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An Interview with Charles Holton

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SPECIAL PRESIDENTIAL INAUGURATION ISSUE 2017: AN INTERVIEW WITH CHARLES HOLTON

INTRODUCTION

Many important economic indices show that the economy has improved markedly under the Obama administration, but, there are communities that are still struggling with loss of jobs and housing. Courts are seeing an increased number of eviction cases presenting some very serious concerns, particularly for the tenants. However, the evictions can be reduced, and educating the judges, tenants and landlords is the first step. The struggling tenants can seek public funding or legal aid available in their counties that provide alternatives to eviction, but unfortunately, the cutbacks in funding to legal aid organizations have affected many states of late. The State of North Carolina is an example, where the funding level has dropped 80% over the past few years. The new federal administration in 2017 should consider the social consequences when reducing the budgets for legal aid at the federal and state levels.

On behalf of the *Emory Corporate Governance and Accountability Review* (“ECGAR”) for the Pre-Presidential Inauguration Edition, Prasad Hurra¹ and Zalak Raval² interviewed Mr. Charles Holton, Director of the Civil Justice Clinic at the Duke University School of Law. Mr. Holton was named the Pro Bono Attorney of the Year for 2013 by the North Carolina Bar Association. This interview is about the legal battles of the individuals and the communities that have suffered the impact of homelessness.

¹ Prasad Hurra is a JD Candidate '17 at Emory University School of Law. Previously, a civil litigator in India for over five years, Prasad got his LLM from Duke University School of Law in May 2015. Nicholas Torres, the Editor-in-Chief of ECGAR, would like to thank Prasad Hurra and Reuben Guttman, ECGAR's co-founder and Senior Advisor, for their contributions to ECGAR. Prasad and Reuben originally approached Nicholas regarding this Special Issue of ECGAR. Prasad spent countless hours editing, communicating, and managing editors. Prasad also stood in as Editor-in-Chief during part of the production period for this Special Issue. Owing largely to Prasad's passion, determination, and work ethic, ECGAR was able to produce the largest issue in its short history. It is fair to say that Prasad has played an invaluable role in advancing ECGAR's growth as one of Emory Law School's student-edited journals.

² Emory University School of Law, J.D., Candidate 2018; Best Appellant Oralist for 1L Class G. Alan Blackburn Moot Court Competition at The Georgia Court of Appeals; 2L Arbitration Team, Emory Alternative Dispute Resolution Society; 2L Law Review Member, Emory Corporate Governance & Accountability Review; Candidate, Transactional Law Skills Certificate; B.A. Political Science and International Affairs, George Washington University. I would like to thank my parents, Javnika Raval and Naresh Raval and my husband, Mehel Patel for all their love and support; I wouldn't even be half the person I am today without their guidance.

I. INTERVIEW

Prasad Hurra: In general, what are your thoughts about eviction cases? What are the laws that are applicable and other issues that you think are concerning, in relation to eviction cases?

Charles Holton: From my observation there has been a growing crisis with regard to evictions. It is multi-faceted. It has to do with landlords wanting to move out tenants who are perhaps paying lower rent than what landlords might otherwise get. It has to do with the state of the economy and a number of other factors. But, the net result is that our courts are seeing an increased number of eviction cases, and those cases present some very serious concerns, particularly for the tenants. They are often dealing with a lease that has likely been drafted by the landlord's attorneys with numerous complicated provisions in it, and those provisions may sometimes be illegal.

The tenant rarely has the opportunity for any kind of legal review of the lease before an eviction proceeding is brought on for hearing by the landlord. Usually, it is very short process, often allowing only 10 days between filing and hearing. In some cases, the matter simply involves the issue of non-payment of the rent. In such a situation, the landlord does not have to wait an extended time to move a tenant out and get someone in who will pay the rent.

On the other hand, there are many other more complicated cases where the tenant is given a very short timeframe to assess what might be done, to seek legal help, and learn if they wish to oppose eviction some way. On top of that, you typically have a David and Goliath situation with regard to the landlord who will often be represented in court by a lawyer, or if not that, a property manager who has done perhaps hundreds of evictions before and is quite familiar with the courthouse, the court procedures, and what needs to be done, as opposed to a tenant who may have never had a moment in civil court before.

I think there is a significant need for availability of legal advice to the tenant. Advice could and should concern an assessment, first, on the legality of the lease. There are leases that I have seen many times that have provisions that are illegal and unenforceable. There are also potential tenant counterclaim issues such as unsafe housing or lack of repairs; there may be issues of discrimination and perhaps retaliation for a tenant complaint that had been made previously—all of those things need to be assessed by an attorney and there needs to be time in which to do that. Some states automatically provide additional time if the

tenant appears at the initial hearing and says that she wants to get a lawyer, but many states do not.

Hurra: I am glad that you bring out the David versus Goliath comparison. In these cases, how does David take on Goliath?

