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An Intentional Conversation about ADR Interventions: Eviction, Poverty and Other Collateral Consequences

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This article contains a description of the symposium process and the information collected during the symposium.

I. INTRODUCTION

The Dispute Resolution Institute (DRI)¹ held its biennial symposium, An Intentional Conversation About ADR Interventions: Eviction, Poverty and Other Collateral Consequences at Mitchell Hamline School of Law (MHSL) from October 10 through 12, 2019. It is DRI’s tradition to design the symposia as “intentional conversations” about particular topics.² This means that all participants attend by invitation and are expected to actively participate in the conversation. For a comprehensive conversation, DRI strives to include a broad cross section of participants and perspectives. Consequently, for this symposium, DRI invited landlords, tenants, respective attorneys, community dispute resolution program executive directors and mediators, academics (including clinical professors who run housing clinics), researchers,

legislators, housing reform project funders, human rights staff, members of the judiciary who sit in housing court, local government administrators, and students. In addition, DRI sought geographic, gender, ethnic, and racial diversity of the participants. This year, fifty-four individuals participated in the symposium, representing each of the invited groups. Further, some of the invitees served as theme leaders, providing context for the large group conversations.

The symposium consisted of three sessions:

Session I: Setting the Context: What’s the Problem?

Session II: An Exploration of Interventions: What’s Working and What’s Not?

Session III: Where Do We Go from Here?

DRI Director and MHSL Professor of Law, Sharon Press, opened the symposium and explained why DRI chose this theme for the symposium:

[T]he issues related to eviction have risen to a crisis level – here in Minnesota and nationally. I became inspired to explore the role ADR can play as a result of the remarkable changes I saw in Ramsey County Housing (eviction) court where I serve as a volunteer mediator for the Dispute Resolution Center, one of our wonderful Community Dispute Resolution Programs here in Minnesota. As a result of some amazing collaborative work between the judiciary, Legal Services, Volunteer Lawyers Network, the Dispute Resolution Center and Emergency Assistance, what happens at court now is 180 degrees different than what was happening before – and all for the positive... [I]t became clear to me... that the Community Dispute Resolution


Programs have a role in addressing this crisis and that by working together, we can make a real difference.

Over the course of our time together, it is my hope that we will be able to identify and capitalize on our collective insights and be inspired and re-energized to continue this important work. I am not naïve enough to think that the complex issues involved in evictions can be resolved solely by activating alternative dispute resolution processes, but I do believe that ADR has a place at the table. During the course of our time together, I hope that we will identify when and how ADR can be used appropriately as well as what else needs to be in place to make a difference – and also when ADR processes are not appropriate.

II. SESSION ONE: SETTING THE CONTEXT: WHAT’S THE PROBLEM?

Session one theme leaders included:

Maya Brennan, Senior Policy Associate, Research to Action Lab, Urban Institute

Lavar Edmonds, Research Specialist, The Eviction Lab, Princeton University

Alice Hausman, Minnesota State Representative, Chair of the Housing Finance and Policy Division

Ann Juergens, Professor of Law, Mitchell Hamline School of Law

Chris Mendez, 12 Youth Advocate and Restorative Facilitator, The Legal Rights Center
Moderator: Jim Hilbert, 13 Professor of Law and Senior Fellow, Dispute Resolution Institute, Mitchell Hamline School of Law

Theme leaders laid the session’s foundation by defining the scope of the problem. Participants then met in pre-assigned groups with a cross-section of backgrounds and opinions. A facilitator and a note-keeper worked with each group in a loose circle process. During the first round, the facilitator asked each participant to introduce themselves. After introductions, the participants offered their reactions to the theme leader statements. During the remaining rounds in the circle process, participants raised additional issues. At the conclusion of the small group discussion, each group shared their additional issues, which were captured on flip chart paper for symposium participants to see. Over lunch, participants engaged in a ranking exercise and chose the five most important issues to them. The goal of this exercise was for the group to develop a collective sense of the scope of the problem and the most pressing issues.

