Due Process Denied:
Handling of Hennepin County Eviction Cases at the Brookdale, Ridgedale and Southdale Courts

by

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on behalf of
HOME Line

January 7, 2000

Acknowledgments

David Werblow, an author of the report and the main court observer, was sponsored by the National Association for Public Interest Law ("NAPIL") during the summer of 1999. NAPIL's support, the payment of Mr. Werblow's salary, is gratefully acknowledged.

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About HOME Line

HOME Line is a Minnesota non-profit corporation which originated as a program of Community Action for Suburban Hennepin (C.A.S.H.), a community action program operating in suburban Hennepin County outside the City of Minneapolis. In July 1999, HOME Line's tenant services were spun off from C.A.S.H. HOME Line's programs include a hotline that receives approximately 5,000 calls from tenants each year; a litigation program providing legal representation to suburban tenants, mostly in eviction and lack-of-repair cases; a program of presentations to local high schools to educate the students on becoming knowledgeable and responsible renters; an organizing program, providing staff to facilitate organization of residential tenants, especially at HUD-subsidized complexes at risk of conversion to unsubsidized status. HOME Line also participates in housing policy advocacy at the state and national levels.

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EXECUTIVE SUMMARY AND RECOMMENDATIONS

The Hennepin County District Court hears about 9,000 eviction cases each year. Minneapolis eviction cases are automatically assigned to the housing court at the main courthouse in downtown Minneapolis ("Downtown Court"). A landlord of suburban property may file an eviction case either at the Downtown Court or at one of the three suburban "Satellite" Courts, also known as the "Dale" courts. Cases Downtown are heard by experienced housing court referees. Cases in the Satellite courts are heard by District Court judges who only hear a handful of housing court cases each year.

Anecdotal reports indicated that decisions at the Satellite Courts have been inconsistent and sometimes contrary to law. To test the truth of these reports, a trained observer watched and analyzed 467 eviction-case initial hearings, 255 Downtown and 212 in the Satellite courts.

In the Satellite courts, errors of simple and common black-letter law were noted in 14.0% of the contested cases. In the Downtown court, only one error was noted, a mere 0.7% error rate, and that one error was made by a non-regular referee. The Downtown court was also much more effective at getting parties to settle their cases.

The number of Hennepin County eviction cases has decreased steadily over the past seven years. For 1999, there are 34% fewer eviction cases than in 1992. The Satellite cases represent only about 15% of all eviction cases heard in the county. With little shift in staff, the Downtown court could absorb all the cases now

heard in the Satellite Courts.

Based on this evidence, the time has come to complete the consolidation of the entire housing calendar and have all housing cases heard in the Downtown housing court and its experience referees. This consolidation would:

1. Greatly decrease inconsistent and erroneous decisions in housing cases.

2. Increase the number of eviction cases that settle, a professed goal of the Hennepin County Court.

3. Allow all eviction cases to be set for trial in a predictable way.

4. Simplify post-hearing motion practice in eviction cases.

5. Ensure that all eviction cases would be heard by the same court that now deals with all tenant-initiated housing cases.

For these reasons and more, we strongly urge that the eviction calendars in Divisions II, III, and IV be ended and all eviction cases venued Downtown.

INTRODUCTION

1. The Housing Court system in Hennepin County.

The Hennepin County District Court hears about 9,000 eviction cases each year. About 2/3 involve property in Minneapolis and 1/3 in the suburbs; almost all involve residential property. The vast majority of cases, city and suburban, involve low- or moderate-income tenants.

Minneapolis eviction cases are automatically assigned to the housing court at the main courthouse in downtown Minneapolis ("Downtown Court"). A landlord of suburban property may file an eviction case either at the Downtown Court or at one of the "Satellite" Courts. If a suburban case is filed at the Downtown Court, it proceeds exactly like a Minneapolis case. This dual system is the result of an administrative court decision and is not a statutory requirement.

There are three Satellite Courts. Division II Court or "Brookdale" hears northern suburb cases; Division III Court or "Ridgedale" hears central suburb cases; and Division IV or "Southdale" hears southern suburb cases. About 1,100 eviction cases a year (i.e. about a 1/3 of the suburban cases) are heard at the Satellite Courts.

The Downtown Court was established about ten years ago specifically to bring efficiency and consistency to the handling of housing cases in Hennepin County[1]. Prior to its creation, housing

[1]The legislation also created a housing court in Ramsey county to achieve the same purpose in that county. 1989 Minn. Laws ch. 328, art. 2, s. 17. See Advisory Committee to State

cases were heard by 40 different judges who rotated onto the housing calendar for a one week stint. Id. at 5. Different judges had different levels of housing-law expertise, and outcomes were unpredictable. Id. Since judges rotated, cases requiring continuing jurisdiction and oversight were poorly handled because there was no good centralized system for tracking them and no particular judge in charge. See id. at 2-6.

