



Memphis Area Legal Services, Inc.

Serving the Tennessee Counties of Shelby, Fayette, Lauderdale and Tipton



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STATEMENT OF CINDY COLE ETTINGOFF
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U.S. HOUSE COMMITTEE ON THE JUDICIARY

SUBCOMMITTEE ON THE CONSTITUTION, CIVIL RIGHTS AND CIVIL LIBERTIES
HEARING ON "POTENTIAL REMEDIES FOR UNLAWFUL EVICTIONS IN FEDERAL
EMERGENCY AREAS"

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I thank Chairman Nadler and Ranking Member Jordan of the U.S. House Committee on the Judiciary, and Chairman Cohen and Ranking Member Johnson of the Subcommittee on the Constitution, Civil Rights and Civil Liberties, for inviting me to submit this statement and to address the hearing on Potential Remedies for Unlawful Evictions in Federal Emergency Areas. My name is Cindy Cole Ettingoff and I am the CEO and General Counsel for Memphis Area Legal Services, Inc. (MALS). MALS provides pro bono legal services for the Tennessee counties of Fayette, Lauderdale, Tipton and Shelby. I greatly appreciate the opportunity to share information about unlawful evictions based upon MALS' extensive work involving evictions during the COVID-19 pandemic.

As background, in March 2020, when COVID first necessitated the closing many business, Shelby County was considered the second poorest large metropolitan area with a population of 1,000,000 or more in the United States.¹ Monthly unemployment rate reports from the TN Department of Workforce Development between March 2020 and the present indicate that for all but one reporting period, Shelby County, TN had the highest unemployment rate in the state.²

Based upon a study by Dr. Elena Delavega of the University of Memphis, School of Social Work, published in 2020, the city of Memphis has a poverty rate of 21.7% with the rate of child poverty being 35%. The City of Memphis poverty rate for Blacks is 26.1%, for Hispanics/Latinos is 29.2%, while the poverty rate for non-Hispanic Whites in the city of Memphis has continued to decrease to 9.3%. In the Memphis Statistical Metropolitan Area (MSA), which includes parts of Tennessee, Arkansas, and Mississippi, the overall poverty is 15.4%, child poverty is 23.7%, poverty for people over age 65 is 10.7%, Black poverty is 22.6%, Hispanic or Latino poverty is 21.9%, and non-Hispanic White poverty is 6.9%.³

Poverty is certainly not limited to the Memphis/Shelby County area. Poverty is experienced throughout our country.⁴ Unfortunately, poverty and evictions go hand in hand. Poverty often leads to eviction, both lawful and unlawful, because anything that impacts income, such as job loss, inability to go to work because of personal illness or the illness of a child, loss of transportation, or childcare issues can result in the inability to pay rent. As pointed out by Professor Matthew Desmond of the Princeton Eviction Lab, Black women with children are at the highest risk of eviction of any renting population.⁵ Persons of color have been more likely

¹ Elena Delavega PhD, MSW, School of Social Work, University of Memphis, & Gregory M. Blumenthal, PhD, GMBS Consulting, *2020 Memphis Poverty Fact Sheet*,

https://www.memphis.edu/socialwork/research/files/documents/2020povertyfactsheet_correct.pdf

² <https://www.tn.gov/workforce/tennessee-economic-data-/labor-force-statistics/unemployment-rates.html>

³ Elena Delavega PhD, MSW, School of Social Work, University of Memphis, & Gregory M. Blumenthal, PhD, GMBS Consulting, *2020 Memphis Poverty Fact Sheet*.

⁴ Priyanka Boghani, *How COVID Has Impacted Poverty in America*, <https://www.pbs.org/wgbh/frontline/article/covid-poverty-america/>

⁵ Why Eviction Matters, <https://evictionlab.org/why-eviction-matters/#who-is-at-risk>

to get sick, be hospitalized, and die from COVID,⁶ and also to suffer the economic consequences of the pandemic, including job and income loss and food and housing insecurity.⁷ Although the previously mentioned factors were present prior to COVID, the pandemic greatly impacted the ability of many impoverished individuals to work.⁸ Some individuals who were furloughed or lost jobs due to COVID are not able to return to work or are not being recalled to work resulting in a continuing inability to pay their rent. Many of those who seek MALS services report having been without employment for over a year.