From this exercise, the participants identified the following issues, 14 in descending order of frequency:

12. Mr. Mendez was invited when he was the Housing Coordinator for Community Mediation and Restorative Services. THE LEGAL RIGHTS CTR., https://www.legalrightscenter.org/christopher-mendez.html (last visited Mar. 28, 2020).
14. Additional issues identified by participants were: gentrification and the need for landlords to be incentivized to rent; destabilization of communities; power imbalances (onus on tenants to exercise their rights is too high, market dynamics, tenant fear of exercising rights due to retaliation, local efforts needed to resolve this); support services need to be expanded; unintended consequences, such as ordinances that do not address the real issue, lack of data when courts are not involved, and multiple 911 calls leading to a nuisance designation and eviction; demonization language used (landlords have stories too); cycle of poverty (criminal record leads to loss of housing, which leads to poverty and the criminalization of poverty); government assistance is not working (bureaucracy, wait lists, and tenant inability to afford housing even with assistance); landlords do not pay for the externalities of community (high number of corporate landlords rather than individuals); immigrant fear; legislator conflicts of interest; need for transparency (lack of research and data); accessibility; isolation of tenants; eviction system was set up without sufficient due process procedures and is compounded by a lack of representation (the court system is not set up to protect housing or homes and has business focus rather than housing stability focus); varying state eviction laws (but all states are experiencing a housing/eviction crisis).
• **Intersectionality of the problem**
  This issue included subtopics such as: overlap with ordinances; criminal; education; youth achievement (which included classroom education, individual student, juvenile criminal filings); tenant health (which included the mental and medical impact of eviction such as depression and stress); and the need for multiple interventions.

• **Need for early intervention models**
  This issue included the need to start conversations earlier, such as utilizing ADR before filing and pre-eviction court interventions.

• **Racism of policies**
  This issue included: the disproportionate policy impacts on black women with children; the historic context of eviction; systemic racism (such as mapping tools, intentionality of race segregation in housing, analogy to the criminal justice system, empowering black voices to speak on their own behalf).

• **Shortage of affordable housing**
  Currently, the demand for housing is much higher than the supply. The lack of housing supply means that there is limited access to affordable housing and this creates power imbalances (e.g. renters must commit to leases without even seeing the space in advance).

• **Lack of knowledge/education**
  This includes the judiciary, the legislature, and the public. Often, tenants do not know the “rules” and need legal advice and a better enforcement process.

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15. Mass incarceration is now recognized as the problem which has led to a host of collateral consequences. By analogy, a way to address the eviction crisis is class action lawsuits and mobilization of tenants.

• **Inappropriate/ineffective mediation**
  This issue includes the need for best practices in mediation, especially as it relates to housing court. Housing court mediators need more training and need the flexibility to “say more.” The ethical requirement that mediators be impartial must be addressed.

• **Need for better proxy than eviction for landlords to use for screening**¹⁷

• **Need for both “carrots” and “sticks”**
  This includes the need for incentives for landlords to continue to provide affordable housing and the possibility of imposing taxes on landlords with high eviction rates. Additionally, both landlords and tenants need to be educated.

• **Electronic court records**
  An eviction filing remains on a tenant’s record, even if the tenant “won” or a settlement was reached and there was no actual eviction; expungements are often too difficult and expensive to obtain.

• **Uncaring environment**
  Current laws and regulations do not allow landlords to act with humanity, even when they want to do so.

• **Criminalization of “bad” tenants**

• **Time**
  This includes the speed by which an eviction can be filed; people who need mediation do not have time to go to mediation; court processes do not allow people to address emergency issues (court fees are unequal in an emergency); the window for eviction is too short because it is hard to get services in a timely manner.

¹⁷. Participants noted that research has determined that prior conviction of crime is also not an accurate predictor of future ability to pay rent.
- **Rules not always followed by landlords**
  This includes the need for landlord accountability; application fee abuse; eviction used as tactic/pretext to remove tenants; security deposit fraud; bait and switch; lack of enforceability of existing rules.

