

Addressing the COVID-19 Eviction Crisis Through Court and Community Mediation

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The United States currently faces the most severe housing crisis in history, with an avalanche of evictions still to come. According to the latest analysis of weekly U.S. data, without sufficient state and federal intervention, an estimated 30-40 million people (half of American renter households) are at risk of eviction across the country.² Evictions in St. Louis City and St. Louis County, Missouri, mirror these harsh nationwide eviction conditions. Even prior to COVID-19, nearly 16,000 eviction lawsuits were filed annually in the St. Louis City and County courts - an average of more than 43 eviction cases per day.³

The costs of evictions are borne by tenants, landlords, the community, and the courts,⁴ and these costs are being exacerbated during the pandemic. In evictions, families lose their homes and their possessions, with a significant harm to their physical and mental health; children of evicted tenants experience long-lasting consequences, such as asthma, stress, and depression, plus lower grades and delayed graduations.⁵ Evictions create increased costs for landlords through the court process, including attorney's, filing, and sheriff's fees, as well as lost income from transitioning tenants. Evictions raise crime rates and lower neighborhood stability, which decrease property values. During this health crisis, the incidence of COVID-19 and mortality has risen in states that lifted their eviction moratoriums, impacting community health and safety.⁶ And, last, eviction cases clog the court system, requiring significant time and money, all at the taxpayers' expense, with outcomes that do not necessarily address the problem.

Confronting the COVID-19 Eviction Crisis

The COVID-19 pandemic has taken eviction concerns to new heights. The pandemic has caused catastrophic job loss and unprecedented unemployment rates. The risk of eviction has dramatically increased and compounded systemic race and gender inequalities in housing. Eviction rates are higher among low-income women than men, and higher among people of color.

¹ Many thanks to Mike Geigerman, Managing Director, United States Arbitration & Mediation and Treasurer, St. Louis Mediation Project; Sam Stragand, Former Staff Attorney, Metropolitan St. Louis Equal Housing & Opportunity Council and Secretary, St. Louis Mediation Project; Zack Schmook, Former Staff Attorney, Metropolitan St. Louis Equal Housing & Opportunity Council; all of the law students and mediators who have volunteered with the St. Louis Mediation Project over the years; and Hon. Michael Burton, Presiding Judge, Mo. 21st Judicial Circuit (St. Louis County, Missouri).

² Emily Benfer, et al, *The COVID-19 Eviction Crisis: An Estimated 30-40 Million People in America are at Risk*, ASPEN INST. (Aug. 7, 2020), <https://www.aspeninstitute.org/blog-posts/the-covid-19-eviction-crisis-an-estimated-30-40-million-people-in-america-are-at-risk/>.

³ Emails from Thomas Kloppinger, Circuit Clerk, Mo. 22nd Judicial Circuit Court, and Joan Gilmer, Circuit Clerk, Mo. 21st Judicial Circuit Court (on file with Professor Tokarz).

⁴ MATTHEW DESMOND, *EVICTED: POVERTY AND PROFIT IN THE AMERICAN CITY* 1-5 (2016).

⁵ Matthew Desmond & Rachel Tolbert Kimbro, *Eviction's Fallout: Housing, Hardship, and Health*, 94 *SOC. FORCES* 295, 295-301 (2015).

⁶ Kathryn M. Leifheit, et al, *Expiring Eviction Moratoriums and COVID-19 Incidence and Mortality*, https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3739576.

Black single mothers face the highest eviction rate of any group and are particularly vulnerable to being evicted during the pandemic, in part because they occupy some of the professions significantly impacted by the pandemic, such as service and hospital jobs.⁷ In St. Louis and nationally, almost 30% of black women renters are evicted each year.⁸

The courts struggle to address eviction cases with laws and procedures that do not wholly benefit the parties nor the community, especially in this time of crisis. Just the filing of an eviction lawsuit creates a significant barrier for renters seeking future quality housing in a safe neighborhood because many landlords reject housing applicants with recent lawsuits, judgments, or evictions - even if the case was dismissed, and even if the case was due to the pandemic.⁹ Experts call this process “blacklisting” because it effectively locks tenants with an eviction record out of the housing market. Because of blacklisting, many evicted tenants and their families either find themselves in substandard housing or effectively homeless— a particularly problematic outcome for the public, as well as the tenants during this health crisis.

Of all the legal interventions to address evictions, increased access to legal representation for parties has received the most research - and probably the most widespread support.¹⁰ Attorneys are better at navigating the legal system than laypeople. Attorneys have the training and skills necessary to understand the law, raise and argue defenses, and use the rules of evidence. Also, not surprisingly, tenants with attorneys have significantly better outcomes than those who are unrepresented. This solution also can raise the quality of housing because landlords quickly learn that attorneys will properly raise defenses about habitability.