Lawful Evictions vs. Unlawful Evictions

An understanding of the mechanics of lawful eviction and how it differs from unlawful ouster is important. With a lawful eviction, the tenant is given notice,⁹ generally 14 days to pay the rent in full and avoid eviction or be subjected to a hearing in court at which a set out is usually established. The tenant has an opportunity to appear in court and seek a continuance, request mediation, or contest the eviction. If possession of the property it granted to the landlord, the normal time before setout will occur is 10 days. Regardless, in a lawful eviction tenants have the benefit of knowledge of when set out is likely to occur and have the ability to make some effort to move their most needed personal belongings elsewhere.

This notice and opportunity are missing with unlawful eviction. The tenant may return home to find the lock changed or the door removed and what remains of their belongings on the street or gone. That means clothing, children's toys and stuffed animals, beds and bedding, chairs, plates, utensils, photos, awards, school books or laptops, medicine and medical equipment can be placed at the curb. Our experience has been that even if the tenant arrives shortly after the set out occurs, many, if not all of their possessions are gone. Imagine the impact on a child who has gone to the grocery with her mother returning home to find that her home and everything she had is gone. While set out without a court order is illegal and a violation of state law, the remedies provided by law are not readily available to poor tenants.

Relative Inaccessibility of Current Legal Protections

⁶ *Id.*

⁷ Matthew Desmond & Rachel Tolbert Kimbro, Eviction's Fallout: Housing, Hardship, and Health, 94 *Social Forces* 295, 317 (2015)

⁸ Priyanka Boghani, *How COVID Has Impacted Poverty in America*, <https://www.pbs.org/wgbh/frontline/article/covid-poverty-america/>

⁹ Non-Legislative Commission on the Study of Landlord-Tenant Laws, 35 *U. Ark. Little Rock L. Rev.* 739, 761 (2013).

If the eviction is unlawful, the tenant can bring a legal action, but if the tenant did not have money to pay rent, they are unlikely to have funds to pay for legal representation. They frequently turn to MALS. Among the legal services provided by MALS is representation of those who have experienced unlawful evictions. In fact, during the moratorium, MALS received approximately 1,200 requests for legal assistance involving evictions. It is difficult to ascertain the exact number of eviction assistance requests received by MALS that involved unlawful evictions because MALS tracking has historically not distinguished between lawful and unlawful evictions and does not include the number of declined unlawful eviction cases. Moreover, many tenants report that they do not seek legal assistance after an unlawful ouster because survival, primarily finding a safe place to sleep for the night, is their first priority.

Under the present law, an unlawfully evicted tenant could pay the filing fee, file a civil warrant in state court, and seek to represent themselves. However, if the tenant could not pay rent, he/she is unlikely to be able to pay the filing and service fees. Assuming a means of getting a lawsuit filed is found, absent working knowledge of the rules of civil procedure and evidence a tenant is unlikely to be successful in representing themselves. Moreover, the best means of proving ownership and value of items that were lost due to unlawful eviction, such as a receipt or credit card bill, were also likely lost in the unlawful eviction.

Unlawful eviction is a setback for people who were already struggling.¹⁰ If an individual is unable to pay rent, they would almost certainly not be able to procure new housing and beds and clothing and food for their children. Unlawful eviction results in more than just the loss of housing or personal items, it is an emotional trauma for children and adults, with potentially long-term effects.