For the most part, the establishment of the Downtown Court has solved these problems. Id. The court is run by a main housing-court referee, who handles the administration of the court and hears about 3/4 of the cases. Two other part-time referees with extensive housing-court experience handle almost all the rest of the cases.

The one remnant of the old system is the eviction calendars at the Satellite Courts. For reasons based more in history than policy, the Satellite Courts continue to hear about 1,100 eviction cases each year. Like the pre-1989 system, the cases are heard by judges who rotate to the Satellite Courts for one or two weeks at a time. Unlike the pre-1989 system, these judges do not concentrate on housing law even during their stay in Satellite Court. Instead, they mostly hear criminal misdemeanor cases. Squeezed into their criminal calendar is a short calendar of eviction cases. Their housing caseload typically consists of two calendars totalling about 5-30 cases, one calendar on Monday and another on Wednesday

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Court Administrator's Office, Housing Calendar Consolidation Project Evaluation Final Report at 1 (1993) (report produced pursuant to the law that created the housing court as a pilot project, 1989 Minn. Laws, ch. 328, art. 2, s. 17, subd. 8).

or Thursday.

2. Anecdotal evidence indicates that the Satellite Courts do a poor job with housing cases.

As described more completely on page i, HOME Line provides a variety of services to Hennepin County tenants. As part of its tenant-advocacy program, HOME Line operates a hotline which receives about 5,000 telephone calls each year from Hennepin County tenants. In addition, our attorneys regularly appear in court on eviction cases. Thus we have received a great deal of anecdotal information about the housing calendars.

For several years, this evidence has included repeated complaints and incidents of incorrect, unfair, and inconsistent decisions made on the Satellite eviction calendars. In addition, several judges have told us that the limited experience they get in housing matters makes it difficult for them to correctly and efficiently render decisions in the eviction cases before them. Specifically, they have indicated that they would prefer housing cases be venued in front of the experienced housing court referees. In essence, the Satellite (judge-rotation) courts appear to suffer from the same or similar problems as the pre-1989 (judge-rotation) downtown housing court.

3. Eviction cases deserve proper consideration.

This evidence troubled us. Under Minnesota law, an eviction case must go to trial within six days of the initial appearance and can go to trial on the spot. Thus, there is little chance to educate the judges in the law: First, the hurry-up atmosphere allows no time for education. Second, since an eviction case is a

civil case, the Sixth Amendment right to counsel does not apply. Usually both parties appear pro se. The landlord appears pro se (or "represented" by a property manager) because too little money is at stake to pay an attorney; the tenant appears pro se because the tenant cannot afford an attorney, and there aren't nearly enough free attorneys to go around. For lack of financial resources and because Satellite-Court eviction cases can be appealed only by direct appeal to the Court of Appeals within 10 days, the parties are very unlikely to be able to appeal an unfair, adverse decision.

Judges are forced on the spot to make important decisions that can result in homelessness. In comparison, in almost all other civil cases, the judge has the luxury of up to 90 days to make decisions and usually has the advantage of briefs submitted by attorneys from both sides. In criminal cases, the state always has an attorney to brief the court and the defendant usually does; in addition, many of the important decisions can be taken under advisement.

Because of the stakes involved, if the anecdotal evidence is indicative, the functioning of the Satellite eviction courts is a very serious situation. A family's home is usually at stake. If the tenant loses, a family is homeless, perhaps with little warning that homelessness was a possibility. If a mom-and-pop landlord loses unfairly, the landlord can suffer a significant financial loss. And, while a large-scale landlord probably can weather a few losses in court, several unfair losses erode that landlord's faith in the judicial system.

4. Purpose and design of the study.

The study was designed to measure the following:

(i) Error rates in eviction cases in the two courts.

(ii) The amount of time afforded the litigants in each court.

(iii) The amount of time litigants had to wait to have their case heard in each court.

(iv) Opportunities for and successful use of settlement talks and mediation in each court.

The purpose of measurement (i) has already been discussed; in short, the least litigants should expect from court is a correct and consistent application of the law to their case.

Measurements (ii) and (iii) are related to litigants' perception of the reasonableness of the process. Measurement (iv) is related to an announced goal of the court system -- to help parties work out their own problems whenever possible.

The details of the study are set out in the Methods section that follows. Briefly, during the summer of 1999, a trained law-school student watched and timed a random selection of more than 200 cases in each venue. The observer took careful notes on each case, marking those that might have involved an incorrect application of the law. The marked cases were reviewed several times by different attorneys who specialize in housing law to determine if a clear violation of black-letter law occurred. The results are reported below.

Our goal is not to single out any individual judge or referee for criticism. Indeed, it is our opinion that the errors we observed result from good judges being placed in a bad situation.

Therefore, although the data are available in our office, we do not report any information identifying judges or litigants.

METHODS

1. Cases Observed Observations were made during the period June 14, 1999 to August 14, 1999. For the first one and a half weeks, attorney Paul Birnberg and University of Minnesota law student David Werblow acted as joint observers. Subsequently, Mr. Werblow was the sole observer.

