

LEGISLATION AND RULES, LITIGATION, COMMITTEES, AND VOLUNTEERING

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LEGISLATION AND RULES

- 1985 Proposed and co-drafted amendment what is now Minn. Stat. §§ 571.75, 571.921 to extend garnishment protection to farmer milk sales.
- 1989 As member of the Governor’s Commission on Affordable Housing, proposed and co-drafted:
- Minn. Stat. § 484.013 to create Housing Courts in Hennepin and Ramsey Counties,
 - Minn. Stat. § 504B.381 (formerly § 566.205) to provide for the emergency relief action for tenants,
 - Minn. Stat. § 504B.385 (formerly § 566.34) to provide for the rent escrow action,
 - Minn. Stat. § 504B.391 (formerly § 566.35) to provide for fines in landlord violations of housing court orders,
 - amendment of Minn. Stat. § 504B.231 (formerly § 504.255) to provide for minimum statutory damages for landlord lockouts, and
 - amendment of Minn. Stat. § 504B.221 (formerly § 504.26) to provide for minimum statutory damages for landlord utility interruptions.
- 1989 Proposed and drafted Minn. Stat. §§ 504.33-504.35, governing displacement and replacement of low-income housing by government, and providing a basis for *Low-Income Housing Committee v. City of Minneapolis* (see Significant Cases, 1992-94, *infra*). The statute was repealed in 1995.
- 1990 Proposed amendment to Minn. Stat. § 504B.425 (formerly § 566.25) to provide for attorney fees in tenant remedies, rent escrow, and emergency relief cases, and proposed and co-drafted amendment to Minn. Stat. § 504B.001 (formerly § 566.18) to extend tenant protections to caretakers.
- 1991 As member of the Hennepin County Housing Court Bench and Bar Committee, co-drafted Minn. R. Gen. Prac. 601-612 governing Housing Court practice and procedure.
- 1992 Proposed amendment to Minn. Stat. § 504.27, now contained in §§ 504B.271 (formerly § 504.24), 504B.225 (formerly § 504.25), 504B.231 (formerly § 504.255), and 504B.221 (formerly § 504.26), to provide protection against property seizures, lockouts, and utility interruptions to mortgagors and contract for deed vendees.

- 1992 Proposed and drafted Fourth District (Hennepin County) Standing Housing Court Order Waiving Housing Court Photocopying Charges to Legal Services and Legal Advice Clinic Attorneys (Minn. Dist. Ct. 4th Dist. June 8, 1992).
- 1996 Proposed Fourth District (Hennepin County) Standing Housing Court Order approving acceptance of uncertified checks from Legal Aid and other law firms for payment into court. Order (Minn. Dist. Ct. 4th Dist. May 15, 1996).
- 1997 Proposed amendment to 504B.171 (formerly § 504.181) to prohibit landlords from allowing illegal activity, and to 504B.001 (formerly § 566.18) to allow tenants to enforce the statute in tenant remedies and rent escrow actions.
- 1997 As a member of the Conference of Chief Judges Procedures and Forms Committee, *Pro Se* Housing Court Subcommittee, drafted court forms for *pro se* landlords and tenants in unlawful detainer (eviction), rent escrow, tenant remedies, and lockout actions.
- 1999 As a member of a committee of landlord-tenant attorneys selected by the Minnesota Legislature, co-drafted of Minn. Stat. Ch. 504B, a recodification of landlord-tenant statutes formerly in Chapters 504 and 566.
- 2002 Drafted proposed amendment to 42 U.S.C. § 1437d(l)(6) to protect innocent public housing tenants from eviction.
- 2003-2006 Lobbied successfully against bill by tenant screening agencies to weaken eviction expungement rights in Minn. Stat. § 484.014.
- 2007 Assisted in the drafting of and testified in support of MINN. STAT. § 504B.206, which created the right of victims of domestic abuse to terminate a residential lease in certain circumstances.
- 2008 Lead Attorney, Renter Working Group of the Minnesota Legislature Task Force on Mortgage Foreclosures (2007-08), co-wrote a legislative package to increase the rights of tenants whose landlords are in foreclosure. New laws included foreclosure advice notices for tenants, Minn. Stat. § 580.042, disclosure of foreclosure status by landlord to prospective tenants before signing leases, § 504B.151, two month vacate notices to tenants at the end of the redemption period, § 504B.285, expanded rights of tenants to pay on or take over unpaid landlord utility bills and deduct payments from rent, § 504B.285, right to withhold the security deposit in the last month of the redemption period, § 504B.178, and mandatory expungement of foreclosure eviction files where the tenant already has moved or where the bank did not give the required notice to the tenant, § 484.014.
- 2009 Assisted in the drafting of amendments to Minn. Stat. § 504B.285 to extend eviction notice rights to tenants in foreclosure who were excluded from the 2008

amendments.

