

- [Home](#)
- [Articles](#)
- [Archives](#)
- [Columns](#)
- [Digital Edition](#)
- [Opportunity Market](#)
- [About](#)

Articles

Bench & Bar of Minnesota is the official publication of the Minnesota State Bar Association.

[Home](#) / [Articles](#) / In eviction proceedings, lawyers = better outcomes

In eviction proceedings, lawyers = better outcomes

Posted [Feb 5 2019](#) by [Luke Grundman](#), [Muria Kruger](#), and [Tom Tinkham](#) in [Articles](#), [Current Issue](#) with [1 Comment](#)



A study arising from the Housing Court Project in Hennepin County proves that legal representation in housing court helps prevent homelessness.

Evictions have significant and often tragic consequences for tenants and their families. An eviction notice can spell a nearly immediate need to move out with nowhere to go but to double up with a friend or relative—or worse, end up in a shelter, the car, or the street. For the children, this is likely to mean significant emotional instability as well as absence from school and the search for a new school. For the county, an eviction may mean the tenant must apply to live in a publicly supported shelter.

The longer-term consequences of an eviction for the tenant are severe. In this tight housing market, most landlords with decent properties will not consider a tenant with an eviction history, relegating those unfortunate families to substandard housing at best. Despite these significant legal and practical consequences, tenants have no right to legal representation—and almost by definition cannot afford an attorney. The Housing Court Project in Hennepin County provides some representation to some tenants. This article describes the project and a recent study examining its effectiveness. The lessons learned in Hennepin County from this program are applicable in varying degrees to the other Minnesota communities.

The eviction process

In Hennepin County and elsewhere in Minnesota, the eviction process is circumscribed by statute. The plaintiff, usually a landlord, serves a summons on the defendant requiring the defendant to appear at a hearing in not less than seven days (often *exactly* seven days later).¹ Since the law does not require personal service, some tenants receive only a few days' warning when they find a summons taped to their door. In Hennepin County these hearings are held on the third floor of the Hennepin County Government Center three afternoons each week. The study revealed that the number of evictions set each day ranged from 17-45. Failure to appear at the initial hearing results in a default and the issuance of a writ of recovery to remove the tenant.

It is eye-opening to walk through the third floor hallway just before housing court opens to see who is being summoned to this unhappy event. Legal Aid and Volunteer Lawyers Network keep demographic statistics on the families represented at housing court. Of tenants who receive full representation, 79 percent self-identify as people of color or mixed-race families. More than half (52 percent) identify as black or African American. Almost 70 percent are families led by women, most of which constitute single-adult households. The large majority (87 percent) of families have at least one minor child in the home. 80 percent of represented families make less than the federal poverty guidelines (currently about \$400 per week for a family of three). The remaining 20 percent make less than twice the federal poverty guidelines.

At this initial hearing, the court determines whether there are contested issues requiring a trial. If a trial is required, the court normally must set that trial within six days.² If the landlord prevails, the court issues the writ of recovery but can stay its execution for a reasonable time not to exceed seven days.³ At the expiration of any stay, the sheriff serves the writ, giving the tenant 24 hours to leave or be forcibly removed.⁴ Depending on the circumstances, a tenant who is evicted will have two to four weeks from service of the summons to move and find a new residence.

In the year from July 1, 2017 to June 30, 2018, 5,182 eviction cases were filed in Hennepin County. Landlords are frequently represented by attorneys. Even when they aren't, the landlord is often represented by an agent knowledgeable about the eviction process. About 75 percent of documents filed in Housing Court are efiled.⁵ *Pro se* tenants are not required to efile, so that figure suggests that most landlords are sufficiently sophisticated to efile. Very few tenant defendants are represented by private counsel. Of the 5,182 eviction cases filed, court records indicate that only 163 tenants had an attorney of record.

The Legal Aid and VLN Housing Court Project

Mid-Minnesota Legal Aid and Volunteer Lawyers Network have maintained a legal clinic at the Hennepin County Courthouse for 18 years. Mid-Minnesota is funded by the state of Minnesota, foundations, and many individual contributions. VLN, the pro bono arm of the Hennepin County Bar Association, is funded by the bar, foundations, and many individual contributions derived mostly from the legal community. The city of Minneapolis, Hennepin County, and the Pohlad Family Foundation have recently provided significant additional financial support to enhance the court project. Currently, 11 fulltime equivalent attorneys from Legal Aid see clients at the housing court clinic and provide advice and full representation where time and resources permit. In 2017, 149 volunteer attorneys with VLN provided over 1,400 hours of legal service at the clinic. Generally, VLN attorneys provide brief advice on evictions, help in negotiating settlements, and assistance in preparing expungement petitions.

