

Interim Report of the Tenant Advocacy Project During the COVID-19 Pandemic April 27, 2021

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Intro

This interim report on the Tenant Advocacy Project (TAP) serves as an overview of TAP's performance and the eviction trends at Franklin County Municipal Court (FCMC) during the COVID-19 pandemic.

TAP is the first daily eviction prevention program in Columbus, Ohio, that operates on-site at the FCMC eviction court. TAP operates through the Legal Aid Society of Columbus (LASC), a non-profit corporation that provides free legal assistance to low-income and underserved clients.

FCMC oversees all evictions in Franklin County, Ohio, and received around 18,000 eviction filings per year before the COVID-19 pandemic started.¹ This report mostly focuses on the evictions that were filed during the pandemic from June 1 to December 31, 2020, the months FCMC eviction court operated during the pandemic in 2020. We are still in the middle of collecting and evaluating data to describe this period, which will explain the limited periods in some of data sets of this report.

The COVID-19 pandemic has changed the landscape of eviction litigation drastically. Although more protections have been available for tenants, such as eviction moratoriums under the CARES Act and CDC Order, more time is required to litigate each case when assessing them for these new defenses. More time is also spent on assisting tenants seek services created during the pandemic, including rental assistance, housing assistance, and other social services.

It has been difficult comparing data collected during the pandemic with data before the pandemic, especially since FCMC does not collect data on evictions beyond a tenant's name and address. Regardless, TAP has continued to collect basic data such as tenant demographics and eviction trends during the pandemic, which this report will discuss below.

What should be apparent in this report is that TAP played a significant role in improving tenants' housing prospects and shaping the eviction process at FCMC during the pandemic. This was

¹ 18,597 filings in 2019; 17,835 filings in 2018; 17,516 filings in 2017. Supreme Court of Ohio Case Management Section (Retrieved April 20, 2021).

https://analytics.das.ohio.gov/t/SCPUB/views/MunicipalandCountyCourtCourtStatistics/CaseloadandPerformance?iframeSizedToWindow=true&:embed=y&:showAppBanner=false&:display_count=no&:showVizHome=no#5

accomplished through advising FCMC on policies in response to COVID-19, negotiating settlements that reduced balances owed to landlords or prolonged tenants' moveout dates, and bringing local and national attention to evictions in Franklin County through media and policy advocacy. Ultimately, TAP continues to demonstrate that even during a pandemic, tenants' outcomes are significantly better when they are represented by an attorney.

Eviction trends and the impact of TAP during the pandemic

Since June 1, 2020, FCMC has held eviction court at the Greater Columbus Convention Center (GCCC). GCCC provides more space than FCMC's courthouse to accommodate for proper social distancing. However, not much else has changed procedurally. All eviction trials are scheduled for 9:00 AM in front of one magistrate. FCMC still utilizes a cattle call system for holding trials, where parties are called in for a bench trial, one at a time, until all cases are resolved. Eviction court is usually done by 12:00 – 1:00 PM. Several COVID-19 outbreaks have occurred at court, with reports of whole law firms, solo practitioners, tenants, and landlords likely catching COVID-19 from these outbreaks. Fortunately, no cases of COVID-19 have been reported from TAP's staff or volunteers.

Evictions have been significant lower during the pandemic compared to pre-pandemic numbers. *Table 1*. However, this comparison does not necessarily reflect the number of evictions that go forward with trial during the pandemic compared to those that went forward before the pandemic. FCMC has frequently scheduled over 100 trials per day during the pandemic, which was a rare occurrence before the pandemic. More data collection and analysis are needed to demonstrate this point accurately.

| Month (2019) | FED Filings | Month (2020) | FED Filings | Month (2021) | FED Filings |
|---------------------|--------------------|---------------------|--------------------|---------------------|--------------------|
| January | 1603 | January | 1593 | January | 929 |
| February | 1467 | February | 1389 | February | 827 |
| March | 1166 | March | 828 | March | 1681 |
| April | 1374 | April | 299 | | |
| May | 1569 | May | 399 | | |
| June | 1469 | June | 693 | | |
| July | 1872 | July | 774 | | |
| August | 1657 | August | 984 | | |
| September | 1702 | September | 1405 | | |
| October | 1535 | October | 1330 | | |
| November | 1370 | November | 848 | | |
| December | 1435 | December | 1665 | | |

Table 1

TAP was created to address the historical lack of legal representation that tenants have experienced in evictions in FCMC. Before TAP's inception on March 1, 2017, around 1% of all evictions filed in FCMC had tenants represented by an attorney.

