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Legal Representation in Evictions - Comparative Study *Limited Services Data Included*

This project seeks to determine whether legal representation for tenants in the Fourth Judicial District Housing Court provides meaningful benefits in housing stability. With help from two Hennepin County departments—the Center for Innovation and Excellence and the Office of Housing Stability—and many volunteers, Mid-Minnesota Legal Aid and Volunteer Lawyers Network examined eviction cases filed in Hennepin County between January 1 and June 30, 2018 to determine the effect of legal representation for tenants on housing stability. This study examines the extent to which representation helps tenants keep their homes or obtain sufficient transition periods to move, maintain clear eviction records, avoid forced moves by sheriff deputies, and avoid the use of emergency shelters.

An earlier version of this report focused on the value of full representation compared with no representation. This version also includes data on the value of limited representation, as defined with more detail below.

1. Summary of Results

This study shows significant gains in housing stability for tenants who have lawyers representing them in Housing Court. The study shows that the best results are obtained through full representation, and that significant gains are also seen when clients receive limited representation.

- Fully represented tenants win or settle their cases 96% of the time, clients receiving limited/brief services win or settle 83% of the time, and those without any legal services win or settle only 62% of the time.
- The settlements made by fully represented tenants are significantly better. Represented tenants are almost twice as likely to stay in their homes.

- If fully represented tenants agree to move, they get twice as much time to do so—and are much less likely to have an eviction record to make the move more difficult. Nearly 80% of tenants with lawyers leave court without an eviction record stemming from the case, compared with just 6% of unrepresented tenants.
- Fully represented tenants are four times less likely to use homeless shelters. Results vary but one study suggested that represented tenants used shelter at only one quarter of the rate as others who were unrepresented, resulting in shelter cost savings (at current project rates) of more than \$231,000 per year.
- Unrepresented tenants are between four and five times more likely than fully represented tenants to face the worst possible outcome of an eviction case: The abrupt, forced departure from their homes by sheriff deputies.

Tenant representation reduces racial inequity in the housing domain. Nearly 80% of those represented are people of color.¹ Without representation, as shown below, evictions leave people on the street and on “no-rent” lists due to their eviction backgrounds. Eviction records force families to rent from landlords who prey upon their desperation. One eviction is upstream from another. Evictions force families into unhealthy and unsafe homes in neighborhoods of concentrated poverty.² Nearly 80% of tenants in Housing Court have never been there before.³ Many are young—single moms and first-time renters. Legal representation in Housing Court can interrupt a downward spiral of poverty and racial inequity.

Legal representation in eviction cases, and the resulting avoidance of evictions as shown in this report, provides significant social benefits not studied in this report. In a recent analysis for CommonBond Communities, Ernst & Young calculated benefits from eviction prevention include thousands per family: Savings on health care costs; child education stability; economic and job stability; reduction in use of food banks; safety to the community, and more.⁴

2. Indicators of Housing Stability

This study reviewed eviction records for six indicators of housing stability, defined below.

- a. Loss vs. win/settlement: We track the extent to which representation prevents the instant displacement families face if they lose an eviction case. We review cases to determine which cases are won or settled instead of lost.
- b. Remaining in home through settlement: Many settlement agreements involve payment plans. By analyzing subsequent case records, we can determine which

¹ See *infra* at Part 3(c).

² Based on landlord survey conducted by HousingLink. Less than 5% of landlords are even willing to consider renting to a tenant with a recent eviction record.

³ Hennepin County, “Housing Court: What do we know about people being evicted?” (June 2017).

⁴ “Social impact measurement of CommonBond’s eviction prevention activities,” *Ernst & Young* (Apr. 2018), www.commonbond.org/sroi.

agreements lead to successful payment plans and do not lead to subsequent housing displacement.

- c. Sufficient transition periods: For settlements that provide for the tenant to move, we analyze the extent to which they provide a period of transition for the family. We calculate the length of time, in days, the family receives to move.
- d. Avoiding forced moveouts: We look for settlements, and overall case outcomes, that result in the landlord obtaining a court order providing for forced family displacement by sheriff deputies. Such orders—called “writs of recovery”—may be tracked in court records.
- e. Cleared eviction records: We expect representation leads to significantly higher rates of cleared eviction records at the end of eviction cases. By tracking whether case records continue to appear in the court’s database, we can determine whether a case was expunged, the records were sealed and the case was cleared from the tenant’s record.
- f. Shelter usage: If represented families retain their housing, it follows they will likely make diminished use of homeless shelters. This assumption must overcome the fact that represented tenants who are forced to move are more likely to be informed about the shelter system and how to access it, since the lawyers representing them will tell them. Even so, we expect relatively diminished use of shelters for represented parties.

