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ELIZABETH A. BROWN
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**From:** Lydia Nussbaum <lydia.nussbaum@unlv.edu>
**Sent:** Wednesday, September 16, 2020 3:07 PM
**To:** Supreme Court Clerk
**Subject:** Comments re: ADKT 0567

I write to briefly summarize what research shows us about 1) the benefits of mediation as an eviction-prevention strategy and 2) important program design considerations to ensure it works for all participants--landlords and tenants alike.

**1. How mediation can help:**

- mediation can help landlords avoid the hassle, the delay, and the expense involved in waiting for court filings to be processed and for a court-ordered eviction. Granted, summary eviction processes are more streamlined than other kinds of small claims or civil litigation procedures, yet they are not entirely without burden, particularly for self-represented landlords who may not have the business margin to cover costs of filing fees, attorney fees, additional fees for the actual eviction, costs of preparing the property for a new tenant.
- mediation can help tenants reach agreements that include flexible payment plans, reductions in the amount owed, tailored timelines for move-out in order to find new housing that does not interfere with children's school, as well as avoiding an eviction judgment on their record that could affect future rental opportunities.
- In additional to these pragmatic considerations for why mediation can be an effective way for both landlords and tenants to find alternatives to Court-ordered eviction, there is also the important benefit of having voice:
    - Mediation offers a relational, problem-solving process. Many landlords and tenants know each other (indeed they may even be relatives!). Court processes simply cannot offer this same opportunity for direct conversation between landlords and tenants that gives each person the opportunity to tell their story and be listened to. Because of this opportunity to speak, studies show that the overwhelming majority of participants in landlord/tenant/summary eviction mediation felt heard (83%) by the other side, had enough time to say what they wanted to say (92%), discussed all the issues that brought them to the Court in the first place (88%), did not feel pressured to reach an agreement (81%), would recommend the ADR process to others (86%), were satisfied with the mediation (89%), and were glad that ADR services were available (85%).
- Resources:
    - Deborah Thompson Eisenberg & Noam Ebner, *Disrupting the Eviction Crisis with Conflict Resolution Strategies*, 41 Mitchell Hamline Law Journal of Public Policy and Practice 125, 130-134 (2020).
    - Karen Tokarz et al., *Addressing the Eviction Crisis and Housing Instability Through Mediation*, 63 Wash. U. J. L. & Pol'y 243 (2020).
    - CENTER FOR DISPUTE RESOLUTION, UNIV. OF MARYLAND FRANCIS KING CAREY SCHOOL OF LAW (C-DRUM), REPORT ON THE 2016 RENT COURT ADR PILOT FOR THE DISTRICT COURT OF MARYLAND IN BALTIMORE CITY (2017), https://digitalcommons.law.umaryland.edu/cgi/viewcontent.cgi?article=1002&context=cdrum_fac_pubs.

**2. Important considerations**

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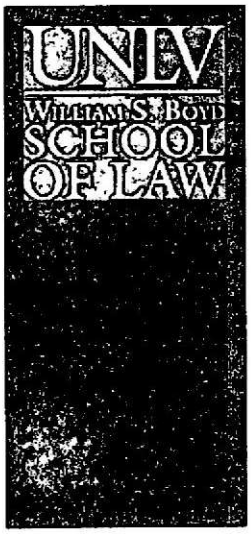
- Should mediation in the landlord/tenant context be mandatory if 1 of the parties requests it or should it occur only if both parties agree?
    - One study of purely opt-in mediation (both parties had to agree) found that parties in half (50%) of all cases attempted mediation when it was an option and found positive results. In contrast, another study found that in a mandatory mediation program for landlord/tenant disputes many more cases (75% to 95%) resulted in mediated agreements, of which roughly 70% resulted in permanent resolution. (*See* Tokarz et al., Addressing the Eviction Crisis and Housing Instability Through Mediation, at 253-254).
    - As a general matter, in studies of mediation for civil cases, whether or not mediation is court-mandated or voluntary was found to make no difference in the size or nature of the mediated outcome, compliance with the agreement, improvement of the litigants' relationship or their assessment of the process, the mediator, or the outcome (Roselle L. Wissler, *The Effectiveness of Court-Connected Dispute Resolution in Civil Cases*, 22 Conflict Resolution Quarterly 55 (2004); Roselle L. Wissler, *Court-Connected Mediation in General Civil Cases: What We Know from Empirical Research*, 17 Ohio St. J. Dispute Resol. 641, 681-682) (2002)).
    - However, an important consideration for the success of a mandatory mediation program is whether both parties have incentives to reach a mutually beneficial agreement, together, rather than go through the Court process. As an example, one study of mediation between landlords/tenants of mobile homes, compared outcomes between programs when parties participated voluntarily/involuntarily. The study found that mandating mediation when both sides of the dispute were not motivated to avoid Court was not an effective use of the process. (Bruce Stiftel, *Mediation of Mobile Home Landlord-Tenant Dispute: An Assessment of Government Agency Implementation of Mediation*, 14 Mediation Quarterly 53 (1996).
    - The success of a mediation program designed to avoid summary eviction through the Courts relies upon buy-in from the landlords and tenants. An important element of the proposed program is to build-in connection to rental assistance programs. Hopefully this program design feature will incentivize all parties to come to the negotiation table.
- What is the mediator's role in landlord/tenant mediations?
    - Landlord/tenant cases, like many other kinds of disputes, bring with them ingrained, built-in power imbalances between the parties and can also be emotionally challenging for landlords and tenants alike. Such cases are ethical minefields, even for experienced mediators, as the temptation for mediators to superimpose their own judgment on that of the parties, to slip from neutral to advocate, can be powerful and difficult to resist.
    - Individuals who are trained mediators abide by professional codes of ethics to respect party self-determination and ensure that it is the parties who are directing decisions about whether the case resolves or not. Often, mediators are defined more by forbearance than by action -- by what they cannot do than what they can do -- they cannot advise, they cannot judge, they cannot assign fault or blame. But what mediators do is to forge lines of communication, to ensure individuals are heard, to help parties brainstorm and consider their available options, and to make choices that are informed.
    - In order for mediators to serve in their professional role as non-judgmental, neutral third parties, both landlords and tenants need to come to the table prepared to bargain. That requires they are fully informed about the legal, financial, and relationship consequences of agreeing to resolve the matter outside of court or not. A successful program will need to ensure up-stream support for landlords and tenants.
    - Resources: Eisenberg & Ebner at 137-146.

Thank you for the opportunity to share these comments.

With sincere regard,

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