From June 1 through September 31 of 2020, the first four months eviction court was open during the pandemic, tenants appeared for 39.08% of all scheduled eviction hearings. TAP provided legal assistance to 44.42% of the tenants that appeared, which was 17.36% of all hearings scheduled during this period. *Table 2.*

| Period (2020) | % of cases tenants appeared | % of attendees | % of total cases |
|------------------------------------|------------------------------------|-----------------------|-------------------------|
| Feb 14 – Mar 11 (pre-covid) | 31.17% | 26.98% | 8.41% |
| June | 28.64% | 42.63% | 12.21% |
| July | 41.11% | 42.75% | 17.57% |
| August | 43.09% | 50.12% | 21.60% |
| September | 45.37% | 43.26% | 19.62% |
| Jun – Sept | 39.08% | 44.42% | 17.36% |

Table 2

It is difficult to compare this to pre-pandemic numbers since the only data available on pre-pandemic attendance is from February 14 to March 11, 2020, which hardly provides a reliable dataset to evaluate attendance trends. Anecdotally, TAP staff agree that attendance during the pandemic has been higher compared to before the pandemic, and what little data is available supports that observation. *Table 2.*

One caveat is that attendance during June 2020 was particularly low. Several theories might help to explain this. First, tenants may have been reluctant to attend eviction court in person due to fears of being exposed to COVID-19. However, the theory given more weight by TAP staff is that most of the evictions scheduled in early June were based on breaches that occurred between March 15 and May 30, 2020, meaning that tenants who were threatened with evictions during that period had a greater amount of time to vacate compared to tenants responding to evictions for alleged breaches that occurred after June 1. For example, tenants who were threatened with evictions early April had several months to vacate before their first eviction hearings in June. In comparison, tenants who were threatened with evictions after June 1 usually have their first eviction hearings within two to four weeks.

Evictions during the pandemic have been highly concentrated in ZIP Codes with lower per capita income. *Table 3* is based on all 10,111 eviction filings from June 1 to December 31, 2020 and compares the five ZIP codes with the highest number of eviction filings.²

² FCMC closed the eviction court in response to the pandemic from March 15 to May 31, 2020, which is why data is not included for January 1 – May 31, 2020.

| ZIP Code | Eviction Filings | Filings per 100 residents of ZIP Code | Per Capita Income |
|------------------------|------------------|---------------------------------------|-------------------|
| 43232 | 822 | 1.81 | \$21,041 |
| 43228 | 788 | 1.45 | \$24,361 |
| 43213 | 716 | 2.13 | \$24,893 |
| 43229 | 676 | 1.26 | \$21,765 |
| 43224 | 599 | 1.34 | \$19,948 |
| Franklin County | 10,111 | 0.6 | \$31,221 |

Table 3

The demographics of TAP clients shifted in some areas during the pandemic, most notably a reduction of clients reporting their ethnicity as non-white and a reduction in average household income. *Table 4*. One theory for these shifts is that demographics that traditionally earn higher incomes, especially whites and males, have on average lost enough income during the pandemic to increase their categorical rates of eviction, and therefore increase their likelihood to seek legal assistance from TAP. With the impoverished suffering the most from the pandemic, but also higher-income earners taking losses, evictions are likely witnessing not a sporadic change in demographics, but a downward shift of all classes due to the widespread economic slump caused by the pandemic. The drastic reduction in the average income of TAP clients' households is most likely tied to the widespread loss of jobs and hours that has been disproportionately experienced by low-income workers.

| Year | Women | Single Women | Non-White | HH w/ Children | % of FPL |
|----------------|--------|--------------|-----------|----------------|----------|
| 2017 | 62.90% | 38.9% | 72.1% | 54.1% | 91.4% |
| 2018 | 66.60% | 42.9% | 73.3% | 58.0% | 96.9% |
| 2019 | 62.50% | 39.9% | 73.9% | 54.5% | 94.0% |
| 2020 (Jun-Dec) | 60.10% | 36.4% | 65.6% | 54.3% | 83.2% |

Table 4

From June 1 to December 31, 2020, TAP attorneys represented clients from 923 households, composed of 1212 children and 1228 adults. TAP clients ranged from 19 to 85 years old, with an average age of 41 years. 90 clients were 60 years or older, or 9.7% of our clients. TAP's clients on average housed 1.31 children per household. If extrapolated to the 10,111 evictions filed in 2020 during the pandemic, around 13,200 children faced eviction in Franklin County.³

³ Many families vacate their properties after the threat of an eviction and before an eviction is filed, and are therefore not accurately represented in eviction filings alone. A recent study of Milwaukee found that 34% of tenants vacate their homes just from receiving a notice to vacate, regardless of whether an eviction is filed or not. Desmond, Matthew, 2016, "Milwaukee Area Renters Study (MARS)", <https://doi.org/10.7910/DVN/BLUU3U>.