The observer attended as many initial hearings at the Satellite Courts as physically possible. All the initial hearings at Division II ("Brookdale"), held 1:30 p.m. on Mondays and Thursdays, were observed; all the initial hearings at Division IV ("Southdale"), held 11:00 a.m. on Mondays and Thursdays, were observed; all the Wednesday 11:00 a.m. hearings at Division III ("Ridgedale") were observed; the Monday 11:00 a.m. hearings at Division III were not observed because the observer was at Division IV during that Monday slot. In all, 212 initial hearings were observed. In addition, a randomly selected group of four other hearings from Satellite-court cases was observed.

A randomly selected group of Downtown initial-hearing calendars were observed. Twelve calendars, four presided over by Referee Thomas Haeg, three by Referee Wesley Iijima, three by Referee Susan Ledray, and two by other, non-regular referee/s were observed. A total of 255 initial hearings were observed. In addition, a randomly selected group of eleven other hearings from Downtown-court cases was observed.

2. Data Collected The observer timed each individual hearing as well as the time between the announced start of the calendar and the actual start of the calendar. For each case, he entered the appropriate data by checking off boxes on the form set out as Exhibit 1. Finally, he took detailed notes of the arguments made by both parties and the reasoning and ruling of the judge or referee; the notes were made on the form itself, using extra sheets as needed. Where the oral proceedings could be better understood by reference to the case file, the observer subsequently pulled the file and took notes from the pleadings and orders.

Within 48 hours, usually within 3 hours, observer Werblow then discussed each case with Mr. Birnberg and the other attorneys at HOME Line. If all these persons agreed that the judge's or referee's ruling contradicted black letter law, the case was so marked. The marked cases subsequently went through a repeat analysis; in a few instances, upon further review, the case was "unmarked" because the ruling, though incorrect, might not have positively contradicted black letter law. Lastly, the marked cases, with full case notes, were reviewed by Ken Corey-Edstrom, an

attorney whose practice includes a substantial amount of landlord-tenant law, almost always representing the landlord, and who helped draft the recodification of landlord tenant law, Minn. Stat. Chap. 504B. Mr. Corey-Edstrom concurred that all the marked cases were wrongly decided.

A summary of each of the marked cases is found in Exhibit 2. Since our intention is not to single out individual judges or individual cases, identifying information has been removed from the summaries. The original case notes are available for review in our office.

3. Statistical Analysis To determine if two percentages were statistically different, a difference-of-p's analysis, as described in Frederick Mosteller et al., Probability with Statistical Applications § 9-5 (Addison-Wesley Publishing Co. 1970), was performed.

To determine if two means were statistically different, a difference-of-means analysis was performed. Id. at § 12-4.

RESULTS

1. The Satellite Courts were far more likely than the Downtown Court to make errors of law.

The main hypothesis tested by the study was that the Satellite Courts are less effective at correctly applying Minnesota landlord-tenant law than the Downtown Court. The results obtained strongly support the hypothesis. The details are given below, but in summary, the Downtown Courts were nearly error free while the error rate in contested cases in the Satellite Courts was 14%.

A description of the cases in which errors of black-letter law were observed is set out in Appendices A and B. The number of cases -- both contested and uncontested -- and the number of errors observed are set out below in Table 1.

Table 1, Error Rates in the Two Courts
All Cases

	Downtown Court	Satellite Courts
Total No. Cases	255	212
Total No. Contested[1]	146	93
Total No. Uncontested	109	119
Errors in Contested Cases (No./Percent)	1 (0.7%)[a]	13 (14.0%)[a]
Errors in Uncontested Cases (No./Percent)	2 (1.8%)	0 (0%)
Errors in All Cases (No./Percent)	3 (1.2%)[b]	13 (6.1%)[b]

[a,b]Percentages with the same letter are significantly different at a >99% confidence level.

[1]A case in which both sides appeared in court.

As shown in Table 1, the Satellite Courts erred in 13 out of 93 contested cases -- cases where both parties made an appearance and did not enter a settlement. This error rate of 14.0% was about 20 times higher than the error rate by the Downtown Courts, which erred only once in 146 contested cases. The Satellite error rate for all cases was 6.1%, more than five times the error rate Downtown.

The errors noted were not in cases involving arcane points of law. Eight of the errors involved either the non-payment/redemption statute (Minn. Stat. § 504.02, Subd. 1; Minn. Stat. § 504B.291, Subd. 1) or the stay-of-the-writ statute (Minn. Stat. § 566.09, Subd. 1; Minn. Stat. § 504B.345, Subd. 1(d)), the two most commonly applied statutes in eviction (unlawful-detainer) actions. These eight errors involved ignoring straightforward language in the

statute -- such as allowing 8 days stay in the writ, not the 7 days allowed by statute, accompanied by a statement "I can stay a writ for eight days - that's the maximum by law."