When this idea was explored in St. Louis in the early 2000’s, critics pointed to the high costs of providing attorneys for parties, with no obvious sources of funding and no political buy-in. However, a recent 2018 study published by the Philadelphia Bar concluded that the City of Philadelphia recouped at least \$12.74 in associated savings on other programs - relating to housing and crime, for example - per dollar spent on providing legal counsel to tenants.¹¹ Perhaps, someday, St. Louis City or County will revisit this option. In the meantime, the St. Louis Mediation Project was created to fill the gap to help the community and the courts with housing disputes.

St. Louis Mediation Project Provides Mediations in Pro Se Housing Court

⁷ Tasbeeh Herwees, *Housing Insecure*, ACLU Magazine (Winter 2021), https://www.aclu.org/sites/default/files/field_document/aclu_winter21_singles-compressed.pdf.

⁸ Matt Desmond, *Americans Were Told to Stay at Home. Black Women Are the Most at Risk of Losing Them*, The 19th News, Dec. 21, 2020, <https://19thnews.org/2020/12/eviction-moratorium-black-women-housing/>.

⁹ In Missouri, through Casenet, anyone can access eviction court records, which remain in the system even when cases are dismissed. Some other jurisdictions have addressed this by sealing files in dismissed cases. Sophie Beiers, et al, *Clearing the Record: How Eviction Sealing Laws Can Advance Housing Access for Women of Color*, ACLU (Jan. 10, 2020), <https://www.aclu.org/news/racial-justice/clearing-the-record-how-eviction-sealing-laws-can-advance-housing-access-for-women-of-color/>.

¹⁰ Heidi Schultheis and Caitlin Rooney, *A Right to Counsel is a Right to a Fighting Chance: The Importance of Legal Representation in Eviction Proceedings*, American Progress (Oct. 2, 2019), <https://www.americanprogress.org/issues/poverty/reports/2019/10/02/475263/right-counsel-right-fighting-chance/>.

¹¹ See Stout Risius Ross, LLC, *Economic Return on Investment in Providing Counsel in Philadelphia Eviction Cases for Low-Income Tenants*, The Philadelphia Bar (2018), <https://www.philadelphiabar.org/webobjects/pba.woa/contents/webserverresources/cmsresources/philadelphiaevictionsreport.pdf>.

While eviction lawsuits are an important legal remedy, many aspects of mediation make mediation a more just and effective dispute resolution approach than court evictions. A well-functioning court system is vital for any strong democracy. But, when the court system is hugely overburdened and people do not believe that their voices will be heard or that justice will be done when they walk through the courthouse doors, public trust and confidence are undermined.

To bring the benefits of mediation to the housing courts, while rebuilding tenants' and landlords' trust in the court system in St. Louis, and at the same time providing learning opportunities for law students, Washington University School of Law Civil Rights & Mediation Clinic (Clinic) developed the St. Louis Mediation Project, in partnership with Metropolitan St. Louis Equal Housing and Opportunity Council (EHOC), well over a decade ago. The Mediation Project collaborated with judges in the St. Louis City Circuit Court to explore the benefits of mediation for pro se parties and to address a serious overcrowding issue in housing court. The Mediation Project provided free mediation services by law students and volunteer lawyers for the St. Louis City Circuit Court pro se housing docket, where neither landlords nor tenants are represented by legal counsel, every Friday morning for more than ten years.

The need for an intervention in St. Louis housing court was confirmed in an early study by the Clinic and EHOC of eviction cases filed in St. Louis City, which revealed that tenants face an almost unsurmountable hurdle when their cases are brought to trial.¹² According to the study of all landlord-tenant cases that concluded with a trial or default judgment in 2012, only two cases (0.04%) ended in favor of the tenant, while 4,934 cases (99.96%) ended in favor of the landlord. At least 2,282 cases (or 46.23% of the total) were forwarded to the sheriff for execution of the eviction, i.e., forcible removal of the tenant from the property.¹³ As starkly shown by the numbers, the chances of tenants succeeding in court were virtually zero and the odds that tenants would be forcibly evicted from their home by court action and sheriff eviction, with all of its attendant costs, were very high.

In 2013, the Mediation Project expanded to include mediators affiliated with United States Arbitration & Mediation (USAM) and other volunteer mediators. In summer 2018, the Mediation Project began providing mediations for the St. Louis County Circuit Court pro se housing docket at the request of judges who expressed interest based on the successful outcomes the Mediation Project had brought to the City. In summer 2020, the Mediation Project handed off St. Louis City mediations to the St. Louis Conflict Resolution Center, shifted to Zoom mediations in the St. Louis County pro se housing docket, and began providing pre-filing eviction mediations in the St. Louis County community.

