

Outside Counsel

Innovative Part Integrates Guardianship and Housing Matters

New York's courts are often said to be overloaded and the emphasis on speedy dispositions can work to the disadvantage of certain litigants whose unique needs and problems may be overlooked. This can be especially true in Housing Court, where some litigants with physical or mental disabilities may even undermine their own best interests. In June 2008, the Office of Court Administration (OCA) created a new and innovative guardianship part, combining the authority of the Supreme Court over guardianship proceedings under the Mental Hygiene Law with that of the Housing Court. This innovation has succeeded in protecting and empowering vulnerable tenants, lifting spirits, and offering hope to an important segment of our community.

In the past, when a judge in Housing Court was aware that a tenant in a summary proceeding evidenced physical or mental disabilities, the response was generally limited to the appointment of a guardian ad litem pursuant to CPLR §1201 to protect the interests of the litigant. This often resolved the problem. At other times, a guardian ad litem lacked the authority to effect a just result. The next level of intervention was the appointment in Supreme Court of a guardian with more expansive powers pursuant to Article 81 of the Mental Hygiene Law (MHL).

However, this creates a problem because now two different court parts, one in Supreme Court and the other in the Housing Court, exercise authority over the same controversy without any coordination. This results in excessive delays and an unnecessary burden to the parties which can lead to tenants being evicted for non-payment of rent and landlords losing needed income to pay for upkeep of their buildings.

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By
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The resolution to this dilemma was the creation of an integrated part (the Part) that provided jurisdiction over both the Article 81 guardianship and Housing Court matters. This part was envisioned and established by Deputy Chief Administrative Judge Fern Fisher and the Administrative Judge of the Supreme Court, New York County, Justice Sherry Klein Heitler.

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vulnerable litigants, such as non-English speakers, senior citizens, and people with serious physical and/or mental disabilities.

The Process

Here is how the new integrated part works. A special counsel and a lead social worker supervising social work interns are made available to the Part to assist litigants in need of intervention. The social workers play an important role in providing litigants with counseling, information, assistance in securing benefits, and handling urgent situations. The Part's approach is a holistic one which attempts to address the underlying problems while empowering the litigants to express their viewpoints and provide them with a sense of comfort in an otherwise inhospitable environment.

The process begins with a filing of an Article 81 guardianship

proceeding in Supreme Court, usually by New York City's Department of Social Services (DSS). When the alleged incapacitated person is also a party in a Housing Court proceeding, the Article 81 matter is assigned to the Part (currently Part 25 in New York County) and the Housing Court matter is also transferred to the Part (designated Part I in the Housing Court). Invariably, the Article 81 petitioner in Supreme Court seeks a temporary restraining order (TRO) pursuant to MHL §81.23 staying the landlord from prosecuting the Housing Court matter pending the determination of the Article 81 proceeding. The TRO gives the tenant protection from eviction while the court determines whether to appoint a guardian.

In each case, the court appoints both counsel for the alleged incapacitated person and an appropriate court evaluator (otherwise called the eyes and ears of the court) to investigate and report his or her findings on whether a guardian is appropriate and to identify and address any underlying problems. On the return date, both the landlord-tenant matter and the guardianship application are heard in the Part. The landlord's counsel has an opportunity to express concerns as to any alleged nuisance conditions in the apartment or actions by the tenant that may be dangerous to health and safety of others, or to request the payment of use and occupancy. The Article 81 petitioner's counsel has the opportunity to request a continuation of the stay and address the landlord's concerns. The court presides over both proceedings with an eye toward a just resolution.

In the past, it could take months for the petitioner in an Article 81 proceeding to settle an order appointing a guardian. Thereafter, further delay ensued due to the lengthy time it took for the petitioner to forward its file to the guardian. This delay could result in substantial prejudice to both the incapacitated person and the landlord. Therefore, the court now drafts the

Guardianship

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proposed order within days of the hearing and e-mails it to all interested parties. The parties are given a deadline of several days for review and comment and then the signed order is e-mailed to petitioner's counsel to serve with notice of entry. The court directs the petitioner to provide a copy of its file to the guardian within 14 days.

The court extends the stay of the Housing Court proceeding for a limited time to allow the guardian to begin resolving the issues involved. The court also schedules a mandatory conference prior to the expiration of the stay to determine whether the guardian has complied with the court's mandate. The court continues to schedule conferences until all matters are resolved.

The Part offers unique solutions to real problems. In open court and with consent of the parties, the court coaxes DSS, charities, and family members to pay rental arrears. The court reaches out to housing specialists both in government and the private sector to provide affordable housing. The court counsels tenants to clean up their apartments, allow access to the landlord to make repairs and to remove hazardous conditions.