Other errors included (i) finding for the tenant on all issues set for trial and then issuing a writ anyhow; (ii) evicting a defendant on the grounds of "no lease" even though the complaint (correctly) alleged a lease and non payment, and the tenant offered in court the money required to redeem under § 504.02/ 504B.291; (iii) issuing a writ in a breach-of-lease case in a four-minute hearing without allowing the tenant to admit or deny that she breached the lease or determining whether the lease provided that the alleged conduct was an evictable offense; and (iv) ordering expungement without making any relevant finding;

The differences cannot be accounted for by one or even several rogue judges. The thirteen erroneous cases in the Satellite Courts involved nine different judges. Even if the cases involving the same error by the same judge were considered to be a single case, the data would reflect nine judges making nine types of errors in 89 contested cases. Even with just these 89 cases considered, the Satellite error rate was still significantly different from the error rate in the Downtown Court with 99% confidence.

Neither can the errors be accounted for simply by anti-landlord or anti-tenant bias. Of the 13 errors in the Satellite Courts, seven favored the landlord, four favored the tenant, one favored the tenant in a special way (allowing expungement without a proper basis), and one case involved two errors, one favoring

each side with the ultimate error favoring the landlord.

A closer look at the raw data indicates that an important factor (perhaps the most important factor) in causing the errors is simply that many of the judges at the Satellite Courts have little experience in housing law. Of the observed cases presided over by the three regular housing-court referees -- each of whom has years of experience and has heard thousands of cases -- NO errors were observed. Excluding the non-regular referees, the results were as shown in Table 2:

Table 2, Error Rates in the Two Courts Excluding the Non Regular Referees

	Downtown Court	Satellite Courts
Total No. Cases	216	212
Total No. Contested	126	93
Total No. Uncontested	90	119
Errors in Contested Cases (No./Percent)	0 (0%)[a]	13 (14.0%)[a]
Errors in Uncontested Cases (No./Percent)	0 (0%)	0 (0%)
Errors in All Cases (No./Percent)	0 (0%)[b]	13 (6.1%)[b]

[a,b]Percentages with the same letter are significantly different at a >99% confidence level.

As indicated by these data, the regular referees had a perfect record in the 216 cases observed.

2. Settlements are much more likely in the Downtown Court than at the Satellite Courts.

The other major observed difference between the two courts was that settlements were much more likely Downtown than in the Satellite Courts as shown in Table 3 below.

Table 3, Mediation and Settlement Rates

	Satellite Courts	Downtown Court
(1) Successful Mediation	0.0%[a]	9.8%[a]
(2) Settled before Appearance[1]	6.5%[b]	23.3%[b]
(3) Settled after Appearance[2]	5.1%	6.0%
(4) Total Settled without Mediation[3]	11.6%[c]	29.3%[c]
(5) Total Settled with or without Mediation[4]	11.6%[d]	39.1%[d]

[a,b,c,d]Percentages with the same letter are significantly different with >99% confidence.

[1]These cases were settled without formal mediation but before the case was called.

[2]These cases were settled without formal mediation and not before the case was called.

[3]Line (4) is the sum of lines (2) and (3).

[4]Line (5) is the sum of lines (1) and (4).

This suggests that the main housing court's efforts to promote settlement -- the presence of trained mediators, clerks and referees urging settlement, and a consistent approach to cases by the court -- are very effective. Cases settled about four times more often Downtown than in the Satellite Courts.

3. Suburban Cases are more likely to involve non payment of rent than are Minneapolis cases.

Another difference observed between the Satellite Courts and the Downtown Court was the type of cases heard. As shown in Table 4, the seemingly more complicated cases -- those involving allegations of foreclosures, holdover tenants, and tenants in breach of lease rather than non payment of rent -- tend to be filed Downtown.

Table 4, Type of Case Filed by Venue

	Number and Percentage of Each Type of Case in Each Venue		
	Downtown All Cases	Satellite All Cases	Downtown - Suburban Tenants Only
Non payment of Rent	210 (82%)	198 (93%)	60 (94%)
Holdover	9 (4%)[a]	5 (2%)[a]	0 (0%)
Breach of Lease & Breach of No-drug Possession Covenant[1]	17 (7%)[b]	6 (3%)[b]	1 (2%)
Foreclosure/ Cancellation of Contract for Deed	8 (3%)[c]	1 (0.5%)[c]	3 (5%)
Rent Escrow	9 (4%)	0 (0%)	0 (0%)
Other	2 (0.8%)	2 (0.9%)	0 (0%)

[a,b,c]Percentages with the same letter are significantly different with >95% confidence.

[1]If the complaint alleged both non payment and breach, it was logged as a non payment case unless the court based its decision on the alleged breach.

Foreclosure cases were filed at a six times more frequent rate Downtown than at the Satellite Courts, and holdover and breach

cases at about double the rate. No rent escrow cases were observed in the Satellite Courts, but this simply reflects a Court rule that such cases are only heard Downtown.

As the third column in Table 4 demonstrates, the differences apparently are attributable simply to the lack of City of Minneapolis cases in the Satellite Courts. Non-payment cases represent 94% of both Satellite-Court cases and suburban-premises cases that the landlord chose to file Downtown. For reasons unknown, Minneapolis is more likely to generate cases not involving unpaid rent.