Mediations Successfully Resolve Landlord-Tenant Cases and Help Reduce Evictions

The St. Louis Mediation Project has been quite successful over the years at resolving landlord-tenant cases in the courts and helping to reduce evictions. For example, over 70% of the pro se landlord-tenant cases mediated by the Mediation Project in St. Louis City resulted in settlement in 2018.¹⁴ Similarly, in St. Louis County, 75% of mediated pro se cases resulted in an

¹² ZACHARY SCHMOOK & KAREN TOKARZ, EQUAL HOUSING & OPPORTUNITY COUNCIL, THE STUDY (2012) (unpublished study) (on file with Metropolitan St. Louis Equal Housing & Opportunity Council).

¹³ These numbers demonstrate that a judgment in favor of the landlord is also not an ideal outcome for landlords, because nearly half of the landlords still had to pay the sheriff to execute the judgment, pursue garnishment proceedings, etc.

¹⁴ Data for cases mediated in St. Louis City Circuit Court in 2018 on file with Professor Tokarz.

agreement in 2019.¹⁵ The percentage decrease in evictions in mediated pro se cases is beneficial for all involved. The successful completion of mediated agreements means not just fewer evictions, but that tenants have more control over their housing, landlords receive the money and/or premises owed to them, neighborhood are more stable, and the courts spend less time and money adjudicating these cases.

In addition, mediated settlements result in significantly improved outcomes and compliance for both parties. In 2018, over half of all the St. Louis City cases that settled through mediation resulted in a dismissal, i.e., the parties successfully completed the terms of the agreement, significantly decreasing the number of eviction judgments for that docket and resulting in approximately 250 fewer evictions per year. Only 33% of mediated settlements resulted in a judgment against the tenant (after the tenant violated the agreement), and only 25% of mediated settlements resulted in an execution of the judgment. By contrast, 92% of non-settled cases that went to trial resulted in a judgment against the tenant, and the landlord was forced to execute the judgment in 40% of those cases. (Of a total of 1,382 cases docketed on the St. Louis City pro se housing dockets in 2018 in which both parties appeared, 149 cases went to trial while 476 settled through mediation. Whereas landlords won all but 12 of the cases that resulted in trial, 250 of the 476 cases settled through mediation resulted in a dismissal and no eviction on the tenant's record.)¹⁶

These results are consistent with studies showing that there is a greater compliance rate for settlements resulting from mediations rather than judgments reached through trial, and that mediated agreements result in better outcomes for all parties.¹⁷ This may be because tenants and landlords experience “procedural justice” and, thus, are more likely to comply with the terms of the settlement. Mediation is flexible and allows the parties to come to their own unique private contract, instead of being bound by a rigid statutory scheme.

Mediators can facilitate alternative options to resolve a case not available to a judge. In Missouri, for example, if a tenant owes a landlord *any* money, the court must grant the landlord possession of the property. Although the court has discretion in determining the amount of damages owed, particularly in cases involving issues of habitability, an order for a “rent and possession” eviction gives the tenant only ten days to move out or redeem their lease before the landlord can execute the order. If the landlord wishes to execute the order, the landlord must then pay the sheriff and pay for the removal of the tenant's belongings if the tenant has not already removed them.¹⁸ By contrast, because mediated agreements follow contract law instead of the eviction statutory scheme, the parties can extend move-out dates, reduce the expense of eviction for the landlord, and even identify pathways for tenants to remain in the unit through a rental payment plan and other approaches.

Mediations Assist the Courts with Landlord-Tenant Dockets

¹⁵ Data for cases mediated in St. Louis City County Court in 2019 on file with Professor Tokarz.

¹⁶ Data for cases mediated in St. Louis City Circuit Court in 2018 on file with Professor Tokarz.

¹⁷ Roselle L. Wissler, *Court-Connected Mediation in General Civil Cases: What We Know from Empirical Research*, 17 OHIO ST. J. ON DISP. RESOL. 641, 694 (2002).

¹⁸ See, e.g., *Eviction Procedures and Policy*, CITY OF ST. LOUIS, <https://www.stlouis-mo.gov/government/departments/sheriff/new-eviction-policy-2014.cfm> [<https://perma.cc/7VQN-2G5C>].