Holton: It is very difficult because it's not really feasible to teach a tenant housing law on the spot, what things to look for, and what they [could] do. If it is just a question of unpaid rent, and there are not any other confounding issues, such as unsafe housing, retaliation, or discrimination, then there is still a need to have systems in place that can perhaps still avoid eviction. There are various studies that show that if there is a judgment of eviction on a tenant's record, it can have serious consequences with regard to the ability to obtain future housing, to obtain public housing benefits, or to obtain credit, as these things will often show up in a background check that examines civil judgments.

It is very significant to avoid a judgment of eviction. Even if it is a situation where paying the rent in a particular situation is not tenable because the tenant simply cannot afford it, to be able to negotiate a move out for the tenant, for instance, without going to eviction would be a useful thing to do. Also, there are numerous community agencies that can provide temporary rent assistance, especially if the situation is such that the tenant has fallen short of cash on a temporary basis, but has the long-term prospects of being able to pay rent. We have found that in most communities, there are often a number of sources of emergency rental funds available, but no one really takes the time to coordinate the sources and tap into them. We were shocked by a recent study we did here, in North Carolina, [to find] that there are rental emergency funds that go unspent from year to year. Given the growing number of evictions that take place, that is a disturbing thing and suggests a lack of coordination. To go back to your question, sometimes what is really needed is someone familiar with the benefits that are available, and who has the time and capacity to coordinate those benefits, in order to help the tenant and landlord out of a situation that may be just temporary in nature.

Hurra: The mayor of New York has doubled spending for legal aid to fight evictions to more than 13 million dollars a year. A bill pending approval by the city council would require the city to spend more than a hundred million dollars annually. How would this substantial investment in legal aid benefit tenants facing eviction? Do you think it would be solely geared towards legal counsel or would coordination for emergency rental funds be a better way to solve this problem?

Holton: Ideally, I think it would be divided among several of those buckets. I think there would be significant need for legal counsel to be funded through legal aid. Frankly, I think legal aid or agencies like legal aid, do this all the time and are much more efficient in their ability to represent a large number of tenants than private attorneys who might see these cases only occasionally. A significant portion of that money ought to go to Legal Aid agencies. But, in addition to that, the role of the coordinator, who, for instance, might be a social worker from the Department of Social Services in a given community, needs to be someone who is familiar with the community assets and has the ability to negotiate with the landlord as well as with tenants, acting as an intermediary to help negotiate and resolve the issues. I observed a program in Michigan where there was a social worker with the Department of Social Services who was actually placed in the courthouse on the days when housing cases came up. She worked there the entire day and dedicated several other days of the week primarily to working out eviction cases to avoid the consequence of eviction judgments.

A final bucket where the funds might be placed would be for emergency rent assistance, available when someone has a health problem, when someone loses their job but is employable, or other similar circumstances, made available to cover rent for a limited amount of time. This would help alleviate the consequence of an eviction or even a move out. First, there is the issue of whether they can even find a place to relocate, and the possibility that they may become homeless. I think that homelessness is well-recognized as a concern in eviction cases and avoiding that outcome is very important if at all possible. Second, even if they are able to find another place to move into, there is a changing of schools if there are children involved, removal from local healthcare providers, in addition to the general disruption of family life that can occur. That is a consequence in and of itself. It is a multi-faceted problem -- not just one of an eviction judgement.

Hurra: Even when tenants are behind on rent, which accounts for the majority of eviction cases, a lawyer could help them remain in their home, but for how much longer? What about a tenant with a history of not paying rent?

Holton: Well, for whatever reason, there are some tenants who simply cannot or will not have the funds to pay their rent. Frankly, there is not much that can be done concerning those tenants. It may be that they are simply in a housing unit that is too expensive for what their budget can afford. It may be that they need a social worker to lead them through the route of housing assistance [that can be provided] by governmental programs [such as] Section-8 rental assistance

or other housing projects assistance. However, I know that Section-8 waiting lists are quite long. At least in our area, there has been a big push in terms of what the government might do to improve housing. One of the most effective things would be to increase the amount of funds available for Section-8 vouchers, with which I agree. Going back to your question, I think that for a certain percentage of these cases, there is not much that lawyers can do for them, and they become more an issue of social work.

Hurra: Do you think a bill that compels landlords to inform potential tenants of all their rights and responsibilities on a contract, before signing the contract, would be sufficient to overcome this injustice?

Holton: Most States have statutes that delineate those rights. Perhaps requiring the rights and responsibilities to be noted on the front page of the lease could be helpful. It will also depend on the tenant's ability to read and understand what those rights and responsibilities are. Unfortunately, in my experience, tenants often pay very little attention to leases and paperwork. If a problem arises, certainly having a written document that they can refer to could be useful and serve to lessen injustice.

Hurra: What are some other means by which the average person can acquire legal information so that they are better equipped to stand up for their rights?