Services currently provided by the court project

Services provided Totals

| | |
|-------------------|--------------|
| Expungements | 746 |
| Lockout petitions | 101 |
| Emergency repairs | 178 |
| Evictions | 1,376 |

The project provides brief advice service in fewer than one-third of eviction cases filed (1,376 of 5,182).⁶

The study method

The study compared the results for tenants who were unrepresented to those who received limited advice or assistance and then to those who received full representation. Eleven random court calendar days were selected for full review. For each of the 11 days, the entire docket was downloaded. Volunteers then reviewed the court records for the 274 cases opened on those days.⁷ Cases where a tenant received brief advice in that group (29) were identified and compared.⁸ The results for unrepresented persons were also compared to cases from the first six months of 2018 in which tenants received full representation from Legal Aid (100).

Study results

Table 1: Results of the cases

| | Totals | Tenant Win | Landlord Win | Settlement | Redemption ⁹ |
|------------------------|------------|-----------------|-----------------|------------------|-------------------------|
| Unrepresented | 219 | 24 (11%) | 80 (37%) | 111 (51%) | 4 (2%) |
| Represented | 100 | 21 (21%) | 5 (5%) | 74 (74%) | 0 (0%) |
| Limited Representation | 29 | 7 (24%) | 4 (14%) | 17 (59%) | 1 (3%) |

Fully represented tenants win or settle their cases 96 percent of the time. Clients receiving limited representation win or settle their cases 83 percent of the time. That figure falls to just 62 percent of tenants without any representation.

Table 2: Proportion of tenants who remain in the home

| | |
|------------------------|------------|
| | Remained |
| Unrepresented | 31% |
| Represented | 52% |
| Limited Representation | 48% |

The relative differences in the rate at which tenants remain in the home at the end of the case were examined. We computed this number by adding the number of cases in which the tenant won, plus settlements that did not provide for a move-out date and did not result in the issuance of a writ of recovery. (When a case involves a settlement, a writ of recovery indicates the tenant did not comply with the terms of the settlement.)

The project also analyzed some of the cost savings to the public from having fewer families evicted and thereby forced to apply for public shelter. Public money pays on average \$6,419 per each four-person family when that family uses a shelter.¹⁰ A recent study showed that 55 percent of Hennepin County tenants removed from their homes by a deputy sheriff used an emergency shelter.¹¹ While it is difficult to quantify the savings in shelter costs when a tenant family can remain in its residence, that savings is undoubtedly substantial. And though it is even more difficult to measure, the benefit to children from avoiding this disruption is huge.

Table 3: Length of move-out agreements

| | Median Days | Average Days |
|------------------------|-------------|--------------|
| Unrepresented | 10 | 14 |
| Represented | 20 | 31 |
| Limited Representation | 17 | 20 |

Many settlements result in move-out agreements. Some tenants simply cannot pay their rent. This study sought to differentiate between a move-out agreement that gives a tenant a matter of hours or days to move, compared with one that gives a family weeks or months to move. All the data showed a wide range.

Many tenants—mostly unrepresented ones—received just one or zero days to move. Some tenants received as many as 75 days to move.

Table 3 shows both the median and the average number of days for each group of tenants. It confirms that represented tenants fared much better than unrepresented tenants in the length of move-out agreements. Fully represented tenants received an average (and a median) of twice the number of days before a move-out becomes effective than unrepresented tenants.

Table 4: Rate of forced departure

| | Writ Issued – Settlements | Writ Issued – All Cases |
|------------------------|---------------------------|-------------------------|
| Unrepresented | 32% | 45% |
| Represented | 15% | 15% |
| Limited Representation | 24% | 28% |

In an eviction case, courts issue writs of recovery as the final act of delivering the property to the landlord. A writ of recovery instructs the Hennepin County sheriff to remove a family from a home. Once deputies tape the writ to a family’s door, the family has 24 hours before the deputies may return to forcibly remove them from the premises. The execution of a writ of recovery by deputies constitutes the least desirable—and most jarring—outcome of an eviction case. Families lose possessions, undergo significant stress, and have almost no time to plan for alternate living arrangements.

Table 4 shows that, with respect to avoiding the issuance of a writ, represented tenants fare significantly better. Unrepresented tenants are three times more likely to have a writ issued than fully represented tenants. Even when the analysis focuses only on settlements (excluding wins and losses), unrepresented tenants are more than twice as likely as fully represented tenants to find a deputy sheriff at their door.