3. Context

a. Housing Court Project

This study focuses primarily on full representation services provided to tenants but also provides a briefer snapshot of results stemming from tenant support in a limited services capacity. With support from Hennepin County, Legal Aid and Volunteer Lawyers Network have maintained a legal clinic at Housing Court for 18 years, since early 2000. Lawyers at the clinic, called the “Housing Court Project,” provide low-income tenants with free brief advice and short services. Staff attorneys from Legal Aid and volunteer lawyers from Volunteer Lawyers Network provide legal services at the clinic. The Housing Court Project helps thousands of tenants and some landlords each year with housing legal problems. Many tenants meet with lawyers on the same day as their initial eviction hearings. The lawyers review files, advise tenants about their rights, and draft written legal responses to eviction cases. When tenants facing eviction arrive at the clinic with sufficient warning, their cases may be referred for full representation through Legal Aid or Volunteer Lawyers Network.

Besides help with defending evictions, the Housing Court Project serves other important tenant needs. Lawyers draft hundreds of eviction expungement motions from the clinic, and advise tenants on the process for getting the motions granted. Expungements help tenants clear eviction records and enable them to better find safe and healthy housing.

The clinic also serves as a place for tenants to go with emergencies. Some landlords attempt to sidestep the eviction process by forcing tenants to leave through threats, intimidation, and directly changing the locks to their homes. These cases, called “lockout petitions,” require emergency motions and receive emergency treatment by the court. Tenants in successful lockout cases can return to their homes the same day as the case is filed and collect significant damages. Tenants also get help with emergency cases to restore heat and other essential utilities illegally terminated by landlords.

The Housing Court Project helped 2,378 tenant families in 2017. The following chart highlights some of the work in the important categories referenced above.

Service Provided	Totals
Expungements	746
Lockout petitions	101
Emergency repairs	178
Evictions	1376

The Housing Court Project represents an important connection with private, often large-firm lawyers in Hennepin County. In 2017, 149 different attorneys donated 1,424 hours of volunteer services at the clinic.

b. Eviction Representation Project

In June 2016, Hennepin County supported an expansion of the Housing Court Project model. Clinic attorneys realized that tenants often struggled to advocate for themselves in negotiations and at court. Even tenants with good legal arguments failed to achieve positive outcomes on their own or with limited representation. Lawyers felt the urge to leave the clinic offices so they could help tenants negotiate with landlord counsel or speak to court referees directly. Most landlords had lawyers; almost all had at least professional agents with years of Housing Court experience representing their interests. Tenants with meritorious legal arguments often signed poor settlement agreements. The original project provided for an additional attorney to assist Housing Court Project attorneys, along with a clinic assistant to help organize and manage tenants at court. The project proposed that the additional attorney would provide full-representation assistance to 75 tenant families per year.

The Hennepin County Center for Innovation and Excellence conducted reviews of the expansion to full-representation services in both 2016 and 2017. Those reports were submitted to the Hennepin County Board of Commissioners. In both cases, however, available data was sparse. This report sought to capitalize on the availability of summer associate volunteers to obtain a larger sample size and deeper analysis into housing stability outcomes for tenants.

c. Demographics

Legal Aid and Volunteer Lawyers Network keep demographic statistics on the families represented at Housing Court. Of tenants who receive full representation, 79% self-identify as

people of color or mixed-race families. More than half (52%) identify as Black or African American. Almost 70% are families led by women, most of which constitute single-adult households. The large majority (87%) of families have at least one minor child in the home. 80% of represented families make less income than the federal poverty guidelines (currently about \$400 per week for a family of three). The remaining 20% make less than twice the federal poverty guidelines. About a third of represented families acknowledge having at least one member with a disability; based on more complete demographic information from Legal Aid databases we suspect the proportion would rise if it included unacknowledged and undiagnosed disabilities.

