



Addressing the Representation Crisis in Eviction Matters — Philadelphia's Recent Experience

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In 2016, the crisis in provision of legal services to low-income Philadelphia tenants came to a head. Philadelphia's legal services community had always



played a role in providing important services. For decades legal services programs had provided tenant representation, often with significant pro bono participation. Legal aid attorneys worked with a tenant education organization, did court watch studies,

and advocated locally and at the state level to improve systemic problems in eviction procedures and housing conditions. But more recently, as funding cuts took a toll on legal aid staffing and tenant evictions rates reached 15% in some poor neighborhoods, collaborative public interest groups established a court-based Landlord Tenant Legal Help Center and an active pro bono representation project. The Philadelphia Bar Association's Civil Gideon and Access to Justice Task Force was formed in 2009 and made providing representation in landlord tenant matters a large part of its agenda. However, the stark reality remained that with 24,000 eviction proceedings filed each year, only 8% of the tenants were represented, with less than 1.5% represented by legal services attorneys, while 81% of landlords were represented. Among the largest ten cities in the U.S., Philadelphia had (and has) both the highest poverty rate as well as the highest "deep poverty" rate, and tenants were not getting enough help.

Taking stock of what we had achieved to date, the Philadelphia public interest community working with the Bar Association and pro bono leaders, acknowledged that we were indeed in crisis mode. We had fewer than seven full time equivalent legal services attorneys providing landlord tenant services, spread out among seven agencies, with little coordination among them. The Help Center was only open a few hours per

week and was in a perpetual state of running out of funds. The pro bono program was limited in scope and number of representations. We faced significant organizational and funding challenges that required urgent attention. The severity of these challenges compelled us to redouble our efforts.

This article sets out some of the initiatives that we have undertaken, the plans that we are considering, and the limited success we have already achieved.

Strategic Planning Initiative

In June 2016, we formed a Strategic Planning Group to consider approaches to addressing this crisis. The group did not only include tenant advocates. We also had the benefit of participation by members of the direct legal services community who do not practice in this area but who agreed to provide us with their guidance and insights under the auspices of our Civil Gideon and Access to Justice Task Force. Recognizing that "business as usual" was not working, our goal was to identify our principal challenges, consider how to better deploy our limited resources, and develop a plan to supplement those resources. We mapped out the various components of our current tenant representation resources, including organizations that provide in-court direct legal services, limited advice, pro bono services, and tenant education services. We identified our challenges, which included our need for increased funding for staffing, structural impediments to the efficient provision of services, and systemic obstacles

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whose resolution required coordination with the courts. We began the process of further developing some of the initiatives that had already been launched to address each of these issues.

- *Lawyer for a Day (LFD) Program.* Both legal aid and pro bono attorneys representing tenants must show up at an appointed time and wait for their one case to be called. Recognizing that it is inefficient to attend court for a single case and that our limited attorney resources could be used more efficiently if we were able to handle several cases in one court session, we are working to implement a consolidated representation approach. The idea would be to assign a team to appear in one courtroom and handle multiple cases on the court's list. We have considered a few versions of such a model. First, we have tried to identify multiple cases scheduled on a given day for assignment to a volunteer team. Second, we have had preliminary discussions on the possibility of getting the court's cooperation to reschedule cases we identify that are scheduled for different days to be tried on the same day. Depending upon the nature and number of cases being heard on a given day, the team assigned may consist of one or more lawyers supervising one or more teams of students in that day's court session. We view this LFD program as being equally useful and efficient for the staffed legal services community and for the pro bono community.
- *Funding.* One of the key challenges has been, and for the foreseeable future will continue to be, securing adequate funding for legal services to provide eviction representation. While Philadelphia's public interest programs have had significant government and foundation support, not much has been specifically targeted at eviction work. To further the goal of securing sustainable funding, one ongoing effort of the Strategic Planning Group has been to quantify the impact of the legal services provided

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to tenants in landlord tenant matters. Through the Bar Association, we have engaged the pro bono services of a consulting firm, Stout Risius Ross, LLC, to conduct such a study. Stout prepared a similar study in connection with New York's efforts to obtain representation for low-income tenants and seek the recognition of a right to counsel in this area, and is now working on such studies in other cities.