**III. SESSION TWO: AN EXPLORATION OF INTERVENTIONS: WHAT’S WORKING AND WHAT’S NOT?**

After identifying and prioritizing the issues, the second session included presentations on eviction programs from around the country. The goal of this session was to identify what interventions, if any, were working and should be considered for replication. Additionally, this session helped identify what was not working and should be avoided. The theme leaders for session two included:

Brian Gilmore,\(^1\) Housing Clinic Director and Associate Clinical Professor of Law, Michigan State University School of Law

Jesse McCoy,\(^2\) James Scott Farrin Lecturing Fellow and Supervising Attorney, Eviction Diversion Program, Civil Justice Clinic, Duke University

Judit Fox,\(^3\) Clinical Professor of Law, Notre Dame Law School

Elizabeth Clysdale,\(^4\) Second Judicial District, Ramsey County, Referee

Moderator, James Coben,\(^5\) Professor of Law and Senior Fellow, Dispute Resolution Institute, Mitchell Hamline School of Law

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\(^2\) [Jesse McCoy](https://law.duke.edu/fac/mccoy/) (last visited Mar. 28, 2020).

\(^3\) [Judith Fox](https://law.nd.edu/directory/judith-fox/) (last visited Mar. 28, 2020).


\(^5\) [James Coben](https://mitchellhamline.edu/biographies/person/james-coben/) (last visited Mar. 28, 2020).
In addition to describing their programs, the theme leaders identified a few important themes. The first theme is that no single intervention will be sufficient, rather a variety of approaches will be necessary. Even programs that are working well are incapable of addressing all of the issues identified in session one. Second, the little things matter. There was a hopeful note from the theme leaders that while the system can seem, and is, overwhelmingly in need of reform, individual interventions can, and do, make a difference in people’s lives. For example, tenant access to legal advice is helpful, even if it is not possible for all tenants to receive legal representation. Finally, these problems demand sustainable funding.

Participants were assigned to new small groups for session two to continue the conversation with different symposium participants than session one. A facilitator and note keeper worked with each group in loose circle fashion. Once again, participants introduced themselves and provided reactions to the second session theme leaders. Next, participants identified what was missing from the conversation, both in terms of what should be continued and what should be stopped.

At the conclusion of the small group discussions, the input was collected and used to develop lists of interventions to start or expand and interventions to stop.

A. Interventions to Start or Expand

- **Developing a holistic approach/bundle services/wrap-around services (relationship development and silo-busting)**
  - Upstream legal advice
  - Non-bureaucratic assistance
  - Mental health services
  - Embed social workers

- **Early intervention**
  - Pre-filing intervention
  - Earlier preventative services (human services) and identification of red flags before a problem manifests
  - Before eviction can be filed, involve a “navigator” to determine if something can be done [like the system used for veterans who are seeking medical assistance] which may include the requirement that mediation be tried first
  - Proactive enforcement rather than forcing tenants to complain
  - Differentiated services to assist smaller landlords
• **Data collection**
  o Collect data to understand the root problem that causes the symptom of eviction

• **Building coalitions to impact laws**
  o Hold community/facilitated conversations that include landlords, tenants, service providers, and others
  o Treat landlords as part of the solution
  o Provide support for small landlords
  o Create financial incentives for landlords

• **Consider housing a “right”** \(^{23}\) and improve tenant screenings by screening tenants *in* rather than *out*

• **Support from the Judiciary**
  o Improve the expungement process
  o Use John/Jane Doe instead of tenants’ real names in order to prevent the eviction from impacting them in the future
  o Develop model settlement agreements that include boilerplate tenants’ rights language

• **Educational Opportunities**
  o Landlords (alternative approaches to eviction)

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23. CommonBond was identified as an organization that should be looked at for replication. CommonBond’s mission “is to build stable homes, strong futures, and vibrant communities.” COMMONBOND CMTYS., https://commonbond.org/our-mission/ (last visited Mar. 30, 2020). On CommonBond’s website, their philosophy is displayed:

Our work comes from a simple notion: Home is the foundation for everything in life. And when life throws a curveball, the home should be a safe place to land — not another source of worry. Having a place to call your own is a basic right for everyone. We were founded in part as a response to racial and economic injustices in the communities we serve. Since the early 1970s, CommonBond Communities has provided homes and supportive services for those most in need. Now, nearly 50 years later, injustices still exist and our mission is more relevant than ever. Our expertise ranges from interacting with officials on complex legislation and developing properties, to making sure a child has a safe place to do homework and caring for homeless populations and veterans. In spite of the obstacles and systems that exist to hold people back, we persevere in order to create equitable housing that’s affordable for all.