2010 Assisted in the drafting of and testified in support of the Tenants' Bill of Rights, which would regulate late fees, require receipts for rent, imply in leases which provide for tenant payment of landlord attorney fees a reciprocal obligation on landlords to pay tenant attorney fees, further regulate application fees, increase penalties for wrongfully withholding security deposits, conform state eviction rights for tenants in foreclosure with recent federal legislation, and create a rebuttable presumption of actual rent payment when the tenant produces money order receipts. The legislation passed and was signed by the Governor. 2010 Minn. Laws Ch. 315.

2011 Successfully lobbied in the Minnesota Legislature against passage of H.F. No. 440, Sections 11 and 12, and S.F. No. 875, Sections 8 and 9, which would have eliminated the rights of landlords and tenants in Hennepin and Ramsey Counties to have judges hear eviction, repair and lockout cases, and to have judges review decisions of referees in these cases.

Served as an observer to the National Conference of Commissioners on Uniform State Laws (ULC) Study Committee on a Revision of the Uniform Residential Landlord and Tenant Act, and helped encourage the Study Committee to unanimously agree to recommend to the conference that a drafting committee be formed to comprehensively revise the Act.

LITIGATION

1983-1986 *In re Application of Northwester Bell Telephone*: represented rural telephone customers in first telephone rate setting case following federal deregulation. The Minnesota Public Utilities Commission (MPUC) significantly reduced the rate increase. After the MPUC denied an attorney fee request, the Court of Appeals reversed, 374 N.W.2d 758 (Minn. Ct. App. 1985), but the Supreme Court reinstated the denial, 386 N.W.2d 723 (Minn. 1986).

1986 *Salvation Army v. Luten*, No. UD-1860523522 (Henn. Cty. Mun. Ct., June 12, 1986): first case applying Minn. Stat. § 504B.285 (formerly § 566.03) retaliation protections to police calls.

1986-1987 Laurel Village: negotiated settlement with City of Minneapolis to preserve and replace hundreds of units of low-income housing in a downtown development project.

1988 *Tonkaway Limited Partnerships v. McLain*, 433 N.W.2d 443 (Minn. Ct. App. 1988): first decision to hold that a motion for new trial is not required in unlawful detainer (eviction) actions.

1988-1989 *Goggleye v. Pierce*: federal court class action challenging HUD plan to sell

Riverside Plaza, formerly Cedar Square West, the largest subsidized project in Minnesota, with a reduction in subsidized units, leading to settlement for an additional \$25,000,000 in housing subsidies.

- 1990 *Simmons v. Kemp*, 751 F. Supp. 815 (D. Minn. 1990): summary judgment granted to tenant, holding public housing authority improperly bypassed administrative grievance process in eviction, and awarding attorney fees.
- 1990 *Tyus v. Minneapolis Public Housing Authority*, No. UD-1900502523 (Minn. Dist. Ct. 4th Dist. July 11, 1990): first rent abatement award in a public housing rent escrow action.
- 1990-1992 *Aguero v. Nordlie*, CT990-4474 (Minn. Dist. Ct. 4th Dist. Aug. 21, 1992) Amended Order (Sep. 28, 1992): consumer class action over landlord's routine practice of withholding security deposits; award of deposits, interest, penalties, and attorney fees.
- 1992 Prepared a report, adopted by the Minneapolis Civil Rights Commission, analyzing proposals to expand Interstate Highway 35W as violating federal civil rights and fair housing laws.
- 1992-1994 *Low-Income Housing Committee v. City of Minneapolis*, No. 92-22715 (Minn. Dist. Ct. 4th Dist. Oct 25, 1994): represented tenants and housing advocates in challenge to city's low-income housing displacement and replacement practices under Minn. Stat. §§ 504.33-504.35 (*see* Legislation and Rules, 1989, *supra*), leading to settlement providing for an additional 88 units of low-income housing. After the case was filed, the City Council voted to withhold \$50,000 in funding for Legal Aid, but the Mayor vetoed the resolution.
- 1995 *Minneapolis Public Housing Authority v. Holloway*, No. C0-95-391 (Minn. Ct. App. Aug. 15, 1995), Finance and Commerce 46 (Aug. 18, 1995) (unpublished): unsuccessful eviction appeal, affirming rejection of a reasonably foreseeability standard for eviction for actions of non-tenants.
- 1997 *Phillips Neighborhood Housing Trust v. Brown*, 564 N.W.2d 573 (Minn. Ct. App. 1997): unsuccessful eviction appeal, affirming eviction of entire household when one co-tenant violated the lease by engaging in illegal drug activity.
- Smith v. Reese*, No. UD-1961203542 (Minn. Dist. Ct. 4th Dist. Jan. 3, 1997): supervised clinic student in the first holding that landlord's disclosure of a box at a private commercial mail collection and distribution center is not an address where plaintiffs could be personally served, in violation of Minn. Stat. § 504.22 (now § 504B.181).
- Edwards v. Zulfe Enterprise*, No. UD-1970310901 (Minn. Dist. Ct. 4th Dist.