A Typical Morning

In order to understand the Part, a glimpse of a typical morning is helpful. The first case involved a tenant who was embroiled in a holdover proceeding with a small landlord in Harlem. A guardian ad litem had been appointed for the tenant, and the tenant's counsel initially asserted many viable defenses. Unfortunately, the lawyer withdrew when the tenant, due to his mental illness, sabotaged his lawyer's efforts. Left to his own

devices, the tenant failed to comply with discovery, and his answer was stricken. At one point, he was observed outside a courtroom banging his head against a wall. DSS filed an Article 81 proceeding, and the court issued a TRO staying the landlord-tenant proceeding. After speaking with the tenant, the court was concerned that the tenant might commit suicide. Due to the Part's intervention, the tenant realized he needed assistance and voluntarily checked into a hospital, averting any possible suicide attempt. The court ultimately appointed a guardian for him.

The second case involved a senior citizen who was in danger of eviction due to his alleged objectionable conduct. The case was transferred to the Part after the Housing Court had already conducted a trial and ordered an eviction and all appellate remedies were exhausted. The tenant, who is on a meager income, needed to be relocated from his long-term tenancy but was resisting all efforts to assist him. DSS filed an Article 81 proceeding, the tenant had consented to the appointment of a guardian, and the court issued a TRO staying the eviction.

On this day, the courtroom was full of tenant supporters and the landlord was seeking to vacate the stay due to yet another alleged incident involving objectionable conduct. The tenant was upset and issued veiled threats that he would commit suicide rather than move. The social worker assigned to the Part was called immediately, and we calmed the tenant down. Although concerned, the court concluded that the tenant's threats, which he later disavowed, were, in fact, a plea for help. The court convinced the landlord to withdraw the motion and permit the tenant to move out in a dignified manner. The tenant agreed to act responsibly during the remaining stay period. The court then called

the director of a non-profit agency to arrange supportive housing on an emergency basis.

Positive Role in People's Lives

Often, judges make decisions without the ability to sufficiently monitor or reflect on the resulting consequences. In this Part, the court has the ability to see the results of its actions and play a positive role in people's lives. In one recent guardianship proceeding, the court held the hearing at the home of a woman living in a four-story walk-up tenement on the Lower East Side who was dying of cancer and not receiving the medical care that she needed. She also owed rent, and the landlord had commenced a non-payment proceeding.

The court appointed a temporary guardian who obtained a grant to pay the rental arrears and applied for various benefits. The court supervised the emergency application for 24-hour care and visiting nurse services. Unfortunately, due to her advanced cancer, she soon passed away. After she died, her devoted friend sent the court a touching letter, stating:

I just wanted to write to you and thank you for all that you did for my friend in her final weeks. She lived such an incredible life as a dancer, choreographer, playwright, poet and cherished friend to so many. I wish you all had the privilege of knowing her when she was well, as she was dazzling and so full of light and love.

My friend was hospitalized two days before she passed away, as she was really in need of 24 hour care, which (thanks to you) my friend knew was in the works. On her last day, I sat with her in the hospital and we laughed and had fun. And over a last meal of sushi and fresh watermelon juice we talked about all that was in the works—that she would be evaluated and finally have

the care she needed in her home; that the system was finally coming through for her; that you saw her plight and were doing everything in your power to help her.

This feeling of care and safety, both from you all and from all her friends that were so present in her life, I think was what allowed her to go.

So thank you for helping to bring my friend peace.

We can learn an important lesson from the experience conveyed in the above letter. It is important to educate landlords and tenants that the Part exists and to identify participants so that the court can intervene at the earliest stages. The Housing Parts should refer cases to DSS sooner, and DSS needs to file the guardianship proceedings more quickly. We must empower people with disabilities so that they have a voice in their own care and treatment and feel confident that they will be protected from harm.

To level the playing field, the tenant must be represented by competent counsel, and the court must identify free legal service providers to defend incapacitated tenants at all stages of the proceedings. It is already too late when counsel comes in at the conclusion of the housing case to seek a stay of the eviction. We must employ appropriate staffing, including judges with experience in landlord-tenant disputes, social workers experienced with individuals with disabilities, city case workers familiar with and authorized to expedite benefit entitlements, and dedicated clerks and court officers accustomed to dealing with individuals with disabilities.

Therefore, I strongly recommend that this type of integrated part be extended throughout the City of New York to educate the public, empower people with physical and mental disabilities, and employ appropriate personnel to coordinate efforts to provide the necessary assistance.

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