Table 5: Effect on eviction records

| | Record cleared |
|------------------------|----------------|
| Unrepresented | 6% |
| Represented | 78% |
| Limited Representation | 17% |

This project also focused on eviction records as a clear indicator of housing stability. Landlords identify evictions as a highly determinative bases for denying housing application—more determinative, in fact, than most types of criminal records. **Table 5** shows stark differences in eviction records for represented versus unrepresented tenants.

Very few unrepresented tenants leave court with a clear eviction record. Between 73-78 percent of fully represented tenants do. Failure to remove the record of an eviction filing leaves a detrimental mark on even successful unrepresented tenants, making it more difficult for them to find stable, safe, and healthy housing going forward. It is likely that the longer-term clearance record for both represented categories would be much higher if records were examined longer after the eviction process. Both Legal Aid and volunteer lawyers will schedule expungement motions after the eviction for tenants who qualify. These hearings are typically held, at the earliest, two or three months after the eviction action was filed.

The data and conclusions from this study align with other recent analyses of eviction representation.¹² As a result, more jurisdictions have implemented programs to provide all low-income tenants with lawyers in housing court. New York City, San Francisco, Los Angeles, and the District of Columbia are all in stages of implementing complete right to counsel. Many more are poised to take the step.

Conclusion

The study demonstrated that tenants who are represented in eviction proceedings have better outcomes and tenants who are fully represented have even more positive outcomes. Until there is a recognition that all tenants in eviction actions should have access to counsel, we can all take steps to give more tenants an equal chance in housing court:

- Volunteer with your local pro bono group to represent tenants in housing court. In Minneapolis, Mayor Jacob Frey has supported an initiative to add more attorneys. Call VLN and join the effort.
- Support your local Legal Aid office financially so it can provide more representation.
- Encourage your local public officials to even the field in housing court by providing financial support for pro bono and Legal Aid representation.

LUKE GRUNDMAN has defended the rights of homeowners and tenants with Mid-Minnesota Legal Aid since law school, beginning in 2007. He started as an Equal Justice Works fellow, spent five years fighting foreclosures and predatory lending, and then staffed a medical-legal partnership clinic at Hennepin County Medical Center. He has served as managing attorney of Legal Aid's Housing Unit since 2016.

MURIA KRUGER is the Housing Program manager and resource attorney at Volunteer Lawyers Network. Her role at VLN focuses on training and supporting volunteer attorneys at housing court clinics in both Hennepin and Ramsey counties.

TOM TINKHAM was a trial partner at Dorsey & Whitney and head of its trial group for a number of years and today is of counsel. He is past president of the Hennepin County and Minnesota State Bar Associations. Currently he teaches trial practice and does pro bono work.

The authors of this article wish to thank the many public officials who recognize the importance of housing court to community well-being and have supported efforts to represent tenants who cannot afford an attorney. In particular, we thank Mayor Jacob Frey of Minneapolis, Commissioners Marion Greene and Peter McLaughlin of Hennepin County, and members of the Minneapolis City Council

Notes

¹ Minn. Stat. §504B. 331.

² Minn. Stat. §504B. 341.

³ Minn. Stat. §504B. 345 Subd 1(d).

⁴ Minn. Stat. §504B. 365 Subd 1.

⁵ Hennepin County efilings monthly reports.

⁶ Although 1,376 persons with eviction issues received assistance during this period, many of them come to the clinic with eviction issues even though no eviction action was filed. The project currently represents fewer than one-quarter of the defendants served with an eviction summons.

⁷ Volunteers received written instructions and in person training. Thanks to the 15 volunteers—summer associates from large law firms, paralegals, and law librarians—who collected all of the data.

⁸ Certain types of scheduled cases, such as commercial disputes and non-rental real estate disputes, were excluded from the study.

⁹ Redemption refers to a relatively rare circumstance where there is no settlement but the tenant pays the rent in arrears plus court costs and is able to stay in the home.

¹⁰ Homeless shelter costs were surveyed and averaged for a family of four.

¹¹ Holdener, et al., *Eviction and Homelessness in Hennepin County* (May 19, 2018) at 3.