Tenant Advocates Group

We recognized that while we have a close-knit legal services community, to some extent landlord tenant legal services were being provided largely in "silo" mode, without sufficient coordination among the seven agencies whose lawyers were engaged in such work. Too often, tenants went to multiple agencies in search of assistance and representation, not knowing which agency (if any) would have the capacity to help them. This, of course, created hardships for clients. It also led to duplication of efforts by agencies and significant inefficiencies and confusion. At times, two agencies each believed that they were responsible for a representation and devoted time to the matter in preparation for trial, only to discover late in the game that they were duplicating efforts. Given the scarcity of resources, this was an insupportable situation.

The Tenant Advocates Group has therefore worked to reduce these inefficiencies and to otherwise share resources and strategies of interest to legal services providers and the community that they serve. As discussed below, the group has worked with representatives of the court through the Bar Association's committee structure in an effort to collaborate on making change. Among other things, the group has implemented the following enhancements:

- *Court Notice.* The court notice that accompanied landlord tenant complaints originally identified several agencies, which led to the agency shopping described above. The group therefore developed a new court notice that provides tenants with a single phone number that prompts them to select the appropriate agency with whom to consult and the court has agreed to use this notice.
- *Referral Coordination Network.* The group compiled an information packet to facilitate referrals among the various direct legal services agencies providing tenant representation. This packet, available only to the participating agencies, identifies the contact information, hours of operation, intake procedures, and eligibility requirements for

each agency. It has become a useful tool for inter-agency referral.

- *Online Tenant Resources.* The group created a multi-agency unified tenant education and resources web site. It is intended to be practical and user-friendly, and provides useful information to tenants. It is available at <http://www.phillytenant.org/>.

Landlord Tenant Legal Help Center

Formed in 2012, the Help Center is a court-based provider of limited advice to tenants. It is operated by a collaborative whose members are representatives of legal services agencies (only some of which themselves provide tenant services) and one law firm. In addition to providing advice, sometimes in a non-eviction or pre-eviction context, the Center prepares petitions and provides triage/referral services for walk-in tenants. Its initial funding came from members of the Philadelphia Trial Lawyers Association and it has been funded largely through the generosity of private foundations over the last several years.

We are on track to significantly enhance the Help Center's operations. We have recently doubled its office hours to ten hours per week. More importantly, we believe that with the recent availability of funding from the City of Philadelphia (discussed below), the Help Center will benefit from stabilized funding that will allow for a dedicated staff attorney and paralegal, volunteer staff, and a Centralized Intake Coordinator who would assist in the very important triage/referral function of the Help Center.

Philadelphia Pro Bono Landlord Tenant Project

Established in 2007, this Project provides in-court representation by a team of one volunteer lawyer and one or two law students to low-income tenants facing eviction. Intake is handled by Community Legal Services and, to some extent, the Landlord Tenant Legal Help Center. The cases handled are predominantly at the initial trial level, in the Philadelphia Municipal Court.

Recent developments in this Project include a major expansion of the pool of lawyer volunteers, the increased use of certified students, and the pilot implementation of the Lawyer for a Day (LFD) Program.

- *Outreach to Additional Lawyers.* Referrals to the Project initially came directly from the intake agencies and went to a handful of large law firms. In order to expand the volunteer pool, we now have the intake agencies identify clients to

PhiladelphiaVIP, an agency created under the auspices of the Philadelphia Bar Association, to coordinate the referral of pro bono cases to volunteer attorneys in Philadelphia. VIP then is able to tap into its volunteer pool, which includes additional law firms, in-house counsel, and solo practitioners.

