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## Attorneys: Cook County eviction court proceedings are 'black box'

The odds of winning in eviction court are stacked against tenants; a lack of transparency is part of the problem.

By Maya Dukmasova [@mdoukmas](#)



Cook County sheriff's deputies conduct an eviction in Park Forest in 2008.

JOSEPH P. MEIER/SOUTHTOWN STAR

*This is part two of a two-part series. Read part one here.*

Every week hundreds of tenants and landlords file through five stately, wood-paneled eviction courtrooms on the 13th and 14th floors of Chicago's Daley Center. The courtrooms create an atmosphere of neutral officialdom. But legal observers say that what happens inside them is more or less a mystery.

Last week we brought you the story of Rosalinda Hernandez, a low-income renter who, like many others in Chicago, never had a lease. Hernandez was evicted from her apartment of eight years on the gentrifying northwest side when a new owner bought her building. After a three-month battle against an eviction order, a judge

ultimately sided with her landlord. In July she was forcibly removed from her apartment by the Cook County sheriff's office.

It's impossible to faithfully reconstruct what happened during Hernandez's eviction court proceedings, because there was no court reporter present to make transcripts. This is the norm in Cook County. The absence of systematic record keeping for eviction trials means that both plaintiffs and defendants lose any meaningful opportunity to appeal judges' decisions. If judges behave inappropriately or misinterpret the law, there's no way to hold them accountable. Meanwhile, the lack of systematic record keeping about even the most basic things, such as the number and types of eviction cases filed every year and their outcomes, makes it difficult for legal observers and the press to get an accurate, big-picture sense of what's happening.

The lack of transparency and paucity of good data aren't the only problems with eviction court, according to attorneys and legal observers. There are also problems that disproportionately harm tenants. The vast majority of tenants don't have access to a lawyer; many don't understand they're at risk of losing their homes. Because of the way complaints are filed, tenants are often summoned to court with no information about the basis for the eviction proceedings. And according to the most recent study of Cook County eviction court, judges make decisions about evictions in an average of less than two minutes—and they almost always side with landlords.

Mark Swartz, director of the Lawyers' Committee for Better Housing, a group that provides pro bono legal aid to a few hundred people facing evictions every year, calls eviction court "a black box."

"We don't know how many people have attorneys," Swartz says. "We don't know how many [eviction cases] went to judgments. We don't know how many people were evicted by the sheriff. We don't know how many people were able to land on their feet, how many people had to leave their communities, how many people had to pay more rent. We really don't know any of that, because no one is following that."

Though it's possible to track down the number of eviction filings through the office of the chief judge of the Circuit Court of Cook County, and the number of actual evictions performed by the Cook County sheriff's office is also available, this information isn't systematically aggregated or reported by any agency. There's also no data breaking down the reasons landlords seek to evict tenants.

Here's what little we do know: the Lawyers' Committee published the most recent comprehensive report on eviction courts in Cook County in 2003. Based on observations of nearly 800 eviction cases, researchers found that the average eviction trial took just one minute and 44 seconds.

"The most salient feature of the data collected is the unbelievably short time period in which matters of profound impact on individuals' human dignity are decided," the report's authors wrote.

Tenants have a right to a jury trial, but just 3 percent requested that option. And while having a lawyer helped tenants buy more time before eviction, it still didn't put the odds of winning a case in their favor. (That said, the report also notes that so few defendants had a lawyer—just 5 percent of the sample, compared to 53 percent of landlords—that this finding may not be statistically significant.) In cases where tenants were being evicted for nonpayment of rent, two-thirds didn't present defenses for themselves in court. And when they did—citing reasons such as poor conditions in their rental unit or a landlord's refusal to accept their rent—"the defense raised made no difference to the outcome: the tenant always lost," according to the report.

Since proceedings happen so quickly and defendants so frequently lack legal counsel, the opportunity to appeal eviction rulings is especially important. However, this is nearly impossible without court reporters.

Appellate courts can accept affidavits describing what happened during the initial trial from "bystanders," or people who happened to be in the courtroom while proceedings were going on, but "virtually no one has ever used [this provision]," says Malcolm Rich of the Chicago Appleseed Fund for Justice, a court watchdog and policy group. The odds of a random "bystander" being someone who understands the proceedings and could give a detailed and faithful account of what happened during a trial are low. As things stand, "there's no effective means to have an appeal," Rich says.

Eviction courts once had court reporters, just as every criminal courtroom does today. But they were taken away by order of Cook County chief judge Timothy Evans in 2003 for lack of state funding.

"The state has only funded court reporters when a record of the proceeding is required to be made by statute or rule," Evans's spokesman Pat Milhizer explains in an e-mail.

Currently the state requires court reporters to be present in all criminal cases, but only in civil cases involving involuntary mental health commitment or divorce proceedings in which children testify. Electronic recording equipment is funded only for domestic violence courtrooms, juvenile court, and misdemeanor traffic court.