An unlawful eviction will almost certainly have a negative impact on a child's education. Whether unlawful eviction results in the child having to attempt to rapidly change schools or being unable to go to school because they have no address with which to enroll in school, or the loss of the child's school issued books and equipment, or loss of the child's shoes and school uniforms, the impact is dramatic. Transportation to get the student to school may also be lacking.¹¹ If students are homeless for an extended period of time, they may be relocating frequently and may not be able to attend school regularly.¹² In fact, studies have shown that children who are homeless are significantly less likely to be functioning at grade level than their non-homeless peers.¹³ Even if re-enrollment can be accomplished, starting anew in the middle of the school year

¹⁰ Matthew Desmond, *Eviction and the Reproduction of Urban Poverty*, 118 *Am. J. of Sociology* 88, 102 (2012).

¹¹ *Id.*

¹² *Id.* at 491.

¹³ *Id.* Daniel and Sun point out that "only one-third of homeless students read at the same grade level as more than half of their domiciled peers of the same age." *Id.*

or with a lapse in attendance while attempting to re-enroll in school can act as an impediment to learning.¹⁴ Clearly, eviction has traumatic and long-lasting legal, social, and health consequences for the lessee and their children

In June 2020, in the National Housing Law Project survey of legal aid attorneys nationwide, 91% of the respondents reported illegal evictions in their areas.¹⁵ Although the extended CDC eviction moratorium which is set to end on June 30, 2021, remains in place for most of the country, the moratorium has already ended in west Tennessee. Attorneys representing a group of landlords filed a challenge to the last CDC extension of its halt order. In *Tiger Lily LLC et al. v. HUD et al.*, No. 21-5256 (March 29, 2021). The 6th Circuit Court of Appeals, in an emergency appeal, confirmed the lower court ruling that the CDC's action extending the moratorium on evictions exceeded the scope of the CDC's authority. The end of the eviction moratorium for western Tennessee placed Memphis Area Legal Services in the position of being on the frontline of evictions, both lawful and unlawful.

A Closer View of Unlawful Eviction

Approximately eighteen months ago I met with a client who came to MALS offices frantic because an unlawful set out had occurred. As part of the set out, one of the occupants, who was bedridden and on oxygen was placed in her wheelchair outside in December. The whole family was traumatized. The tenant video recorded the event from the time when he and his family drove up to their home to find their belongings and housemate outside. Christmas presents for the children had been placed on the street. In the video, the children and the man's wife were crying and screaming. The evictee was asking for mercy on the part of the set out crew. The entire family was attempting to grab their belongings from the curb before they could be stolen. That family had found a new place to live and had planned to move as soon as Christmas was over and their next housing was available. It is also worth noting that even if property has not yet been stolen while setting on a curb, additional damage often results to the property because the eviction process does not require any care be taken with the items being removed. Furniture may be set out in the rain. Furniture is often broken or damaged.

¹⁴ Philip T.K. Daniel & Jeffrey C. Sun, *Falling Short in Sheltering Homeless Students: Supporting the Student Achievement Priority Through the McKinney-Vento Act*, 312 E. Law Rep. 489, 489-491 (2015).

¹⁵ National Housing Law Project, *Survey of Legal Aid Attorneys*, July 2020, <https://www.nhlp.org/wp-content/uploads/Evictions-Survey-Results-2020.pdf>.

H.R. 1451 and Congressional Action

Much of the preceding information has been focused on the harms visited upon tenants by unlawful evictions and the fact that most tenants do not have an adequate means of addressing such unlawful evictions. Accordingly, the subject matter of H.R. 1451, the Emergency Eviction Enforcement Act of 2021, is of significant importance to the citizens served by MALS and others who might face unlawful eviction during a national emergency. The bill could provide a means of addressing a number of the challenges of individuals subjected to unlawful evictions and could also provide resources and assistance to these individuals. The bill proposes to allow an unlawful eviction lawsuit to be brought in federal court by the Attorney General, in addition to the private cause of action afforded a tenant. The bill also offers the opportunity for treble damages, which could provide a strong deterrent for a landlord contemplating unlawful eviction. Given that most evicted tenants cannot afford paid legal assistance and not all tenants may be able to obtain pro bono legal assistance, the proposed legislation could be extremely beneficial to those experiencing unlawful eviction during a national emergency. This bill could provide those who have suffered an unlawful eviction during a national emergency additional, much-needed means of access to justice.