June 3, 1997): supervised clinic student in the first decision allowing tenant to deduct the award of attorney fees from rent and pay it to counsel.

1997-1999 *Minneapolis Public Housing Authority v. Lor*, No. UD-1970716525 (Minn. Dist. Ct. 4th Dist. Sep. 10, 1997): trial court concluded that federal legislative history of public housing statutes gave the court discretion to not evict remaining household members who did not have knowledge of excluded household members' illegal activity. On appeal, affirmed in *Minneapolis Public Housing Authority v. Lor*, 578 N.W.2d 8 (Minn. Ct. App. 1998), but reversed in *Minneapolis Public Housing Authority v. Lor*, 591 N.W.2d 700 (Minn. 1999).

1999 *Okoiye v. Washington*, No. UD-1981029901 (Minn. Ct. Dist. June 15, 1999): rent abatement increase for failure to complete repairs; *Washington v. Okoiye* and *Okoiye v. Washington*, No. UD-1981029901 (Minn. Ct. Dist. Oct. 8, 1999): landlord violated shared meter statute where tenant's meter covered her first floor apartment and the common basement which the landlord used for an office and for personal use; landlord violated unlawful exclusion statute by excluding tenant from the basement. Total rent abatements over 2 years: \$12,000.

2001-2002 *Walters v. Demmings*, No. C4-01-2, 2001 WL 641753 (Minn. Ct. App. June 12, 2001) (unpublished): reversed eviction order and restated the strong retaliation prohibitions in Minn. Stat. § 504B.285 first pronounced in *Parkin v. Fitzgerald*, 307 Minn. 423, 240 N.W.2d 828 (1976).

On remand, *Walters v. Demmings*, No. UD-1001004526 (Minn. Dist. Ct. 4th Dist. Aug. 14 and Oct. 25, 2001, Jan. 30, 2002): denied eviction, held landlord could not force tenant to pay utility bill on a shared meter which included landlord's other utility accounts, credited tenant's payments against rent, and awarded rent abatement, costs, and \$4,500 in attorney's fees and authorized tenant to withhold fees from rent.

2001 *Tri Star Developers, LLC v. Mattson*, No. HC 1011002522 (Minn. Dist. Ct. 4th Dist. Oct. 16, 2001): supervised clinic student in the first decision to hold landlord's failure to obtain a rental license is a jurisdictional defect in a nonpayment of rent eviction case, requiring dismissal.

Smith v. Floy, No. HC 010829900 (Minn. Dist. Ct. 4th Dist. Dec. 14, 2001): Landlord held in contempt of court for failing to reimburse tenant as ordered by the court for apartment rented to tenant while condemned, and ordered to jail if landlord continued to violate the court's orders.

2002 *Minneapolis Public Housing Authority v. Valtierra*, No. HC 1020710513 (Minn. Dist. Ct. 4th Dist. Aug. 2, 2002): first Minnesota decision holding that a public housing authority cannot bypass its administrative grievance process for criminal activity in an eviction involving possession of a small amount of marijuana,

which is not a crime.

2003 *Senogles v. Tran*, No. HC 03022020901 (Minn. Dist Ct. 4th Dist. May 22, 2003): emergency relief action; habitability rent abatement award of \$4,500, with \$2,000 disbursed from court and judgment for \$2,500.

Dominium Management Services, Inc. v. C.L., No. A03-85, 2003 WL 22890386 (Minn. Ct. App. Dec. 9, 2003): supervised work responding to landlord's appeal of eviction decision; Court affirmed rulings that eviction notice was retaliatory, that defendant was disabled, and that the landlord failed to reasonably accommodate the tenant's disability under federal law.

2004 *Harris v. _____*, No. HC 031022502 (Minn. Dist Ct. 4th Dist. Dec. 15, 2003, Jan. 9, and Feb. 6, Mar. 3, Mar. 17, 2004): landlord imprisoned for contempt in violating eviction settlement.