4. Average court delays were similar in the two courts but the amount of delay was more predictable Downtown.

Some landlords and tenants believe that one of the two court systems is more prone to delay than the other system. To test this hypothesis, the observer timed each hearing and timed the delay between the time for start of Court stated in the Summons and the actual time the first case was heard.

On average, there was no statistical difference in the time the Court took to start its calendar in the two venues. The Downtown Court started 21 ± 9 minutes late (average ± standard deviation) while the Satellite Courts started 15 ± 16 minutes late. The large standard deviation for the Satellite Courts shows that the starting time for the Satellite Courts is much less predictable than that Downtown and means that there is no statistical difference between the average delay of 21 minutes Downtown and 15

minutes in the Satellite Courts.[2] Out of 33 calendars observed, the Satellite Court started four minutes early twice and exactly on time once. However, one calendar started 60 minutes late and another 44 minutes late. Downtown, one calendar started right on time and the next most prompt 15 minutes late; the least prompt were two that started 35 and 30 minutes late, respectively.

The amount of time spent at the initial hearing of each case was statistically identical in the two venues. This was true for each of the types of cases, as shown in Table 5.

Table 5, Time Spent per Initial Hearing by Type of Case

Type of Case	Satellite Courts	Downtown Court
Contested Case	6.2 ± 4.4[a]	4.2 ± 3.4
Uncontested Case	1.2 ± 1.0	1.5 ± 1.5
Settled	3.8 ± 4.0	3.5 ± 4.0
Set for Trial	5.6 ± 2.5	6.6 ± 8.2
Not Set for Trial	2.8 ± 2.7	3.2 ± 2.2

[a]Average ± Standard Deviation in minutes.

In short, on average both individual initial hearings and the wait before the first case took a similar amount of time in each of the venues, but the waiting time was more predictable in the Downtown Court.

[2]The standard deviation is a measure of the variability of the observed times. Twice the standard deviation approximates a 95% confidence limit. For example, "21 ± 9 minutes" means that about 95% of the calendars will start between 3 and 39 minutes late (between 21-18 and 21+18 minutes late, 18 being twice 9).

SUMMARY OF RESULTS

1. The error rate at the Satellite Courts was 20 times higher than the error rate Downtown.

The study's major hypothesis was proven correct: The error rate in eviction cases at the Satellite Courts was greater than that Downtown. Indeed, the error rate in contested cases in the Satellite Courts was a substantial 14.0%, twenty times higher than the error rate Downtown. In addition, the only errors observed Downtown were by non-regular referee/s, suggesting that errors are the result of lack of experience by basically capable jurists.

2. Settlements were four times more likely at the Downtown Court than at the Satellite Courts.

The second significant difference between the two venues was the rate of settlement. Cases were about four times more likely to settle in the Downtown Court than in the Satellite Courts.

3. The time a calendar starts at the Satellite Courts is much more variable than at the Downtown Court.

Landlords may choose to file an eviction case at a Satellite Court hoping to get swifter justice. The landlord cannot count on swift justice. While the calendars usually have fewer cases at the Satellite Courts than Downtown, the time the calendar actually starts is much less predictable at the Satellite Courts. The initial hearings took about the same amount of time at the two venues. However, while we recorded too little data to provide quantitative results, our anecdotal observations were that if a case was set for trial, the Downtown Court was always prepared to set the case for trial in the week allowed by statute; the Satellite Courts might set the case for trial that afternoon

(making discovery efforts virtually impossible) or it might set the trial off a week or two and that date might itself be postponed.

RECOMMENDATIONS

1. All eviction cases should be heard Downtown.

Theoretically, the number of erroneous rulings could be reduced by seminars for the judges hearing the eviction cases and/or similar educational efforts. It is not clear that this approach would work. The main advantage the housing-court referees have is not seminars but the experience gained from hearing hundreds and thousands of cases. There is no way for judges to duplicate this except by accepting an assignment to housing court for several months at a time, just as judges are rotated into family court for a year or two. However, there is a much simpler solution available.

That solution is simply to block all the housing cases to the housing court referees. This should not impose an undue burden on the system. Table 6 (next page) shows the number of cases heard in the various housing courts over the past eight years.

Table 6, Number of Cases Filed Each Year by Venue				
Year	All Cases, All Divisions	Evictions, All Divisions	All Cases, Downtown (Division I)	All Cases, Satellites (Div II-IV)
1992	13,524	NA[1]	12,383	1,141
1993	11,759	NA	9,986	1,773
1994	11,820	NA	10,144	1,676
1995	11,436	NA	9,556	1,880
1996	10,630	NA	9,117	1,513
1997	10,281	NA	8,846	1,435
1998	9,540	9,258	8,257	1,283
1999	8,997[2]	8,718[3]	7,832[3]	1,165[2]

[1]Not available.