During the pandemic, most cases of TAP represented cases resulted in a dismissal, payment plan, or move out agreement.⁴ Move out agreements decreased from June to September, while payment agreement increased. *Table 5* Several theories may help to explain these changes. First, although the CARES Act eviction moratorium was in effect, enforcement was difficult early on due to the initial lack of publicly available records to demonstrate if a property was subject to the moratorium. As enforcement became easier, the easier it was to leverage the CARES Act in negotiations. Second, rental assistance in Franklin County was not easily accessible when FCMC reopened in June due to lack of publicity, challenges in logistics, staffing shortages, and disruptions in funding. Third, the CDC eviction moratorium started September 4, 2021, and was easier to enforce than the CARES Act moratorium, meaning it provided attorneys and tenants greater leverage in negotiating settlements for tenants to remain housed.

| Period (2020) | Move Out | Stay |
|-------------------|----------|--------|
| June | 73.75% | 26.25% |
| July | 66.15% | 33.85% |
| August | 60.27% | 39.73% |
| September | 42.61% | 57.39% |
| Jun - Sept | 58.56% | 41.44% |

Table 5

Tenants represented by TAP attorneys on average paid less to their landlords than unrepresented tenants. This is largely because TAP attorneys contest charges that are not authorized by the lease or law, or by leveraging defenses during negotiations to reduce balances owed.

In an evaluation of all agreed entries (settlement agreements) submitted to FCMC for evictions filed in August 2020, 79 tenants represented by TAP attorneys agreed to pay an average of \$3,567 for past balances.⁵ Conversely, 141 unrepresented tenants agreed to pay an average of \$4,030 for past balances. In other words, represented tenants agreed to pay an average of \$463 less per case than unrepresented tenants. If the 79 represented tenants all paid the additional difference of \$463, they would have collectively agreed to pay an additional \$36,577 to landlords. This would extrapolate to \$438,924 if this difference was paid every month over a year. Tenants' payment agreements are mostly covered by rental assistance from organizations such as IMPACT Community Action, which receives most of its funds through federal rental assistance like the CARES Act and American Rescue Plan Act. Attorney negotiated agreements generally result in fewer of those emergency funds being used for unwarranted amounts, which stretches the use of the funds to help more households facing eviction.

⁴ We are still collecting data on trial outcomes, voluntary dismissals, and other outcomes before providing a fuller assessment of outcomes in TAP cases. We likely need additional staff to compile this data.

⁵ It should be noted that this data is not readily available from FCMC. Agreed Entry data has to be manually inputted, meaning the 985 cases filed in August 2020 had to be manually reviewed for agreed entries, and each of the 317 agreed entries found had to be reviewed and inputted for the computations in this report.

For move out agreements, 72 tenants represented by TAP attorneys obtained on average of 34 days to move out, versus 95 unrepresented tenants who on average obtained 21.5 days to move out, or 12.5 fewer days. This does not account for any additional time tenants gained from attorneys prolonging litigation through discovery requests, filing motions, or filing counterclaims.

Litigation challenges during the pandemic

TAP attorneys currently represent two to three tenants per day, lower than the four to five tenants that experienced TAP attorneys represented per day before the pandemic. A variety of reasons attribute to this reduction:

Increased complexity in litigation during the pandemic

Before the pandemic, eviction laws were static and changed only through slow and minute updates in housing law. The pandemic, on the other hand, has led to the rapid creation of local, state, and national responses that affect housing law and the eviction process, such as court closures, eviction moratoriums, and financial assistance programs.

Eviction moratoriums, such as those under the CARES Act and CDC Order, have significantly increased the time needed to assess each case and prepare for litigation. Furthermore, because FCMC had to adapt to these changes as well, TAP attorneys spent significant time preparing arguments for the court as novel issues arose around these moratoriums.

The CARES Act eviction moratorium was extremely difficult to enforce since FCMC required tenants to demonstrate that their landlords owned properties subject to the moratorium. The most difficult requirement to prove was that a property had a federally backed mortgage. Most pro se tenant litigants were unfamiliar with this requirement or how to research it, while publicly accessible information was mostly unavailable to determine if a property had such a mortgage. In other words, landlords were entrusted to self-report when their properties had federally backed mortgages that subjected them to the moratorium.

The CDC Order to Temporarily Halt Evictions presented a series of challenges. When it first went into effect on September 4, 2020, local landlords were quick to challenge its constitutionality in the case of *KBW Investment Properties, LLC v. Azar*, No. 2:20-cv-4852 (S.D. Ohio). TAP and LASC housing attorneys assisted the National Housing Law Project in drafting an amicus brief in opposition. This took significant time away from TAP attorneys who would have otherwise been spending that time representing more tenants in evictions.

KBW Investment Properties resulted in a stipulated dismissal that kept the CDC eviction moratorium intact; however, the CDC issued an FAQ that clarified that landlords could challenge tenants' eligibility for the moratorium through court actions, which was, and still is, pursued through filing evictions. Practically speaking, with most tenants eligible for the moratorium, TAP attorneys are required to prepare each tenant against challenges to their eligibility.

