

Editorial Advisory Board: The right to counsel in housing cases

By: Editorial Advisory Board ○ February 15, 2018

Baltimore struggles with appalling levels of crime and poverty, huge problems requiring multi-pronged solutions, through both civil and criminal law. Because wrongful eviction can cascade into other social ills – homelessness, depression, kids' displacement from schools – we should provide low-income tenants with counsel in eviction cases.

Eviction triggers escalating losses. Matthew Desmond's Pulitzer Prize winning 2016 book "Evicted" documents the social, economic, and community price paid for wrongful eviction. Because most poor people spend more than half of their income on housing, an evicted family often loses all of the possessions that a middle-class family would pay to have moved to a new apartment. That means living without big things like beds and bureaus and also more personal effects like clothing, photo albums and a child's stuffed animals.

An order of eviction can make it harder to get government housing assistance or an apartment on the private market, shoving a family further into poverty and hopelessness. Some people bear a disproportionate share of these costs: African American tenants are more likely to suffer eviction than whites, women more likely than men, and mothers much more likely than people without children.

Too often, landlords get tenants evicted when they are not entitled to, because they tend to have counsel or another representative, while tenants typically proceed pro se. Most people need a lawyer's help to prove that they paid the rent, are entitled to deduct repair expenses from their rent or sexual harassment. Public housing regulations pile on additional layers of complexity.

A lawyer can negotiate to give the tenants enough time to find alternative housing and also save the evicted tenant from an official order of eviction, which would impede placement in a new, safe home. That saves people and communities from homelessness and also avoids needless disruption in a child's schooling and the adults' work lives. People with stable housing become better parents, students, neighbors, workers, and citizens.

While Maryland law allows lawyer-supervised law students and Maryland Legal Services Corp. grantees to represent tenants in rent court, they can only represent a fraction of tenants who need help.

Last fall, New York City became the first city to extend right to counsel in eviction cases. Other cities are considering similar legislation: the District of Columbia appropriated nearly \$4 million for eviction defense, and Philadelphia has allocated \$500,000.

Pilot programs demonstrated the administrative and fiscal feasibility of extending a right to counsel in housing cases. The studies found that counsel did make a difference – a 77 percent reduction in evictions in New York – but the most surprising finding was that municipalities actually saved money by providing tenants with counsel in eviction proceedings. A Bronx program that cost \$450,000 saved the city nearly twice that amount – \$700,000 – in shelter costs alone. Those shelter costs represent only part of the price paid for wrongful eviction by communities, families and especially women and children. High rates of depression, illness, addiction, and attendant crimes of desperation also flow from landlord abuses.

Infrastructure in place

Maryland law is already part-way to recognizing a right to counsel in eviction cases. Judges in housing discrimination cases are authorized to appoint counsel for either side. House Bill 942 pending in the General Assembly would entitle indigent former tenants to counsel when their former landlords take the step of requesting the district court issue a "body attachment" – to hold the tenant in jail after the tenant fails to appear for an oral exam – in aid of

the landlord's efforts to collect on a civil judgment for unpaid rent.”

Beyond the housing context, low-income people are entitled to counsel in civil cases regarding children in need of assistance, termination of parental rights, guardianship, incarceration for failure to pay child support, and truancy.

We have experts on hand to implement make Maryland a leader in the right-to-counsel movement. The Public Justice Center created and staffs the National Coalition for a Civil Right to Counsel. In 2014, a legislative taskforce chaired by now-acting Secretary of Health Robert Neall urged the state to extend rights-to-counsel in civil cases regarding intimate partner violence and fund a pilot program to ensure representation in child custody matters. In 2011, the Maryland Access to Justice Commission recommended that Maryland follow the American Bar Association's Model Access Act and extend the right to counsel to low-income people in to housing as well as a much broader category of "human needs" that include protection orders, child custody, and access to health care. The commission reasoned that the repetitive nature of the disputes means most could be resolved with just four hours of a lawyer's time. Expenses would be contained by extending the right only to low-income individuals under the MLSC guidelines, and paying counsel fees comparable public defenders.

The first, logical step is a pilot project modeled on successes in other cities. Then, Baltimore could adopt an ordinance. Finally, Maryland could become a national leader by enacting the first statewide housing right to counsel statute, a welcome change of good press for Baltimore.

Alternatively, the General Assembly could increase funding to existing legal aid services in order to fully cover the costs of a civil right to counsel for indigent tenants. Maryland is already a leader among states in legal funding legal aid due to interest on lawyer trust accounts.

The time has come to extend a right-to-counsel to low income Marylanders. Rent court judges should hear both tenants' and landlords' factual and legal arguments before ordering evictions. The current system wrongly imposes the losses inherent in eviction disproportionately on those least able to bear them.

**CLARIFICATION, Feb. 16: A sentence referring House Bill 942 has been changed to more completely describe a body attachment in the context of the proposed legislation.*

Editorial Advisory Board members John Bainbridge Jr., Wesley D. Blakeslee, Arthur F. Fergenson and Stephen Meehan did not participate in this opinion.

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