Rich is now leading an effort to get electronic recording equipment into eviction court through a grant from the Illinois Supreme Court. However, with another budget standstill looming, the effort is unlikely to yield results anytime soon. According to Milhizer, Evans strongly supports the Appleseed Fund's efforts.

The lack of appeal opportunities can pose tragic consequences for anyone who loses his or her rental unit unfairly. But evictions are particularly detrimental to families who live in subsidized housing.

"Evictions are not a symptom of poverty—evictions are actually a cause," says attorney Lawrence Wood, director of the housing practice group at the Legal Assistance Foundation. The foundation provides pro bono eviction–court representation to tenants who live in public housing or have a Section 8 rental–assistance voucher. "[Evictions are] especially devastating in the subsidized housing context because the person doesn't just lose the unit—they're going to lose the subsidy."

In 2013 the foundation represented Nicole King, a single mother of two who lived in a Section 8 apartment and was facing eviction for being behind on her rent. According to court documents, King first came to eviction court, without a lawyer, after a misunderstanding with her landlord about how much rent she owed. The landlord claimed King owed several hundred dollars. King spoke with the landlord's lawyer outside of court and the two came to an agreement.

But King later said that she didn't understand the terms. King thought that she would be allowed to pay the rent she owed and stay in the apartment. The landlord's lawyer denied making such an offer, and said that King had agreed to pay what she owed and vacate the unit. The next time King came to court, she came with a lawyer from the foundation and a court reporter hired for the occasion.

In the resulting transcript from the hearing, King's attorney argued that the agreement between King and the landlord's attorney shouldn't be enforced because there had been no meeting of the minds, since King hadn't understood the terms to which she was agreeing. Besides, her lawyer argued—she was prepared to pay all the rent the landlord claimed she owed. The landlord's lawyer, however, said that the property manager no longer wanted King in the building, because of alleged misbehavior by a guest of King's. Her lawyer objected, arguing that these new allegations had nothing to do with the original grounds for eviction.

Here, as Wood puts it, is where things became "shocking." As the transcript attests, Judge Martin Moltz responded to King's lawyer's objection by saying, "I'm going to allow pretty much anything in here"—meaning he'd consider the anecdote about a guest's alleged misbehavior as evidence against King, citing an Illinois statute that relaxes the rules about what can be considered relevant evidence. But this statute applies only to informal hearings on small–claims cases, which eviction cases aren't.

After overruling King's lawyer's objection, Moltz also openly states that he enforces agreements such as the one between King and the property manager even when he knows an unrepresented tenant

didn't understand the terms: "[I]n virtually 90 percent of the cases where there's an agreement, one side is generally an attorney and one side is pro se [i.e., self-represented], and it's very often that somebody doesn't understand it, but we generally enforce them."

Finally, Moltz says that even though, in King's case, he would have been inclined to side with her—knowing she hadn't understood the terms—and nullify the agreement, due to the nature of the testimony about her other alleged lease violations he has decided to side with the landlord.

Wood was astounded, he says, both by the judge's incorrect citations of Illinois laws and his open admission that he would enforce an agreement he knew one side hadn't understood. The foundation appealed the case and won, preserving King's access to subsidized housing and saving her record from the scarlet letter of an eviction.

"The appellate court found that Judge Moltz had abused his discretion," Wood says.

Moltz didn't respond to a request for comment.

"I think that the King case is important because it shows why it's so important that there be a record of what's going on in the [eviction] courtrooms," Wood explains. "If we hadn't brought a court reporter, we would never have prevailed on appeal. When there's no record in these cases, judges are not motivated to follow the proper procedures in the law. It encourages judges to take shortcuts. And many will not do that, but some judges will. I think the bad judges need to know that their actions are being recorded so they will follow procedures."

And though the chief judge's office and legal aid groups provide some educational resources and consultation services at the Daley Center to help tenants navigate eviction court, observers say these aren't enough, especially in the face of judicial bias.

"I've been going to eviction court for 40 years, and I have to say the judges assigned to eviction court in general are unsympathetic to the tenants," says Loyola Law School professor Henry Rose, one of the original drafters of Chicago's Residential Landlord and Tenant Ordinance. "I think the circuit court judges tend to be much more protective of landlord interests. . . . That bias has been in the system for decades."

According to the DePaul Institute for Housing Studies, the share of households renting in Chicago is on the rise; now is a good time to start paying closer attention to the rules and procedures governing landlord-tenant relations. As recently reported in Matthew Desmond's authoritative study of Milwaukee, evictions are one of the most significant contributing factors to entering and remaining entrenched in poverty. And since no-fault evictions are permitted in

Chicago, any tenant could one day find him- or herself in eviction court. This underscores the need for better data, more attention, and more resources for people going through this process.

"It's an issue that makes a difference as to the vitality of a community, so it's unfortunate that there has not been more public attention paid," says the Appleaseed Fund's Rich. "It's time to start."



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