Housing Court
Addressing the High Eviction Rate for Low Income Renters

By Jeff Yungman

Background
In 2017, the Eviction Lab at Princeton University released the most detailed portrait of American evictions thus far and came to a stunning conclusion: North Charleston’s eviction rate more than tripled from 2015 to 2016 making it the highest eviction rate in the country. North Charleston averaged a whopping 10 evictions a day in 2016. Sixteen-and-a-half percent of renters in the 104,000-person city were officially ordered to leave their homes. What’s more: North Charleston had an eviction filing rate of 35.62 percent, meaning that almost 36 eviction proceedings were started per 100 renters in the city in 2016.¹ In contrast, the average eviction filing rate across the United States in 2016 was 6.53 percent and in South Carolina it was 8.87 percent.²

In recent years, renters’ housing costs have far outpaced their incomes, driving a nationwide affordability crisis. Current data from the American Housing Survey³ shows that poorer renting families spend at least 50 to 70 percent of their income on housing costs. There are varied reasons for people becoming homeless, but often, homelessness stems from the inability to afford a place to live. There are many households where individuals work multiple jobs, but because of other expenses such as medical bills, crippling debt, or other negative financial circumstances, they cannot afford to pay for housing. Under these conditions, many families are constantly at risk of losing their homes through eviction.

An eviction is a cause of poverty, not a condition of poverty. When an individual or family experiences an eviction, there are consequences well beyond just the loss of their home and possessions. Evictions frequently result in community instability, school instability, and employment instability. Evictions can be even more traumatic for vulnerable populations such as children and the elderly. In many cases, an eviction results in psychological trauma that can take years to overcome. Studies have shown that individuals and families who are evicted experience 20 percent higher levels of material hardship.³ Material hardship includes, among other things, going without food and enduring illness or going without electricity, water, or a phone due to lack of funds. These same studies indicate that material hardship remains at high levels at least two years after an eviction.

Eviction can be the first step in the downward spiral to homelessness.¹ But legal strategies can be used to stop that spiral. One study⁴ estimated that 70 percent of households facing eviction receive no legal representation. Yet, tenants with counsel are more likely to appear in court and are significantly less likely to be evicted than their unrepresented counterparts irrespective of the merits of their case. Lawyers can ensure that evictions are lawful, defenses are effectively asserted, and can help secure other relief that may prevent homelessness.
First steps

In response to the eviction crisis in the City of North Charleston and Charleston County in general, a collaboration of local and state groups created an implementation committee to assist the overwhelming number of individuals who are facing evictions. The goal was to reduce the number of people who appear unrepresented at eviction proceedings in Magistrate Court by developing a specific Housing Court program. This group included representatives from One80 Place Legal Services, Charleston Legal Access, Charleston Pro Bono Legal Services, South Carolina Legal Services, three Charleston County Magistrate Court judges, the Charleston School of Law, Nelson Mullins law firm, Charleston Trident Urban League, 211 Hotline, and the City of Charleston. The efforts of the implementation committee were supported by the SC Access to Justice Commission.

Although new to Charleston, a Housing Court is not a new concept. Prior to implementing what was to be known as the Charleston Housing Court Pilot Project (CHCPP), extensive research was conducted on how housing courts in other communities operate. The CHCPP implementation committee reviewed housing court programs in Richmond, Virginia (the city with the second highest eviction rate in the 2016 study); New York City Atlanta; Washington D.C.; Columbus, Ohio; Boston; Philadelphia; Oklahoma City; Denver; and Montgomery County, Pennsylvania.

The Housing Court program from Montgomery County, Pennsylvania was of particular interest. The program was recommended for review by the ABA Commission on Homelessness and Poverty as an example of a Housing Court best practice model. In addition, Montgomery County’s population was the closest in size to Charleston County. Montgomery County produced a comprehensive eviction and homelessness prevention research project report. The report stressed that a partnership between the court that handles evictions and legal service providers was critical for any Housing Court program to be successful. The CHCPP implementation committee’s final plan incorporated many of the recommendations addressed in the Montgomery County report.

One thing that became clear through the research was that Housing Courts were not developed as part of an anti-landlord movement. Tenants being evicted often do not know the law or their rights. In response to this issue, housing courts were created as a pro-access to justice effort. The housing court programs studied had two components in common to prevent evictions:

1. Legal representation by both legal service agencies and pro bono attorneys, in order to level the playing field between tenants and landlords; and
2. Financial rental assistance when appropriate.

