaucracies to more complex and sensitive activities such as maintaining communication with clients

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with intellectual or developmental disabilities, that can be effectively handled by non-lawyer staff employed by the UA provider, such as a benefits specialist or a social worker. A team structure or task-based approach can provide comprehensive and high-quality legal representation that involves combining legal staff with non-attorneys who can interface with government agencies and provide administrative support and social services specialists to assist vulnerable clients with understanding and navigating the interlocking systems faced by the client. Such an approach can serve and benefit UA clients and may help provide program attorneys with the added caseload capacity to provide representation to more of them, extending the reach of the program beyond current levels.