- *Certified Students.* In Pennsylvania, second year second semester students can be certified by our Supreme Court to handle trials on their own with some attorney oversight. We have made it mandatory for students assisting in our tenant representation work to become certified as soon as they are eligible to do so. This policy has increased the number of cases that the Project can take on, as certified students take primary responsibility for their matters and require less hands-on supervision.
- *Lawyer for a Day (LFD) Program.* We were able to test run the LFD program for pro bono matters during the most recent law school semester. One lawyer/paralegal team supervised three two-student teams handling cases scheduled for the same day. Each two-student team included a certified student who took primary responsibility, and the students all consulted with the lawyer/paralegal team that was present in court to handle questions and provide direction. The net effect was that one lawyer was able to handle three tenant eviction matters and reach resolution on each such matter. We hope that the continued use and expansion of this program will result in a meaningfully impactful use of our limited lawyer resources.

Coordination with Court on Systemic Issues

At our request, the President Judge of Philadelphia Municipal Court formed an Access to Justice Working Group to address systemic issues in landlord tenant cases. Through this group as well as the Municipal Court Committee of the Bar Association, we have been able to promote certain changes in Municipal Court practice. We have also had the benefit of constructive dialogue with the leadership of the Philadelphia Court of Common Pleas, which hears landlord tenant appeals.

- *Habitability Defense Protection.* The Municipal Court has, at our request, approved an initiative that now provides tenants an opportunity to avoid a money judgment and the ensuing effect on their credit if, in a "rent-only" dispute, they have been found to be entitled to rent abatement in light of inadequate housing conditions. Prior to this

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program, tenants who had justifiably withheld rent in the exercise of legitimate rights under state law nevertheless were faced with money judgments if the Court determined that they had over-withheld. We insisted that the Pennsylvania Supreme Court's decision in *Pugh v. Holmes* (1979) required a different result. Under the new program, tenants are given an opportunity to promptly pay any unabated rent and receive a judgment in their favor. This procedure is tremendously meaningful in that it eliminates a significant barrier to tenants' ability to preserve their credit and secure future housing.

- **Proposed Filing Requirements.** In the wake of the City Council hearings described below, the Municipal Court has proposed new filing requirements that would provide structural protections that are especially helpful to pro se tenants who would otherwise not be aware of defects in complaints filed by landlords. If approved and implemented, the procedures would require the clerk's office to flag complaints in order to alert judges to specific requirements that appear not to have been met by the landlord — requirements that are generally unknown and thus not enforced by clients proceeding without representation. Specifically, for each and every period for which rent is sought, complaints will need to be accompanied by proof of compliance with City Ordinances regarding

rental licenses and certificates of rental suitability. This procedure will also require that landlords identify cases involving subsidized housing and low income housing tax credit units, so that the Court can enforce tenant safeguards connected to these programs. The adoption of these court filing requirements should help to weed out cases in which the relief sought is inconsistent with certain City Ordinances and subsidized/ low income tax credit housing regulations. For pro se tenants in particular, this initiative will be a significant step forward and reduce inappropriate evictions.

- **Other Municipal Court Initiatives.** At our request, the Municipal Court put in place a mechanism to facilitate the withdrawal of counsel after their limited representation is concluded. We view this as useful particularly in attracting pro bono counsel. The Court has also agreed to put in place certain scripts geared to explaining to pro se litigants the role of landlord counsel in pre-hearing negotiations and the role of mediators in pre-hearing mediations, with a view to ensuring that the litigants are aware of their right to appear before a judge.
- **Court of Common Pleas Initiatives.** We are benefiting from ongoing dialogue with the leadership of this Court in connection with procedural issues in the context of landlord tenant appeals. We are also working with the Court to streamline the form of Settlement Agreement being used by our volunteer Mediation Masters in the Landlord Tenant Appellate Mediation Program.



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