[2]These numbers are extrapolations. The actual figures for the first 8 months of the year were multiplied by 1.5 (12 ÷ 8) to obtain the numbers above.

[3]These numbers are extrapolations. The actual figures for the first 7 months of the year were multiplied by 1.71 (12 ÷ 7) to obtain the numbers above.

While the resources -- referees and administrative staff -- provided to the Downtown Court have not changed much over the past few years, the number of eviction cases has dropped. Indeed, if all the Satellite cases had been heard Downtown in 1999, the caseload Downtown would still have been less than its actual caseload in any of the years between 1992 and 1996; and adding the Satellite cases to the Downtown calendars would have increased the Downtown caseload by only 15%. Furthermore, since suburban cases disproportionately tend to involve non payment of rent (Table 4) -- cases which on average tend to involve simpler issues than the other cases -- the extra burden on the Downtown Court would be even

less than if a random selection of cases were added to its caseload.

We are not suggesting that the Downtown Court has been lazy. With the addition of an expungement calendar and an increase in motion practice, the Court has been kept quite busy. We simply point out that transferring the Satellite cases Downtown should be a manageable burden, probably with little or no shifting of staff.

2. There are at least eight benefits to transferring all eviction cases Downtown.

Eliminating the Satellite Courts would have at least eight benefits:

First, as discussed at lenghth agove, there would be a decrease in erroneous decisions.

Second, cases would be more likely to settle, a professed goal of the Hennepin County Court.[3]

Third, cases set for trial would be set for trial in a predictable way. In the Satellite Courts, the parties cannot know if they need to bring witnesses to the initial hearing because trial-date-setting policies vary so much; Downtown, the parties know they will get adequate notice of the trial date. In the Satellite Courts, the parties cannot know if they will get even minimal discovery; Downtown, the parties know they will get a standard discovery order calling for exchange of witness and

[3] See e.g. Order, In re Fourth Judicial District Pilot Program for Mandatory Mediation in Conciliation Court, No. CX-89-1863 (Minn. Sup. Ct. Octo. 29, 1996), and the discussion of this court's efforts to promote settlement in Finance and Commerce 8 (Nov. 15, 1999).

exhibit lists.

Fourth, post-hearing motion practice is much easier Downtown. Eviction cases, like other cases, occasionally require a motion to open a default judgment -- typically because one litigant missed the hearing with a good excuse, such as a car accident. Sometimes a tenant doesn't attend the initial hearing because there actually was not service of process -- the writ of recovery of property and order to vacate (the writ of restitution) is the first notice the tenant actually gets. The Downtown Court has an established procedure for bringing a motion to open the default. Opening a default judgment from a Satellite Court can be prohibitively difficult. First, the file is often in transit from the Satellite fileroom to the Downtown fileroom. Second, no judge is assigned to hear the motion to open the default; usually the litigant must seek out the signing judge who must set a hearing before herself or some other judge. Even for an experienced attorney, the process is difficult. For a pro se party it can be very difficult. Conversely, the process of dealing with a default judgment in Downtown Court has been made very accessible even to pro se litigants.

Fifth, post-settlement motions are hard to bring after a Satellite case. The typical situation involves a tenant who has agreed to issuance of a writ of recovery if the tenant defaults on a settlement agreement. The landlord believes a default has occurred and a writ is served. The tenant wants to quash the writ. Exactly the same obstacles face such a tenant face a default-judgment litigant. And, as with opening a default judgment,

bringing a motion to quash Downtown is relatively simple (winning the motion, of course, depends on having a good case).

Sixth, all eviction cases would be heard by the same court that now deals with all tenant-initiated cases. This allows for consistent decisions. It also allows for easy consolidation of related eviction and tenant-initiated cases.

Seventh, even where the case turns on gray areas of the law, the litigants can predict the court's ruling because the court has likely ruled on the same issue before. Litigants can plan their lives well if they simply know how the court will rule. (If the litigant thinks the court's view is wrong, appeal to a judge or the Court of Appeals is available.)

Eighth, for those litigants who believe they need a judge to hear their case, the Downtown Court provides them an opportunity. They can simply file a request for a judge under Minn.R.Gen.Prac. 602 and they get a judge, while still benefiting from the experienced administrative staff in Downtown Court.

For all these reasons, it is our belief that the Hennepin County Court should complete the consolidation of housing cases. The Satellite housing calendars should be eliminated and all housing cases venued Downtown.

Appendix A
Improperly Decided Contested Cases

Case 1, Judge 1. For-cause eviction, tenant evicted summarily without proof of breach or of provision in lease allowing for eviction even if allegations true: In an eviction for breach of lease, the court did not consult the lease to establish that it contained a re-entry clause, what that clause said if it existed, or whether the alleged breach was in fact a breach of the lease, and the defendant did not admit the breach. The court did not set the matter on for trial. Rather, the court summarily evicted the tenant after a four-minute hearing without any sworn testimony. See Honorable Linda Gallant, SUMMARY RESIDENTIAL LANDLORD-TENANT ACTIONS IN HOUSING COURT: A Bench Book for Judges, Referees and Mediators (1996) (hereinafter "Bench Book")[4] at 24-25 (cannot evict for breach except on basis of re-entry clause in lease).