TAP attorneys were also required to contest subpoenas served on their clients in connection to *KBW Investment Properties*. Willis Law Firm, which represented the landlord in *KBW Investment Properties*, attempted to use the federal case as leverage for forcing tenants into less favorable deals. Each time a tenant served their landlord with a CDC declaration to seek protection under the CDC moratorium, Willis Law Firm would serve the tenant with a subpoena under the guise of the federal case to demand documentation proving the tenant's eligibility for the moratorium, and threatening sanctions for failure to produce sufficient documentation. Tenants were frequently served with these subpoenas since Willis Law Firm is responsible for about half of the evictions filed in Franklin County every year.⁶ TAP attorneys halted the firm's practice through motions to quash these subpoenas in *KBW Investment Properties*, which also resulted in the court ordering Willis Law Firm to cease the practice altogether.

Another challenge to litigation has been COVID-19 itself. TAP strictly followed CDC's recommended testing and quarantine protocols whenever any staff member or volunteer was symptomatic or exposed to COVID-19. TAP staff collectively quarantined for 10 work weeks between June 1 and December 31, 2020. If a TAP attorney represents at least 2 tenants a day and quarantined for 10 workweeks, or 50 workdays, at least 100 fewer tenants were represented due to the quarantine. Fortunately, despite the suspected symptoms of COVID-19 and numerous encounters with parties that tested positive for COVID-19, no TAP staff member or volunteer has tested positive yet.

Publicity and testimony on evictions in Franklin County

TAP collaborated with the Ohio Poverty Law Center in advocating for policies that have promoted housing stability for tenants during the pandemic. Examples of testimony and expertise that have been provided include:

- **March 23, 2021 – Ohio House of Representatives, Civil Rights Commission:** Invited to testify on how rental assistance and eviction moratoriums would reduce evictions during the COVID-19 pandemic, specifically in relation to an eviction moratorium proposed in House Bill 20.
- **March 17, 2021 – Consumer Financial Protection Bureau:** Invited to discuss debt collection of tenants, tenant credit reporting, evictions, and consumer protections. Led to CFPB interim rule requiring debt collectors and attorneys to notify tenants of the CDC eviction moratorium before or when an eviction is filed.
- **February 18, 2021 – U.S. Senate Committee on Banking, Housing, and Urban Affairs:** Invited to testify as a low-income housing expert for the legislative hearing, "The Coronavirus Crisis: Paving the Way to An Equitable Recovery," in support of \$50 billion housing assistance package in the American Rescue Plan Act of 2021.

TAP has also focused on bringing local and national media attention to its clients and the challenges of evictions during a pandemic. Examples of media coverage:

⁶ Willis Law Firm filed 47.4% of the 17,693 evictions filed in 2018.

- **March 29, 2021 – PBS Newshour:** *American renters hard-hit by pandemic juggle complicated assistance systems, eviction laws.*
- **October 1, 2020 – CNN:** *Neighborhoods at risk for Covid see disproportionately high eviction rates.*
- **June 18, 2020 – Bloomberg City Lab:** *The Columbus Convention Center Is Now a Pandemic Housing Court.*

Conclusion and Next Steps

The COVID-19 pandemic has posed practical and legal challenges to TAP in its effort to provide universal representation to tenants facing evictions. However, TAP adapted to these challenges and provided tenants representation that significantly benefited tenants' outcomes through seeking dismissals, better payment plans, and longer move out dates.

TAP has demonstrated the capacity to collect data to describe eviction demographics and trends that would be unknown without its daily presence at court. However, the limitations of TAP's data also underscore the need for investing more resources into data collection. Currently none of our funding is allocated to data collection. Temporary clerks and interns are often used for data collection; but this often creates sporadic gaps in data sets and inconsistencies in data quality due to infrequent labor and our inability to retain well trained volunteers over long periods of time. Expecting staff to collect data is often difficult since some metrics require daily or weekly observations, which can be difficult to integrate into the daily routines of attorneys and support staff.

The pandemic presents a unique opportunity to observe the influences of programs that were non-existent before the pandemic started, such as easily accessible rental assistance, eviction moratoriums, and other housing policies. Better data on the impact of such programs could help future advocacy for programs and policies that promote housing stability and eviction prevention. Although some analysis can be performed retroactively, we can only observe data that has been collected during the pandemic. Therefore, it would be worth investing our resources into collecting data that will be unavailable in the future, such as daily tenant attendance rates or attendee demographics.

This pandemic is likely our only chance to collect data to measure the effectiveness of programs that were created specifically in response to COVID-19. There is no reason to expect these programs to remain after the pandemic, nor should we expect their recreation anytime soon since COVID-19 is said to be the kind of pandemic that occurs only once every 100 years.