Judge Nicole Colbert-Bochway, associate circuit judge in St. Louis City Circuit Court, who has presided over the landlord-tenant docket multiple years, points out that the Mediation Project helps in multiple ways:

I have seen how the St. Louis community benefits from the Mediation Project with improved relations between landlords and tenants, increased agreement on tenant move-outs and payment plans, and fewer forced evictions through the sheriff's office. Our court gains from its message to the community of its willingness to work with parties to achieve justice. The mediations lessen the burden on the courts, allowing judges to spend more time on the cases that need to go to trial.¹⁹

Judge Ellen Dunne, associate circuit judge in St. Louis County Circuit Court, who presided over the first landlord-tenant docket in the County in 2018 to utilize mediations, concurs:

The Mediation Project offers assistance to the parties in landlord-tenant cases, provides law students real-world experience and an understanding of the contribution pro bono service can make to clients and the community, and helps our courts address a serious need in our region. This project is a win-win-win.²⁰

Addressing the Eviction Crisis Through Pre-Filing and Court Mediations via Zoom and Access to Justice Centers

Both the City and County courts stopped hearing in-person eviction cases in late March 2020 due to COVID-19. Both courts resumed their landlord-tenant dockets in June 2020, with cases being heard remotely.

The St. Louis Mediation Project responded to the pandemic and the inability of litigants to access the courthouse by adding new formats for mediation and collaboration with the courts. First, the Mediation Project resumed mediations in St. Louis County pro se housing court in June 2020 by shifting to Zoom. Zoom allows the parties to appear on video (rather than telephonically) to provide appropriate due process.

Second, with the help of a small CARES Act grant, the Mediation Project began providing mediations to landlords and tenants prior to the filing of an eviction lawsuit in various locations in St. Louis County community, also on Zoom. When the parties engage in mediations before filing, the parties enter the mediation having expended less time, energy, and money. Logically, the parties are more inclined to reach a mediated settlement. Any mediated settlement prior to filing or the first court date also saves the court time, energy, and money by removing cases entirely from the court's docket.

One major concern with the shift to virtual court hearings and mediations is lack of internet access. Households with lower incomes, which are the most vulnerable to evictions, are much less likely to have internet access.²¹ To address this, the Mediation Project offers iPads and

¹⁹ Karen Tokarz, Sam Stragand, Michael Geigerman, Wolf Smith, *Addressing the Eviction Crisis and Housing Instability Through Mediation*, 63 Wash. U. J. L. & Pol'y 243, 261 (2020).

²⁰ *Id.*

²¹ Based on 2016 census data, only 58.8% of households making less than \$25,000 annually and 77.5% of households making between \$25,000 and \$49,999 have internet access at home. Camille Ryan, American Community Survey Reports, *Computer and Internet Use in the United States: 2016* (Aug. 2018); Monica Anderson and Madhumitha Kumar, Pew Research Center, *Digital Divide Persists Even as Lower-Income Americans Make Gains in Tech Adoption* (May 2019).

technical instructions to landlords and tenants participating in pre-filing eviction mediations in the community. This has been especially effective with landlords serving multiple tenants at one centralized complex.

The Mediation Project also supported the St. Louis County Court in its efforts to develop Access to Justice Centers, one on the first floor of the County courthouse in Clayton and the other at the new satellite court in North St. Louis County, necessitated because public access to courtrooms has been restricted during the pandemic. These centers have public computer kiosks linked to the main courthouse that allow litigants to participate remotely in mediations and courtroom proceedings, including landlord-tenant, small claims, preliminary criminal, family court, and order of protection dockets. Court staff are available to assist members of the public in using the computers. (In the first ten weeks that the first center was open in the courthouse, more than 900 individuals utilized the computers for various court matters - including six weddings.)

According to St. Louis County Circuit Court Presiding Judge Michael D. Burton, who helped coordinate the establishment of the Access to Justice Centers and the new satellite court:

The coronavirus pandemic has created physical and operational challenges to the Court's ability to fulfill its mission of providing access to justice for all residents of St. Louis County. Because a large number of court users reside in North County and transportation is challenging in these difficult times, establishing a satellite operation there is a logical and crucial step. We are very grateful to the County Executive's Office for their incredible support for this endeavor. We hope to provide additional locations and hope this is a resource that we can provide even after the pandemic.²²

The St. Louis Mediation Project Moves Forward

The St. Louis Mediation Project has demonstrated that landlord-tenant mediations are effective in reducing evictions in the St. Louis region and improving access to justice for all. Mediations significantly reduce evictions, increase landlords' receiving at least some of what they request without tedious garnishment proceedings or sheriff-led forcible evictions, contribute to housing stability, and benefit the courts. In addition, mediation programs provide positive learning experiences for law students and volunteer lawyers. The Mediation Project has responded to the COVID-19 crisis through pre-filing eviction mediations in the community, as well as the continuation of post-filing eviction mediations in the courts, on Zoom, and plans continued expansion in the future in service to the St. Louis community and courts.

²² Email on file with Professor Tokarz.

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