Case 2, Judge 2. Claiming it had no discretion, court denies tenant the statutorily provided seven days to pay court courts: In an eviction for non payment of rent, the defendant had the full amount of rent with her in court, but did not have the filing fee or other costs. She asked for time to pay the costs to redeem. The court claimed that it had "no discretion" and issued an unredeemable writ of restitution. Minn. Stat. § 504.02, subd. 1(b), in effect at the time the case was heard, provided:

> [I]f the tenant has paid or brought into court the amount of rent in arrears but is unable to pay the interest, costs of the action, and the attorneys fees required by this subdivision, the court may permit the defendant to apply these amounts into court and be restored to possession with in the same period of time, if any, which the court stays the writ of restitution pursuant to section 566.09.

Clearly, the court did have the discretion to give the tenant time (7 days) to pay the costs and redeem. Accord Bench Book at 28.

Case 3, Judge 3. Expungement ordered without considering the public interest or other statutory factors: In an eviction for non payment of rent, the judge, sua sponte, ordered an expungement if the defendants adhered to the settlement agreement and redeemed the premises. There was no discussion of a basis for the expungement, nor any finding that it was merited. See 1999 Minn. Laws ch. 229, s. 1, subd. 2 ("the court may order expungement of an eviction case only upon motion of a defendant and decision by the court, if the

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[4]This Bench Book was written by the housing court referee and distributed to each judge and to each Satellite Court. It is a guide specifically designed to help judges assigned to the housing calendar but unfamiliar with evictions.

court finds that the plaintiff's case is sufficiently without basis in fact or law, [and] ... that expungement is clearly in the interests of justice and [that] those interests are not outweighed by the public's interest in knowing about the record").

Case 4, Judge 4. Court takes jurisdiction even though service was short (less than the statutory seven days): In an eviction for non payment of rent, the court did not have personal jurisdiction over the defendant because of short service (less than the seven days required by Minn. Stat. §§ 504B.331, 566.06; Bench Book at 16). The short service was noted on the file presented to the judge, based on the affidavit of service showing less than seven days notice. The defendant did not submit to the jurisdiction of the court. The court asked only, "Have you been served?" without asking when the service occurred. When the defendant responded that she had been served, the court took jurisdiction without further discussion.

Case 5, Judges 5a and 5b. Tenant wins on all issues at trial, writ issued anyhow: The plaintiff alleged non-payment of June and July rent in the complaint. At the initial hearing, the defendants claimed habitability defenses under Fritz v. Warthen, 298 Minn. 54, 213 N.W.2d 339 (1973). The defendants had an Answer, photographs, a witness, and an inspector's report as evidence. After the defendants gave two months' rent to the court clerk, they made a presentation to the court. The judge then issued an order dismissing the case but did not make any ruling on rent abatement or the associated question of how to distribute the money given to the clerk for escrow to the court. In the same order dismissing the case, the judge set the case on for trial. Then the judge stated that the rent money was to remain with the clerk, and advised the parties to settle the issue of "damages".

The parties did not settle and the case was tried to a different judge weeks later. This second judge found that rent abatement was merited. After the funds were distributed, the judge granted a writ of restitution, reasoning that because the defendants have not paid rent, the plaintiff was entitled to a writ. (By that time, the defendants had not only paid the original June and July rent into court as ordered, they had paid August and September rent as well.)

Case 6, Judge 6. Court denies defendant seven-day stay in writ because it is near the end of the month even though statutory factors have nothing to do with the time of the month: In an eviction for non payment of rent, the court granted a writ of restitution. Upon motion for a seven day stay under Minn. Stat. § 504B.345 (previously 566.09), the court granted only two days, saying, "Today's the 28th. Most I can give you is to the 30th." The court found that it was only able to grant a stay until the end of the month, rather than seven days. Minn. Stat. § 504B.345, subd. 1 (1999) states that

> upon a showing by the defendant that immediate restitution of the premises would work a substantial hardship upon the defendant or the defendant's family, the court shall stay the writ of recovery of premises and order to vacate for a reasonable period, not to exceed seven days.

The statute says nothing about the time the case is before the court or whether it is near the end of the month; the statute's sole standard for a stay is hardship on the family.[5] Bench Book at 27-28 (stay for up to seven days based on hardship; with children in home, typically hardship found and seven day stay granted).

Case 7, Judge 6. Court denies defendant seven-day stay in writ because it is near the beginning of the month even though statutory factors have nothing to do with the time of the month: In an eviction for non payment of rent, the court granted a writ of restitution. The tenant stated that she was a single mother of three children and a sudden move would be extremely difficult and moved for a seven day stay under Minn. Stat. § 504B.345 (previously 566.09), the court granted no stay at all, saying, that it had "no choice" because it was the beginning of another month. As indicated in case 6, that is the wrong standard.