Program design

As research into other programs was progressing, the implementation committee for the Charleston Housing Court Pilot Project began meeting on a regular basis. The committee’s belief became that a collaborative, holistic approach is the most effective method to address the high rate of evictions. To accomplish its goal, the CHCPP planned to provide a comprehensive array of services that included not only legal representation, but also social service interventions such as financial assistance to qualified tenants facing imminent eviction and access to certified financial counselors.

The implementation committee realized early on that in order for the CHCPP to be successful in providing representation to tenants facing eviction, pro bono attorneys would have to be an integral part of the Project. To that end, the implementation committee held three landlord/tenant law CLE programs at which attorneys were provided information on why the CHCPP was being created and how the CHCPP will function and educated about South Carolina landlord/tenant law, common causes of evictions, and defenses that can be presented at eviction hearings.

In the implementation committee’s Petition to the Supreme Court of South Carolina seeking to establish the Charleston Housing Court Pilot Project, the implementation committee described the two ways for tenants to obtain legal representation at eviction hearings:

1) A tenant receives an eviction notice. The tenant reads an additional Housing Court instruction sheet that is attached to the eviction notice. The tenant then requests a hearing from the appropriate Magistrate Court. The Magistrate Court automatically schedules a hearing on a Housing Court docket day. Next, the tenant calls 211. A 211 operator takes the call, screens the tenant for income eligibility and refers the tenant to an appropriate legal service agency. An attorney from the legal service agency contacts the tenant and agrees
to represent the tenant after completing a conflicts check. The attorney notifies the Magistrate Court that he/she will be representing the tenant and confirms the court date. The attorney meets with the tenant to prepare for the hearing and represents the tenant at the hearing.

2) For tenants who request hearings but do not call 211 to obtain representation, each Magistrate Court participating in the CHCPP schedules all eviction hearings on the same one day of the week, each week, known as Housing Court Docket Day. One80 Place Legal Services coordinates the pro bono attorneys, legal services attorneys and law students who volunteer to be at the Magistrate Court on Docket Days. Pro bono attorneys are sent the docket ahead of the court date to complete conflict checks and then notify One80 Place if a conflict exists. On Housing Court Docket Day, a pro bono attorney and law students arrive at the Magistrate Court in advance of the scheduled hearings to screen tenants. In addition, a legal services attorney is present to coordinate services and to provide assistance to the pro bono attorney if needed. If a tenant chooses to be represented, they will sign a limited representation agreement. After meeting with the tenant, the attorney either mediates with the landlord, requests a continuance, represents the tenant at the hearing, or a combination of options depending on the facts of the case. Once a case is concluded, the pro bono attorney completes a closing form that documents the outcome of the case.

Another key aspect in the planning for the CHCPP was to provide financial assistance to households that are experiencing an unexpected financial hardship that temporarily prevents them from being able to pay their rent. Through the CHCPP, tenants are provided emergency short-term relief in an effort to help them avoid an eviction. This assistance (a one-time payment) is not a resource that tenants can turn to month after month. Individuals and families who are facing an unforeseen hardship or experiencing extenuating circumstances beyond their control are the main recipients of this assistance. These funds, which were made possible due to a grant from the South Carolina Bar Foundation are administered by the Charleston Trident Urban League, a HUD certified housing counseling agency.

Although the goal of the CHCPP is to keep low-income tenants from being evicted, there are cases where the tenant, due to the lack of affordable housing in the Charleston area, cannot afford to pay rent. In these cases, the pro bono attorney attempts to negotiate a settlement with the landlord that allows the tenant to move out of their residence on an agreed upon date. While not an ideal solution, being able to move without an eviction makes it easier for the tenant to find alternative, more affordable

ANNOUNCEMENT

Furr & Henshaw has consolidated its Myrtle Beach and Columbia offices and O. Fayrell Furr Jr. and Charles L. Henshaw Jr. will join in practicing at 1900 North Oak Street, Myrtle Beach, South Carolina 29577. The firm was founded in Columbia in 1978 as the Law Offices of O. Fayrell Furr, Jr., and the Myrtle Beach office was opened in 1983 as the primary location of the firm. The firm became known as Furr & Henshaw in 1992.

Fayrell Furr and Charles Henshaw together have almost 90 years’ experience representing plaintiffs primarily in medical malpractice cases. The firm will continue undertaking plaintiffs' medical malpractice and personal injury cases on a statewide basis.