*Id.*
Tenants (education, training, and leadership development)
Use technology to provide early education
- Interactive modules
- Access to emergency resources through the phone
Attorneys and county crisis workers need to come to the courthouse together

- Change language away from “affordable housing”\textsuperscript{24}

- Conduct public service education campaign
  - Safer communities
  - Increase in business opportunities

- Reform laws/statutes
  - Increase time frames

- Explore alternative forms of ownership for long-term tenants

- Identify sustainable funding – not just grants

- Provide resident services rather than evictions

- “Insurance Card” to pay rent with some conditions
  - Renters’ insurance similar to Medicare model

- Special Mediation training for mediators in housing court

\textbf{B. Interventions to Stop}

- Laws without enforcement mechanisms

- Evictions solely because someone is poor

- Municipal ordinances that impose consequences on landlords and prevent them from being helpful to tenants\textsuperscript{25}

\textsuperscript{24} Professor Press indicated during symposium discussions that there was a suggestion to use different terminology because affordable housing often carries certain negative connotations. One suggested option was “workforce housing.”

\textsuperscript{25} See, e.g., Aaron Berc & Karl Gamradt, \textit{St. Louis Park’s ‘Evicted Before Convicted’ Housing Ordinance is a Disgrace}, STARTRIBUNE (May 31, 2019, 6:20
• Unfair court processes
• Unrepresented tenants
• Landlords who are not making improvements
• Solely focusing on the financial bottom line
• Emergency assistance bureaucracy and time constraints
• Non-profit rules that prohibit assistance until after an eviction is filed

• “Us v. Them” (Tenant vs. Landlord) mentality
  o Unintended consequences [e.g., Fair Debt Collection Act which prevents conversations]
  o Creation of vacancies to semi-privatize public housing (e.g. moving to section 8) – usually move to nonprofit management which has fewer protections

The day concluded with an invitation for participants to consider a question for the final session the next day: Where do we go from here?

IV. SESSION III: WHERE DO WE GO FROM HERE?

When the participants reconvened on Saturday, October 12, DRI Director Sharon Press moderated a brief opening session. The theme leaders, listed below, described the topics they would be discussing in the small groups to address the question: “What should happen next?” The theme leaders and topics were:

Ellen Waldman,26 Professor of Law at Thomas Jefferson School of Law, framed her interest in exploring the impact of the political process. Waldman referenced Representative Alice Hausman’s comments during the first session regarding the impact of the number of legislators who are landlords and how seemingly noncontroversial bills were not adopted.

Peter Gilbert,27 Staff Attorney with Legal Aid of North Carolina, wished to further pursue the conversation around the *racism of policies*.

Kelly Browe Olson,28 Associate Professor of Law and Mediation Clinic Director at the University of Arkansas Little Rock William H. Bowen School of Law, focused on the theme of *intersectionality* and explored how all of the disparate pieces that were discussed during the symposium fit together and impact each other.

Deborah Thompson Eisenberg,29 Professor of Law and Director of the Center for Dispute Resolution at the University of Maryland Francis King Carey School of Law and Noam Ebner,30 Professor at Creighton University, described their interest in furthering the conversation around *early intervention efforts*.

Finally, Joseph (“Josh”) Stulberg,31 the Michael E. Moritz Chair in Alternative Dispute Resolution at The Ohio State University Moritz College of Law, described how *community engagement processes* could be utilized to work through eviction related issues.

