Legal Representation and Housing Court Cases in the United States

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State courts across the United States increasingly encourage the use of limited assistance representation—in which a licensed attorney offers a reduced set of legal services, usually during a critical time in the case—as a means of promoting access to justice and to help individuals representing themselves manage their cases. Researchers partnered with an anonymous legal aid provider to evaluate the impact of full representation compared to limited assistance representation on case outcomes for renters facing eviction. The offer of full representation did not improve legal outcomes for renters, perhaps because the attorneys providing complete legal services adopted a facilitative, non-confrontational approach.

Problema de política pública

State courts across the United States increasingly encourage “unbundled” legal services, or limited assistance representation by an attorney, as a means of promoting access to justice and to help individuals representing themselves manages their cases. In providing unbundled legal services, a licensed attorney offers a reduced set of legal services, usually during a critical time in the case—such as during pretrial sessions—and the client represents themselves during all other stages of the case. Consequently, unbundled legal services require less time from attorneys than traditional attorney-client relationships, which provide support throughout the duration of the case. In the case of paying clients, unbundled services can make legal representation in court more affordable. In the case of the clients who cannot afford to pay for legal services, unbundled services offer the possibility of attorney time, a scarce resource, across a wider range of eligible potential clients. This might improve legal outcomes for individuals who cannot afford full legal services, who would otherwise represent themselves through the duration of the case. But, little is known about how unbundled legal assistance compares to the traditional package of services attorneys provide clients. Does full representation result in better legal outcomes than unbundled legal services?

Contexto de la evaluación

This study focuses on Massachusetts’s Housing Court, a specialty court that primarily hears eviction cases. Among cases in this study, 60 percent occurred because the landlord claimed the tenant had failed to pay rent, the most common complaint. In 27

percent of cases, landlords wanted to evict tenants for misconduct, and in 12 percent individuals continued to occupy a home after foreclosure.

Massachusetts eviction proceedings are designed to rule quickly on who has the right to occupy a housing unit. Within the particular Housing Court in this study, eviction cases typically do not come before the judge unless the parties first complete a mediation session, which commonly results in a settlement. A court-employed housing specialist runs the session and performs a variety of functions, including: answering evictors' and occupants' questions, investigating the facts of case, suggesting settlement terms, and predicting how the judge would rule on the case. If the housing specialist is unable to facilitate an agreement, the judge hears the case and often cajoles the parties into an agreement before ruling. Alternatively, evictors and occupants can negotiate on their own, a process that often occurs in the courthouse hallway on the day of the hearing.

Detalles de la intervención

Researchers partnered with an anonymous, medium-sized legal aid provider to evaluate the impact of offering full representation compared to unbundled legal services on outcomes in eviction cases. Occupants facing eviction from their housing units who contacted this provider were first invited to participate in an instructional clinic on the eviction process, which included help in filling out forms for cases in litigation, or to hold a meeting with a provider staff attorney. Researchers randomly assigned 184 occupants that had participated in the provider's clinic or met with its attorneys to one of two groups:

Full Legal Support Group: The 85 occupants randomly assigned to this group received an offer of full legal support from a provider staff attorney throughout the entire legal process, essentially a traditional attorney-client relationship.

Lawyer for the Day (LFTD) Group: The other 99 occupants received an offer to utilize the provider's LFTD program, their standard unbundled legal services. For this study, LFTD provided eligible households with representation in hallway settlement negotiations and mediation sessions on the day of court hearings, but did not provide assistance in filing motion or in the court room.

To measure the impact of an offer of full representation compared to unbundled legal services on case outcomes, researchers tracked case outcomes through telephone surveys and court records.

Resultados y lecciones de la política pública

Most occupants accepted offers of full or unbundled legal services, though some chose to instead represent themselves entirely. Over three-quarters of occupants assigned to the Full Legal Support Group obtained full representation, compared to 7 percent of the LFTD Group. Within the LFTD group, 56 percent utilized the LFTD compared to almost no one in the Full Legal Support Group.

Occupants offered full representation received 10.7 additional hours of their attorneys' time, compared to the 1.7 hours attorneys spent on cases of the LFTD Group on average. Attorneys reported using the additional time for research, meeting with clients, requesting inspections of housing units, and negotiating with evictors' attorneys. They avoided aggressive legal actions such as filing pretrial motions to delay the case and asking for juries. But, the additional legal services did not lead to better legal outcomes. Specifically, individuals offered full legal representation had an equal chance of retaining the right to occupy the property as those offered the LFTD program.

Several aspects of the specific context might have led to these results. That full representation did not outperform unbundled legal assistance could reflect the strength of the particular provider's LFTD program. Or, the lack of impact could stem from characteristics of the Housing Court's proceedings. The mediation session, which tended to be actively and forcefully led by a housing specialist, as well as the judge's encouragement to settle, may have limited attorneys' ability to influence the outcome. Moreover, drawing on the results of a related randomized evaluation conducted by the researchers in a Massachusetts District

Court, the researchers question whether style of litigation adopted by provider attorneys' best served their clients. In the District Court evaluation, occupants assigned to full representation were more likely to maintain to right to live in the unit and pay less in settlements relative to the comparison group, which did not receive an offer for full representation or unbundled legal services. The attorneys employed by the provider for the District Court evaluation employed more confrontational legal tactics to pressure the evictor compared to the facilitative, non-confrontation approach pursued by provider attorneys in Housing Court. This suggests that a more assertive style may result in better settlement terms for occupants. Since researchers were unable to isolate the impact of the intensity of legal services from the style of the attorneys, more research is needed to determine the effectiveness of full relative to unbundled legal services.

Greiner, D. James, Cassandra Wolos Pattanayak, and Jonathan Philip Hennessy. "How Effective Are Limited Legal Assistance Programs? A Randomized Experiment in a Massachusetts Housing Court." Working Paper, September 2012.