Case 8, Judge 6. Court denies defendant seven-day stay in writ because it is near the end of the month even though statutory factors have nothing to do with the time of the month. Court also denies tenant right to redeem in a combined non-payment and holdover case: In an eviction for non payment of rent and holding over, the court granted a writ of restitution for holding over despite the tenant's offer to redeem. The tenant should have been allowed to redeem. Bench Book at 23.

The tenant then moved for a seven day stay under Minn. Stat. § 504B.345 (previously 566.09), the court granted only two days, giving the same reasoning s/he gave in Case 6.

Thus the court made two errors. The first error was on what might be considered a subtle issue.[6] The second error was not.

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[5]The court's error was not deciding to grant only two days stay in the writ. The error was that the court, apparently interested in giving more time, believe that s/he was barred from giving more than two days because of the time of the month.

[6]Attorney Ken Corey-Edstrom, in reviewing this appendix, disagreed with this one sentence. He agrees that the judge misapplied the seven day rule but believes that the Bench Book is incorrect as to redemption in a combined holdover and non payment case.

Case 9, Judge 7. Court denies plaintiff mandatory award of filing fees on grounds they are discretionary: In an eviction for non payment of rent, the court allowed the tenant to redeem by paying the rent in arrears without paying the filing fees and other costs. The court's reasoning was "I suppose that's [costs] discretionary for me." The fees are not discretionary. Minn. Stat. § 504B.291, subd. 1(a) (1999) (formerly Minn. Stat. § 504.02, Subd. 1(a)) provides:

> [I]f, at any time before possession has been delivered ... the tenant may ... redeem the tenancy and be restored to possession by paying to the landlord or bringing to court the amount of the rent that is in arrears, with interest, costs of the action, and an attorney's fee not to exceed $5 ....

Accord Bench Book at 28.

Case 10, Judge 8. Landlord alleges non payment of rent pursuant to a lease, tenant offers to redeem, but court issues writ on ground of "no lease": In an eviction for non payment of rent, the landlord alleged the existence of a lease and the failure of the tenant to pay rent. The tenant offered to redeem and offered the required money. Sua sponte, the court decided that the parties did not have a lease but only an "option for a lease" and would not allow the tenant to redeem. The court's ruling was wrong for two reasons. First, if the plaintiff alleges non payment, the court cannot issue a writ based on some other basis. Mac-Du Properties v. LaBresh, 392 N.W.2d 315, 318 (Minn. Ct. App. 1986). Secondly, the uncontested evidence was that there was a lease; the tenant had simply not paid the first month's rent. Given those facts, the court had no basis for a finding of merely an option for a lease. See Bradley v. Metropolitan Music, 89 Minn. 516, 95 N.W. 458 (1903). Therefore, the tenant had the right to redeem, a valid defense to the only issue before the court, non payment of rent. Minn. Stat. § 504B.291, subd. 1(a) (right to redeem in non payment case).

Case 11, Judge 9. Court stays writ for eight days instead of the statutory seven days: In an eviction for non payment of rent, without agreement by the landlord, the court granted the tenant eight days to redeem, stating, "I can stay a writ for eight days - that's the maximum by law.... You have eight days or they can evict you." This contravenes Minn. Stat. §§ 504B.291, -.345, giving the court discretion up to a maximum of seven days. Accord Bench Book at 27-28.

Case 12, Judge 9. Court stays writ for eight days instead of the statutory seven days: In an eviction for non payment of rent, without agreement by the landlord, the court granted the tenant eight days to redeem. This was error as discussed in Case 11.

Case 13, Judge 9. Court stays writ for eight days instead of the statutory seven days: In an eviction for non payment of rent, without agreement by the landlord, the court granted the tenant eight days to redeem. This was error as discussed in Case 11.

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Case I, Referee 1. Expungement ordered simply because parties asked without considering the public interest or other statutory factors: In an eviction action, the referee ordered an expungement simply because the defendant's attorney stated that without expungement there could be no settlement. There was no discuss of a basis for the expungement, nor any finding that it was merited. This was error as discussed in Case 3.

Appendix B
Improperly Decided Uncontested Cases

Case II, Referee 1. Tenant evicted even though she had redeemed: In an eviction action for non payment of rent, only the landlord appeared in court. The landlord indicated that the tenant had paid all the rent in arrears and all the costs of the action but asked for issuance of a writ anyhow. The referee granted the writ. This was in direct contradiction of Minn. Stat. § 504B.291, subd. 1(a) (1999) (formerly Minn. Stat. § 504.02, Subd. 1(a)) which provides:

> [I]f, at any time before possession has been delivered to ... the tenant may ... redeem the tenancy and be restored to possession by paying to the landlord or bringing to court the amount of the rent that is in arrears, with interest, costs of the action, and an attorney's fee not to exceed $5 ....

(emphasis added). Accord Bench Book at 28.

Case III, Referee 1. Tenant evicted even though she had redeemed: The referee committed the exact same error as in Case II.