Erin Realty v. _____, No. HC 030918514 (Minn. Dist Ct. 4th Dist. Mar. 16, 2004): supervised clinic student in first decision that a landlord may not obtain a writ of recovery for failure to pay future rents not alleged as due in the complaint, as it would constitute a waiver of the tenant's right to the protections of the eviction process in Minn. Stat. Ch. 504B and the right to raise defenses to the landlord's claim as to nonpayment of future rents.

St. Louis Park Place, L.L.C. v. _____, No. HC 1031015540 (Minn. Dist. Ct. 4th Dist. Nov. 12, 2004); *Brooklyn Park Housing Associates, L.L.P. v. _____*, No. HC 040218503 (Minn. Dist. Ct. 4th Dist. Oct. 14, 2004): supervised clinic students in a series of decisions expanding the court's common law inherent power expunge court files under *State v. C.A.*, 304 N.W.2d 353 (Minn. 1981); *State v. Schultz*, 676 N.W.2d 337 (Minn. Ct. App. 2004), *State v. T.M.B.*, 590 N.W.2d 809 (Minn. Ct. App. 1999).

2005 *Pollard v. Southdale Gardens of Edina Condominium Ass'n., Inc.*, 698 N.W.2d 449 (Minn. Ct. App. 2005): co-counsel in successful appeal holding that held that mere existence of nonwaiver clause in bylaws did not preclude residents from asserting claims that association and board were equitably estopped from enforcing rule, and did not preclude residents' claim that association and board violated duty to treat all residents equally; and that resident had standing to bring action even though resident did not own unit in which he resided.

2006 A series of decisions on judicial review of a new Housing Court referee's decisions:

Meldahl v. McIntosh, No. 1050923509 (Minn. Dist. Ct. 4th Dist. Feb. 23, 2006): co-counsel in successful judge review of a new housing court referee's decision,

resulting in dismissal of an eviction action for commencement in the name of the landlord's agent, improper service by the plaintiff's agent, failure to service the Section 8 office, improper representation of a corporation by a non-attorney, failure to comply with housing court rules, waiver of breach by acceptance rent, and application of the covenants of habitability.

Peters v. Tillmon, No. 060306506 (Minn. Dist. Ct. 4th Dist. Apr. 10, 2006): co-counsel in judge review reversal of referee decision ordering tenant to pay rent into court in Section 8 voucher eviction case where landlord failed to notify the Section 8 office as required by regulation.

Humphrey v. Knox, No. HC 031015540 (Minn. Dist. Ct. 4th Dist. Apr. 26, 2006): co-counsel in judge review reversal of referee decision to evict tenant after tenant had successfully litigated habitability defense.

Himraj v. Mayfield, No. 1060117546 (Minn. Dist. Ct. 4th Dist. Apr. 27, 2006): co-counsel in judge review reversal of referee decision requiring tenant in eviction action to pay the full rent and costs to redeem the tenancy where the tenant proved a violation of the statutory covenants of habitability.

Ali v. Brown, No. HC 600223537 (Minn. Dist. Ct. 4th Dist. May 16, 2006): judge review reversal of referee decision denying statutorily required costs to prevailing tenant in eviction action.

2007 *Stewart v. Anderson*, No. A06-1878, 2007 WL 2366528 (Minn. Ct. App. Aug. 21, 2007): supervised work responding to landlord's appeal of eviction decision; Court affirmed rulings by district court judge that housing court referee erred in receiving the landlord's late exhibits but refusing to receive the tenant's late exhibits, and requiring expert testimony for tenant's lay testimony regarding her observations of sounds of rodents, foul smells, and grease stains on personal property removed from the dryer.

2008 *Sakala v. _____*, No. 27-CV-HC-08-6156 (Minn. Dist. Ct. 4th Dist. Sep. 9, 2008): successful judge review of referee order for eviction, where the referee made no finding or conclusion on whether the landlord complied with the Minn. Stat. § 504B.181 disclosure requirements, the referee allowed the landlord to reply entirely on hearsay, the referee raised claims not raised by the landlord and stepped into the role of representing a landlord who already had counsel against a *pro se* tenant. The reviewing judge reversed the referee and dismissed the eviction action for landlord's failure to post address information until two weeks after filing the eviction action.