Brenda Kline with the firm retired effective June 28. The Columbia office has closed effective July 1. All telephone contacts should be directed to the Myrtle Beach office at (843) 626-7621. The firm's email address is furrhenshaw@scmedicalmalpractice.com and the web address is www.scmedicalmalpractice.com. Correspondence should be addressed to P.O. Box 2909, Myrtle Beach, SC 29578.
housing without an eviction on their record.

Outcome data

The first Charleston County Magistrate Court to institute a weekly Docket Day was the North Area 1 Magistrate Court on October 2, 2019. North Area 3 Magistrate Court implemented its first Docket Day on January 9, 2020. Both courts are located in North Charleston. The CHCPP tracked the outcome of eviction hearings held on the Docket Days at both Magistrate Courts until March 4, 2020, when the COVID-19 pandemic created a temporary moratorium on eviction filings. The preliminary results from the first five months of the Charleston Housing Court Pilot Project are as follows:

- 117 hearings were held
- 54 cases were settled without an eviction
- 10 cases in which the eviction was denied
- 14 cases in which the eviction was dismissed
- 28 cases were settled at the hearing, but the tenant did not follow through with the settlement agreement and was subsequently evicted
- 11 cases were evicted at the hearing (of the 11, 2 tenants did not appear for their hearing)
- 65 percent of the hearings resulted in no eviction

Next steps

The data collected thus far indicates that the Charleston Housing Court Pilot Project has been successful in providing greater access to legal representation for tenants resulting in a significant reduction in evictions; thus, keeping tenants housed in place while lowering the eviction rate in North Charleston.

However, there is still work that needs to be done to address the needs of low-income tenants in the Charleston area. A Docket Day will begin at the West Ashley Magistrate Court on June 8, 2020 with the North Area 2 Magistrate Court beginning shortly after.

The work of pro bono attorneys is an integral part of Housing Court. It would be impossible for legal service attorneys alone to represent all the tenants in Housing Court and meet the other demands of their full-time job. Of the attorneys who attended the landlord/tenant law trainings, 78 indicated an interest in volunteering for Housing Court. However, thus far only 16 attorneys have volunteered. As the program expands it will be critical that more attorneys volunteer their time to provide pro bono representation.

Furthermore, as the CHCPP expands, there will come a point in time when One80 Place Legal Services can no longer take on the responsibility of coordinating the project, including scheduling and data collection. One option, which many of the Housing Courts around the country have, are staff dedicated to not only coordinating the Housing Court but also providing representation at hearings in order to provide more consistency to the program and to lessen the dependence on pro bono attorneys.

A somewhat more radical idea, but one that is gaining acceptance around the country, is to require a right to counsel at all eviction hearings. In 2006, the American Bar Association recommended that state and local governments provide legal counsel as a matter of right at public expense to low income persons in adversarial proceedings where basic human needs are at stake, such as those involving shelter. The state of Connecticut, whose population is similar to that of South Carolina, is currently in the process of enacting a right to counsel. In Philadelphia, where a right to counsel was implemented in November 2019, the city is devoting $3.5 million per year towards funding the right to counsel in eviction hearings with the expectation that it will save the city $45 million in costs of services for individuals who become homeless due to being evicted.

The possible consequences of an eviction can be dramatic. As noted in an interview with Judge Ellen Steinberg of the West Ashley Magistrate, she has seen the need for those facing eviction to be more aware of their rights and how to make their case in court.

The Charleston Housing Court Pilot Project has worked to provide a holistic project that protects the basic rights of tenants, levels the playing field in eviction hearings to reduce evictions, increases housing stability, saves money for government services and social service agencies, and serves as a best practice model for other communities.

Questions regarding the implementation of a Housing Court can be directed to legal service representatives: Jeff Yungman and Mary Vosburgh at One80 Place Legal Services; Alissa Lietzow and Nicole Paluzzi at Charleston Pro Bono Legal Services; Matthew Billingsley at South Carolina Legal Services; and Lana Kleinman, Sarah Schreiber, and Robert Darby at Charleston Legal Access; or Magistrate Court judges, the Honorable Amy Mike-lilt, the Honorable Joanna Summey, and the Honorable Ellen Steinberg.

Jeff Yungman is the director of Legal Services at One80 Place in Charleston. He also coordinates the Charleston Housing Court project.

Endnotes

4 Matthew Desmond, Eviction 299 (2016).
7 Princeton University Eviction Lab, Eviction Rankings.
8 Robert Behre, Charleston County Launching a Special Legal Push to Try to Reduce Evictions, The Post and Courier (July 8, 2019).