

New western Mass. network seeks to boost representation in eviction cases

By: Kris Olson February 20, 2020

In Massachusetts eviction cases, only 7 percent of tenants are represented by lawyers, while the landlord across the aisle is 10 times as likely to have counsel.

“The problem is that there are not enough lawyers representing poor people generally, and particularly with respect to evictions,” Springfield attorney Joel H. Feldman says. “Once you have that kind of imbalance, you are not going to get justice.”



To the extent tenants get legal advice at all, it may come in the form of a fleeting conversation with a volunteer attorney in a courthouse hallway, offering no real evaluation of the valid claims that a tenant may have, Feldman notes.

But now, Feldman is hoping to help balance the scales, exporting a model that has sustained his seven-member firm, Heisler, Feldman & McCormick, for 23 years to the seven participants in the newly created Tenant Attorney Network.

Feldman chairs the Massachusetts Access to Justice Commission’s Administrative Justice Committee, which promotes limited assistance representation and law school incubators, along with the type of fee-shifting model at the heart of both his firm’s bottom line and the new network.

The idea is to provide a mechanism to enable the private bar to fill a yawning gap in representation for tenants who cannot afford an attorney.

“Pro bono is great — it’s a piece of the solution — but there are not enough volunteer attorneys to make enough of a dent,” he says.

Fee shifting has proven to be one way to ameliorate the situation, Feldman explains.



In Massachusetts, there are certain statutes — notably, the consumer protection statute, Chapter 93A, and the quiet enjoyment statute, G.L.c. 186, §14 — that allow for the recovery of attorneys’ fees, if tenants prevail.

Feldman’s firm has built a sustainable practice catering to low- to moderate-income clients around such fee awards, negotiating fees separately if a case settles before it gets to trial, and embodying back-up contingency fees in its client agreements if an award is

not made.

The firm does have to be careful about the cases it takes on, rejecting, for example, “good cause” cases in which a tenant will be ineligible for a fee award due to being evicted for a behavior issue, Feldman says.



A broader solution, he says, would be for the Legislature to create a right to counsel in eviction cases, which, though still a live issue, is typically progressing more slowly on Beacon Hill than advocates would prefer.

On Feb. 3, the House extended to May 12 the reporting date for H. 1537, sponsored by Rep. David M. Rogers of Cambridge and Rep. Michael S. Day of Stoneham.

Still, it's possible that lawmakers will meet the aspirational deadline Supreme Judicial Court Chief Justice Ralph D. Gants set last November in his annual State of the Judiciary address for the creation of a right to counsel in eviction cases for indigent landlords and tenants alike.

"I hope that by next year these efforts may finally come to fruition," Gants said.

In the meantime, however, by training the seven members of the inaugural class of TAN, Feldman will essentially double the roster of attorneys able to capably handle eviction cases in western Massachusetts.

The seeds for what ultimately became TAN were planted at brown-bag lunches that Feldman has been leading for several years for Community Legal Aid, which offers free civil legal help to low-income and elderly people in central and western Massachusetts.

TAN is a more formalized effort to build competence and confidence handling eviction cases. For a year, the seven participants in the pilot program will receive one-on-one mentorship from experienced tenant attorneys, business and litigation training, web resources, case review meetings, and more.

Feldman says the plan is for TAN's website to serve as a communication channel for the attorneys and also a repository for training videos and documents.

While the participants will continue to maintain their individual offices, the hope is that TAN will be "almost like a law firm," Feldman says.

The initial TAN participants are Malissa J. Maddox of Springfield; Jaclyn Packard of Worcester; David E. Rivera of Agawam; Stella F. Gnepp of Belchertown; Kathleen A. Jackson of West Stockbridge; and Gregory M. Barry and Robert W. Kinzer III, of Pittsfield.

Jackson says she has seen cases in which tenants have lived without heat for years, forcing them to choose between using dangerous and illegal space heaters or having their pipes burst.



She has seen landlords resist orders to move tenants to hotels until heat is restored simply because that's what makes sense from a business perspective. Since few if any of their tenants will have the wherewithal to pursue them to the point where they are being awarded damages, less scrupulous landlords figure it will be ultimately cheaper to take that risk than to replace a boiler, Jackson says.

Even as a member of the bar, Jackson says that determining the proper way to file complaints for contempt against landlords was a chore. The chances that a pro se tenant would be able to navigate the multi-step process, which includes getting a sheriff or constable to serve a summons, are slim to none, she says.

Like Feldman, Jackson says she realizes that TAN will not be as broad a solution to the eviction attorney shortage as a right to counsel would be.

"But at least having more trained tenant attorneys will give us more depth of a bench to pull from," she says.

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