4. Methods

First, we randomly selected eleven court eviction calendar days. Housing Court in the Fourth Judicial District usually conducts eviction first appearance calendars on Mondays, Wednesdays, and Fridays of each week. For each of the eleven dates we downloaded the entire eviction docket from MNCIS (the court records system). Downloading dockets on calendar dates—rather than later—ensured we captured all eviction cases for that date, including those the courts subsequently expunged.

After a period of time (ranging 6-8 weeks) from the date of the hearings, volunteers reviewed court records. They recorded the following information in each case:

- Case number;
- Party names;
- Property zip code;
- Reason for eviction;
- Base rent;
- Rent owed;
- Result of the case;
- Whether the tenant's record was cleared at the end;
- If the case settled, whether the tenant signed a payment plan or moveout agreement;
- If the tenant signed a moveout agreement, the number of days before moveout; and
- Whether the court issued a writ of recovery (order to remove the tenant) in the case.

Volunteers received written instructions and in-person training prior to analyzing case data. Most volunteers were summer associates at large law firms. A few were paralegals, law librarians, and others with basic legal training. Our trainings taught them how to identify information from court files for proper classification. Overall, 15 volunteers provided nearly 50 hours of assistance to gather data for this project.

Our analysis also includes data from clients receiving full representation by Legal Aid lawyers. This group of 100 cases were eviction cases that came before the Housing Court between January 1, 2018 and June 30, 2018. We tracked the same information for the group of full-representation cases as in those on randomly-selected court days.

5. Results

In addition to the 100 cases of fully-represented clients, this project analyzed 274 randomly-selected court records. The analysis excluded certain cases from each calendar, such as cases involving commercial tenancies, non-rental real estate disputes, cases brought affirmatively by tenants against their landlords, and other non-comparative cases. We also separated cases in which lawyers from Legal Aid or Volunteer Lawyers Network represented the tenants in other capacities, such as through traditional intake and through our on-site limited representation project.

The calendars widely varied in the number of eviction cases heard on each particular day, with a range from 17-45. Two different referees heard the calendars (Melissa Houghtaling and Mark Labine). Of the 274 records, 219 did not receive any representation. Twenty-two received full representation and 29 received limited representation.⁵ The tabled results shown below reference four data sets. “Unrepresented” refers to the 219 records from the sample that did not receive any legal representation. “Rep. - Sample” refers to the 22 cases from the sample in which Legal Aid provided full representation. “Rep. - All” refers to the 100 other cases from between January 1, 2018 and June 30, 2018 in which Legal Aid provided full representation. “Limited Rep” refers to the 29 cases from the sample in which Legal Aid or VLN attorneys provided limited representation through the Housing Court Project clinic.

a. Tenant Success or Settlement vs. Loss

We first determined the result of each case, divided into four categories: The landlord prevailed in a contested case, the tenant prevailed in a contested case, the case settled, or the tenant redeemed the property. The analysis required close attention by the volunteer researchers. Eviction cases dismissed amounted to “wins” by the tenant. This category excluded, however, unilateral dismissals by landlords. Landlords occasionally strike deals prior to the first hearing and dismiss cases voluntarily. Second, the volunteers were instructed to determine whether the case outcome “judgment” referred to a judgment for the landlord or a judgment for the tenant. The researchers coded “dismissal” for judgments in favor of tenants. Redemption refers to a fairly rare circumstance in which the tenant does not make a deal with the landlord but successfully pays the amount of rent arrears and court costs in order to stay in the home. Table 1 shows the results.

Table 1: Result of Case

	Totals	Tenant Win	Landlord Win	Settlement	Redemption
Unrepresented	219	24 (11%)	80 (37%)	111 (51%)	4 (2%)
Rep. - Sample	22	11 (50%)	1 (4%)	10 (45%)	0 (0%)
Rep. – All	100	21 (21%)	5 (5%)	74 (74%)	0 (0%)
Limited Rep	29	7 (24%)	4 (14%)	17 (59%)	1 (3%)

⁵ The remaining 4 cases were cases taken through MMLA traditional intake and did not qualify for this study.

Fully represented tenants win or settle their cases 96% of the time. Client receiving limited representation win or settle their cases 83% of the time. These figures compare with just 62% of tenants without any representation.

b. Remaining in Home

We also reviewed relative differences in the rate at which tenants remain in the home at the end of the case. We computed this number by adding the number of cases in which the tenant won, plus settlements that did not provide for a moveout date and did not result in the issuance of a writ of recovery (the court’s order to the sheriff to remove the tenant). A writ of recovery, when a case involves a settlement, indicates the tenant did not comply with the terms of the settlement. Table 2 shows the results.