¹² RJ Vogt, *Philly Sees New Push to Provide Attorneys for Poor*, (accesstojusticelaw360.com (11/18/2018) (Study finds Philadelphia could save \$3.5 million by spending \$3.5 million to represent poor tenants in eviction cases.)) Julian Birnbaum, *Chicago's Eviction Court: A Tenants' Court of No Resort*. 435 (Represented tenants were more than twice as likely to have their cases dismissed. When tenants were represented the rate of landlord summary possession awards dropped from 84.2 percent to 38.7 percent);

- Boston Bar Association Task Force on Expanding the Civil Right to Counsel, “The Importance of Representation in Eviction Cases and Homelessness Prevention,” <http://www.bostonbar.org/docs/default-document-library/bba-crtc-final-3-1-12.pdf>. (At Quincy court, two-thirds of tenants receiving full representation were able to stay in their homes, compared to one-third of those who lacked representation.);
- Housing Help Program, Homelessness Prevention Pilot Final Report, <http://seedco.org/wp-content/uploads/2011/11/Housing-Help-Program.pdf>. (1,059 families facing eviction in the South Bronx enrolled in the project. The project prevented an eviction judgment for 85.6 percent of clients. Addressing other long term intended goals, HHP prevented shelter entry for 94.3 percent of clients.);
- John and Terry Levin Center for Public Service and Public Interest, Stanford Law School, San Francisco Right to Civil Counsel Pilot Program Documentation Report, <https://sfbos.org/sites/default/files/FileCenter/Documents/49157-San%20Francisco%20Right%20to%20Civil%20Counsel%20Pilot%20Program%20Documentation%20Report.pdf>. (117 full-scope cases and 692 limited scope cases. 63 percent (56) of full scope cases resulted in the tenant retaining their home, and 35 percent (31) resulted in favorable negotiation of move-out date to prevent homelessness.);
- Carroll Seron, “The Impact of Legal Counsel on Outcomes for Poor Tenants in New York City’s Housing Court: Results of a Random Experiment” https://www.jstor.org/stable/3185408?seq=1#page_scan_tab_contents. (268 participants—134 in the control group and 134 in the treatment group. Judgments were issued against 52 percent of control cases but only 32 percent of treatment cases.);




- Jessica Steinberg, “In Pursuit of Justice? Case Outcomes and the Delivery of Unbundled Legal Services” https://scholarship.law.gwu.edu/cgi/viewcontent.cgi?referer=https://www.google.com/&httpsredir=1&article=2112&context=faculty_publications. 96 low-income tenants received unbundled one-time legal services; 20 low-income tenants received full legal representation; 305 tenants had no legal representation. Tenants who received unbundled one-time legal services retained possession of unit 18 percent of the time; tenants who received full legal representation retained possession of the unit 55 percent of the time; tenants who had no legal representation retained possession of the unit 14 percent of the time.

Category: [Articles](#), [Current Issue](#)

Popular Posts

-  [Beyond the Binary: Practical advice for using gender pronouns](#)
[February 5, 2019](#)
-  [One Profession](#)
[July 2, 2018](#)
-  [Reflections on the Cause of Justice: A retiring judge looks back at his time on the bench](#)
[December 5, 2018](#)

Recent Posts

-  [Private discipline in 2018](#)
[March 5, 2019](#)
-  [Third-party vendors and risk management](#)
[March 5, 2019](#)
-  [Welcome to the New Age: The Music Modernization Act](#)
[March 5, 2019](#)

One Comment

1. 
[Rick](#)
Feb 08, 2019

Nice effort. I will be passing this along to our lawyers and to landlord clients.

Leave a Reply

Name *

Email *

Website



In All Categories



Articles by Issue

Select Month



Articles by Subject

ADR (6)



Advertising

- [Classified Ads](#)
- [Display Ads](#)

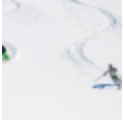
Popular Posts



- [Beyond the Binary: Practical advice for using gender pronouns](#)
[February 5, 2019](#)



- [One Profession](#)
[July 2, 2018](#)



- [Reflections on the Cause of Justice: A retiring judge looks back at his time on the bench](#)
[December 5, 2018](#)

Recent Posts

- [Private discipline in 2018](#)
- [Third-party vendors and risk management](#)
- [Welcome to the New Age: The Music Modernization Act](#)
- [Meet Irene Kao: 'I find value in helping people who help others'](#)
- [Notes & Trends – March 2019](#)



MSBA Online

- [MSBA Home](#)

B&B Online

- [Digital Edition](#)
- [Directory](#)
-  [RSS Articles](#)

Advertising

- [Classified Ads](#)
- [Display Ads](#)
-  [RSS Classifieds](#)

Contact Us

- [Contact the Editor](#)

- [Submit an Announcement](#)

Copyright 2017 - Minnesota State Bar Association

-

[Site Map](#)