2008-09 *Minneapolis Public Housing Authority v. Vann*, No. 27-CV-HC-08-10954 (Minn. Dist. Ct. 4th Dist. Sep. 21, 2009): successful eviction defense of a public

housing tenant for possession of a small amount of marijuana a mile away from the property, with no allegations that the tenant had ever done anything wrong on the property. The lease provision created by federal statute allows for eviction for drug-related criminal activity on or off of the property, with no geographic limitation. A small amount of marijuana is a petty misdemeanor offense, and not a crime under state law. The court granted judgment for the tenant, concluding on reconsideration that Congress did not intend the definition of drug-related criminal activity to cover non-criminal illegal activity, and that the legislative history supported consideration of the circumstances.

2008-10 *Kutscheid v. Emerald Square Prop., Inc.*, 770 N.W.2d 529 (Minn. Ct. App. 2009): supervised work on tenant's rent escrow action over violations of utility shared meter billing regulations in Minn. Stat. § 504B.215, successful appeal of housing court referee's denial of remedies, and successful remand for damages.

2010 *Public Housing Agency of the City of Saint Paul v. Edwards*, No. A09-2085, 2010 WL 3544770 (Minn. Ct. App. Sep. 14, 2010): consulted on work responding to landlord's appeal of eviction decision; Court affirmed rulings by housing court referee in finding that the landlord failed to prove a breach of lease.

Bryant Manor Apartments, LLP, v. _____, No. 27-CV-HC-08-8492 (Minn. Dist. Ct. 4th Dist. Nov. 18, 2010): supervised clinic student in reversal of a referee eviction expungement denial, where the referee took testimony from the landlord but not the tenant and then did not properly apply the common law inherent authority standard.

2011 *Trim v. Inmotion Property Management and Conoryea*, No. 62-HG-CV-11-877 (Minn. Dist. Ct. 2nd Dist. May 10, 2011): supervised student in one day trial in a rent escrow action based on a ceiling collapse from an unattended roof ice jam and exposed nails and inadequate basement air temperature and hot water temperature, after which the referee signed our 9 page proposed order with slight modifications, ordering completion of repairs and awarding \$1500 in rent abatement, costs and disbursements.

Isackson v. _____, No. 62HGCV11-819 (Minn. Dist. Ct. 2nd Dist. April 15, 2011): supervised student in an eviction action for nonpayment of rent, in which we answered with defenses including excessive late fees, waiver of obligation to promptly pay rent due to repeated acceptance of irregular payments, and violation of the Fair Debt Collection Practices Act (FDCPA) by the attorney requesting \$75 in attorney fees while the state eviction statute provides for attorney fees not exceeding \$5.00, and we settled for installment payments, dismissal of the landlord's parallel conciliation court action, mutual rescission of the lease in two months, and no payment of the landlord's filing, service and late fees, with the tenant preserving the \$2000 FDCPA claim against the attorney for

two violations of the Act.

Spann v. Pauluk, 27-CV-HC-11-1462 (Minn. Dist. Ct. 4th Dist. Mar. 30, 2011): supervised clinic student in a rent escrow action case, resulting in an order completely abating the \$850 rent for March 2011 and until further order of the court, due to multiple repair problems and the landlord's failure to appear in court.

ORGANIZATIONS AND COMMITTEES

- Hennepin County Housing Court Bench and Bar Committee, Current and Founding Member
- Volunteer Lawyers Network, Current Housing Committee Member, and Past Member of Board of Directors and Housing Committee Co-Chair
- Minnesota State Bar Association Legal Assistance to the Disadvantaged Committee, Subcommittee on Law Student Initiatives
- Minnesota State Bar Association Civil Gideon Task Force
- St. Paul Area Coalition for the Homeless, Member
- Minnesota Legal Services Coalition Housing Task Force
- Minnesota State Bar Association Real Estate Committee
- Hennepin County Bar Association Landlord-Tenant Committee, Past Chair
- Ramsey County Bar Association Real Estate Section
- Minnesota Justice Foundation, Past Member of Board of Directors
- National Lawyers Guild, Minnesota Chapter, Past Steering Committee Member
- Access Press, Volunteer
- Alliance of the Streets, Volunteer
- Arc of Minnesota, Volunteer
- Children's Law Center, Volunteer
- Highland Friendship Club, Volunteer
- Home Line, Volunteer
- KBEM Radio and KFAI Radio, Volunteer
- Masonic Home Care Center, Volunteer
- Minnesota Coalition Against Sexual Assault, Volunteer
- Minnesota Distance Runners Association, Volunteer
- Minnesota Women Lawyers, Volunteer
- North Central Chapter of the Arthritis Foundation, Volunteer
- Northern Elite Adaptive Cheer, Volunteer
- Special Olympics Minnesota, Volunteer
- St. Paul Jewish Community Center, Volunteer
- Thanksgiving Meals on Wheels, Volunteer
- Wellstone Action, Volunteer