Table 2: Proportion of Tenants Who Remained in Home

	Remained
Unrepresented	31%
Rep. – Sample	59%
Rep. – All	52%
Limited Rep	48%

The data again show a significant improvement for tenants who receive representation. More than two-thirds of tenants without representation could not keep their home. Represented tenants were much more likely to remain in their homes, at an increase of as much as 28%.

c. Length of Moveout Agreements

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

Table 3: Relative Lengths of Moveout Agreements

	Median Days	Average Days
Unrepresented	10	14
Full Rep. - Sample	20	23
Full Rep. - All	20	31
Limited Rep	17	20

As Table 3 shows, represented tenants fared much better than unrepresented tenants in the length of moveout agreements. Fully-represented tenants receive an average (and a median) of twice the number of days before a moveout becomes effective than unrepresented tenants.

d. Rate of Forced Departure

In an eviction case, courts issue writs of recovery as the final act of delivering the property to the landlords. 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.

A writ-issuance rate also demonstrates after the fact whether a settlement agreement likely produced a relatively long-term solution for the landlord and tenant. As described above, this project intentionally analyzed eviction records about two months after their initial hearing date. The two-month lag is a sufficient amount of time, for almost all eviction cases, to show whether an issuance of a writ of recovery occurred. Table 4 shows the writ issuance rates.

Table 4: Issuance of Writs of Recovery

	Writ Issued – Settlements	Writ Issued – All Cases
Unrepresented	32%	45%
Rep. – Sample	10%	9%
Rep. – All	15%	15%
Limited Rep	24%	28%

Table 4 shows that with respect to avoiding the issuance of a writ, represented tenants fare significantly better. Unrepresented tenants are between four and five 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 to find a deputy sheriff at their door.

e. Effect on Eviction Records

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

Table 5: Eviction Records Cleared

	Cleared
Unrepresented	6%
Full Rep. – Sample	73%
Full Rep. – All	78%
Limited Rep.	17%

Very few unrepresented tenants leave court with a clear eviction record. Between 73-78% 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.

Moreover, many represented tenants who do not achieve a clear record as shown in this report may still have one in the works. If the lawyer providing full representation to the tenant cannot obtain a clear record at the end of the eviction case, she will likely seek one later on a special expungement motion calendar. The courts currently schedule those motions between 2-3 months after filing. Few unrepresented tenants, by contrast, file expungement motions and those receiving limited representation are slightly higher. The above figures, accordingly, likely undercount the rate of cleared records for tenants who received full representation.

f. Use of Homeless Shelters

Finally, the project analyzed the use of homeless shelters as a factor in housing stability. Public money pays, on average, \$6,419 per each 4-member family who uses emergency homeless shelters. We obtained the cost range by surveying homeless shelters and requesting data on per diem cost, family size, and average length of stay. Shelters for single adults cost significantly less. As noted above, however, 87% of the families we represent have children in the household. Under such circumstances, we believed using a cost estimate for a medium-sized family would yield the most accurate results.

We first obtained a precise count of represented families who used shelter. The Hennepin County Office of Housing Stability searched for matching name and date of birth records through the County’s benefits system. Of all represented tenants, the search revealed that 5 families had used shelter within 60 days of their eviction cases. Projected over the course of a year, the number allows us to approximate that 5% of total families will use shelter.

Available data do not allow us to create an ideal control group of unrepresented tenants to compare shelter use. Unlike our own data, court records do not include dates of birth—an essential element for accurate analysis of county benefit information. Instead, we calculated a comparison group using two methods.

First, as part of an earlier study involving this project, in 2016, we conducted 50 telephone calls of randomized tenants who appeared in Housing Court and received limited advice and representation. Of that sample, 11 families (22%), used emergency shelter. We expect this

number to be a conservative estimate, since families who receive limited representation by attorneys should have less shelter use than the unrepresented population as a whole. Using the number, we can estimate that representation reduces shelter use by 17% and yields annual shelter savings of about \$218,246.