Symposium participants self-selected which group to join. At the conclusion of the small group discussions, each group shared the salient points from their group; the list follows:

**Group 1: Political Process**

– Develop public service campaigns to educate all stakeholders

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– Use technology to educate at the front end, e.g. resource applications
– Organize tenants
– Address conflict of interest issues at the legislature

**Group 2: Racism of Policies**
– History of landownership is filled with implicit bias, whiteness, and systemic issues
– Developers and judges as the evictors
– Communities of color need to be mobilized to take control of the conversation
– Parallels to the criminal justice system suggest a paradigm for changing the frame for evictions, which include an exploration of the change in the way mass incarceration is now discussed

**Group 3: Intersectionality**
– What does stable housing look like and cost?
– CommonBond data 32 – investing $1 in prevention saves $4 in social costs
– Need data sets from different sources, such as the Department of Human Services, that provides information on the impact of housing instability on students
– Develop better dispute resolution tools and techniques to enable groups to work together
– Focus on the macro-role (Braver Angels 33 model) to develop collaborative problem-solving processes
– Reframe terminology–for example, use: workforce housing, housing affordability, accessible housing, stable housing, life-stage housing, “eviction” to “property dispute,” “landlord” to “property owner,” “tenant” to “resident”

32. COMMONBOND CMTYS., supra note 23.
– Monetize and explain economic impact of eviction on school success, job loss, and mental health
– Emphasize the importance of both macro (community) and micro (individual) story telling
– Incentivize agencies to work with families to determine what families view as success

**Group 4: Early Intervention**
– Include ADR information as a resource when landlords obtain licenses
– Each county should maintain a list of resources that includes mediation/ADR and HOME Line
– On-going communications about rent
– Proactive, automatic inspections to identify problems; repair needs; provide access
– Conversation mechanisms to report problems, like a check-in sheet
– Require posting of resources at every property that includes ADR and social services, and direct landlords and tenants to these services
– Expand the Common Bond, holistic, model, which includes affordable housing with co-located services for comprehensive support
– Support stability, independence, job opportunities, and health and wellness
– Identify interests of early intervention from a landlords’ perspective, the benefits of which include: elimination of filing fees, elimination of stress related to going to court, high turn-over, mutual termination of lease if necessary due to major life change (a mediation opportunity), overcome stereotypes, focus on financial not conduct-based problems, and the potential that landlord/tenant relationship may continue after court
– Fund navigators and mediators for on-going, pre-filing conflicts and early intervention mediation

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34. “HOME Line provides free and low-cost legal, organizing, education, and advocacy services so that tenants throughout Minnesota can solve their own rental housing problems. We work to improve public and private policies relating to rental housing by involving affected tenants in the process.” HOME LINE, https://homelinemn.org/ (last visited Mar. 30, 2020).
to evaluate the situation and determine whether it is on-going or short-term
– Provide pre-filing negotiation and mediation at the request of landlord, tenant, or social worker
– Identify “triggering” events

**Group 5: Community Engagement Processes**
– Offer community conversations or a Housing Summit where talking circles would be utilized as opposed to two-minute sound bites for public testimony
– Create opportunities for individuals to be heard, like truth and reconciliation efforts
– Develop data collection mechanisms to understand the problem, not just the symptom (eviction)

V. CONCLUSION

At the end of the symposium, participants shared what they personally planned to do next. Commitments included writing articles for this *Journal*, contacting legislators, working to improve mediation programs, and continuing to advocate for tenants’ rights.

Since the symposium, Community Mediation Minnesota, the umbrella organization of the state-certified community dispute resolution programs in Minnesota, has continued to expand mediation services in eviction cases, both in the courts just prior to eviction hearings and in upstream opportunities. Community Mediation Minnesota is also collaborating with Homes For All, “a statewide coalition that advances shared policy initiatives that lead to housing stability for all Minnesotans.” During the 2019 Legislative Session, Community Mediation Minnesota advanced a bill to create a housing mediation eviction prevention program, and plans to introduce an amendment to that bill to create a “Minnesota Stable Housing Mediation Grant Program” in the Housing Finance Agency. This amendment would increase access to voluntary housing mediation services.

The symposium served an important function by focusing attention on the critical topic of eviction and the collateral consequences of eviction. It is clear that there is a lot of work that remains to be done. Many different methods of intervention will be necessary and alternative dispute resolution must be one of them.