Holton: The Civil Justice Clinic here at Duke Law School is developing a pilot eviction diversion program, in Durham County, which has one of the highest rates of eviction in the State of North Carolina. It is a real problem here. One of the things that we are looking to provide are brochures which will be served on the tenant with the complaint for summary ejection. The brochure would notify the tenant and the landlord of the existence of an eviction diversion program, provide phone numbers that can be called, and a list of information that is needed to evaluate the issues arising from the lease. I think the practice of notifying those landlords and tenants of ways to avoid eviction proceedings is very useful and not very expensive. Another effort that can be made is through public education that would make landlords aware of this eviction diversion program before they ever file their action. This may save landlords several hundred dollars in filing fees.

Hurra: Can you tell us more about the eviction diversion program?

Holton: This program will assess several things. One is the availability of rental assistance from various entities, starting with the Department of Social Services, which will be the single largest payer. There are also a number of private

charities that provide rental assistance, from which we have compiled a list of those that are available in Durham. Another assessment would be the ability of the tenant to pay the specified rent on an ongoing basis. A third assessment would be whether there are any defenses or counterclaims available to the tenant.

Further, we are compiling a list of resources to help landlords upgrade their properties to meet minimum housing standards. Many small-time landlords may have just a few rental properties, and they are not far above the break-even line in economic terms. They may not have the funds to do the needed repairs to the property; there are some funds that can be made available to them through grants, which could be attractive to landlords.

Another aspect that we are working on is talking to the judges in our County about their willingness to take the extra time needed to work out arrangements to avoid evictions. The chief judge can require that a copy of this brochure go out when a summons and complaint are served on a tenant. This brochure would also be given to the landlord when the landlord files the case.

Hurra: If the court should decrease the filing fee or completely avoid them for that matter, why did the county and the city instead increase these fees, given the disproportionate effect such action is known to have on low-income communities?

Holton: In an effort to avoid raising direct taxes to citizens, the legislators have increased the court fees on both the civil and the criminal side. That has a very direct impact on those who would have access to the courts. On the civil side excessive filing fees may discourage filing of valid claims and counterclaims. On the criminal side, as a part of the sentence, payment of court fees can be several hundred dollars. Even though a criminal defendant may not be sentenced to jail, he may be required to pay court costs within a certain amount of time. Upon failing to do so, he gets taken to jail on his revoked suspended sentence or probation. That is a concern, and obviously all of these measures hit the poor in a very unequal way.

Hurra: What actions is the State Justice Department taking to restructure these policies?

Holton: The first issue is simply making judges aware of the Constitutional requirement already settled by the United States Supreme Court, which states that there needs to be an inquiry into the ability to pay before someone can be cast into jail for not paying. Often judges, because of crowded dockets, make very short shrift of that inquiry, if at all. I think that there is a significant

educational component with regards to our courts. There are a lot of studies that show the cost of keeping someone in prison is much higher than whatever might be recovered by the fines and fees that would be paid by the defendant back into the court.

Hurra: A federal judge granted a preliminary injunction to halt arrests for unpaid traffic tickets. How else can federal judges actively participate in setting precedents that favour and help poor defendants?

Holton: It is really going to take lawyers who are aware of this problem and bring more cases [like this] to light. Often, when a case is brought in a state, even though it involves one defendant, it becomes widely publicized within that state, and judges react accordingly. It would require someone to bring the matter before a federal judge, but I think federal judges have had their consciousness raised about the concerns here and the need to do something about it.

Another issue I want to comment on is funding. It is so disappointing to see the cutbacks in funding to legal aid organizations in many states. The stark examples are in North Carolina where the state funding level in 2007 to 2008 for Legal Aid was \$6.1 million dollars. This year, that funding is down to \$933,000. That is a cut of over 80% of state funding, and that is just a part of the Legal Aid budget. There is also funding that comes from Federal sources, particularly the Legal Services Corporation, LSC, which has also been cut. It is very unfortunate that the State is very short-sighted in cutting back the funds that are available for attorneys to help poor people. There are much more expensive, longer-term social consequences of these cutbacks that have been well-demonstrated—such as crime, imprisonment, unemployment, eviction, and homelessness.

Hurra: What do you think is the rationale behind these cuts, and how would you like the new Administration to address this problem?

Holton: I think the rationale is very simple. There are a number of fiscal conservatives who have been elected into office, at both the state and federal level, who have run on the platform that overall government expenditures need to be cut. Sometimes it may be necessary and appropriate to cut bloated budgets, but legal aid has been cut to the bone in our state. There is a significant deprivation of services taking place, and that is going to have enormous social consequences. That is why I say it is short-sighted to make immediate budget cuts without taking into consideration broader social concerns. On the federal level, the federal government can and should be encouraged to increase funding

of programs such as legal aid. It is important for the overall development and protection of society. If our poor become convinced that they have no voice in the courts and that they cannot receive a fair deal in the courts, that is going to lead to all sorts of other consequences in terms of social unrest.