A second method arrives at a similar estimate. A recent study showed that 55% of Hennepin County tenants removed from their homes by deputy sheriffs use emergency shelter.⁶ As shown above, represented tenants are between 30% to 36% less likely to face forced moveouts than unrepresented tenants. Of the 100 families represented in the first six months of 2018, we can estimate writ issuance reduction of between 60 – 72 families and translate that to reduced shelter use in a range between 33 – 39.6 families. At that rate, and again using the cost estimates listed above, representation may save between \$211,827 and \$231,084 annually.

Another method that attempted to look at shelter usage in the short term by unrepresented tenants did not find a significant difference in usage rates. We recommend that the shelter cost-savings resulting from tenants receiving full representation continues to be studied. A more in-depth study of local conditions could also reveal other cost savings. Studies elsewhere have shown eviction prevention to reduce costs to schools, child protection systems, health care providers, and more.

Table 6 shows the range of families saved from shelter and reduced costs from each method we used as comparison models.

Table 6: Shelter Cost Savings Per Year

	Reduced Shelter Use	Cost Savings
Method 1 – Telephone Surveys	36 Families	\$218,246
Method 2 – University Study	33 – 39.6 Families	\$211,827 – \$231,084

The strong correlation between representation and cleared eviction records likely produces further shelter cost savings. A recent study by the University of Minnesota Humphrey School of Public Affairs found that a sample of families with children who went through Housing Court are 112% more likely to use shelter during the 3-year period following an eviction filing. That study used a particularly high-quality control group, evaluating shelter usage of people who live in the same zip codes and have similar county benefit usage patterns. The correlation suggests eviction records constitute at least one contributing factor in the increased shelter use rate. As shown above in Table 5, fully represented tenants are much less likely to have an eviction record after their cases conclude.

⁶ Holdener et. al, *Eviction and Homelessness in Hennepin County* (May 19, 2018), at 3.

6. Conclusions

This study showed significant gains in housing stability for tenants who have lawyers representing them in court. Fully represented tenants win or settle their cases 96% of the time. Nearly 80% leave court without an eviction record stemming from the case, compared with just 6% of unrepresented tenants. Fully represented tenants are almost twice as likely to stay in their homes. If they decide to move, they get twice as much time to do so. They are four times less likely to use homeless shelters, despite the fact that fully represented tenants are more likely to receive information about the shelter system. And finally, unrepresented tenants are between four and five times more likely than represented tenants to face the worst possible outcome of an eviction case: The abrupt, forced departure from their homes by sheriff deputies.

This study further shows that limited legal representation also has a tangible positive result for low-income tenants. Tenants with limited legal representation win or settle their cases 83% of the time; a number which is still significantly higher than those without any legal representation. Because there are not yet enough resources to provide full representation to all low-income tenants who cannot afford their own lawyer, a greater number of tenants would be left with no legal assistance without the limited representation work done at the Housing Court Project clinic. The study is clear that without any legal assistance, low-income tenants are less likely to be able to negotiate to stay in their homes. They are also more likely to have fewer days to move out and are more likely to be forced out by the sheriff. The Housing Court Project clinic, through its provision of limited legal services to tenants, helps to protect the rights of low-income tenants in the eviction process that would otherwise not be protected.

The data and conclusions from this study align with other recent analyses of eviction representation, as shown in the studies listed below. 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.

- Julian Birnbaum, *Chicago's Eviction Court: A Tenants' Court of No Resort*. 435 contested eviction cases in Chicago courts. 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% to 38.7%.
- 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>. 129 tenants. At Quincy court, 2/3 of tenants receiving full representation were able to stay in their homes, compared to 1/3 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% of clients. Addressing other long term intended goals, HHP prevented shelter entry for 94.3% 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% (56) full scope cases resulted in the tenant retaining their home, and 35% (31) resulted in favorable negotiation of move-out date to prevent homelessness. 27% (187) of limited scope cases resulted in the tenant retaining their home, 44% (302) resulted in a move-out agreement, and the remaining 28% (194) achieved no settlement.
- 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% of control cases but only 32% of treatment cases - also positive findings in defaults/failure to appear, warrants for eviction, stipulations for rent abatements and repairs.
- 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 that had no legal representation. Tenants who received unbundled one-time legal services retained possession of unit 18% of the time; tenants who received full legal representation retained possession of the unit 55% of the time; Tenants who that had no legal representation retained possession of the unit 14% of the time.