

CIVIL COURT OF THE CITY OF NEW YORK

DIRECTIVE

**Subject: Housing Court Attorney Conferences of Stipulations
in Non-payment and Holdover Cases**

Class: DRP- 195

Category: LT-10

BACKGROUND

Appellate courts have upheld vacating stipulations when unrepresented litigants failed to understand their consequences or when the stipulations overreached (*see e.g. 169 Realty, LLC v. Wolcott*, 2003 NY Slip Op 51371[U], * 1, [App Term 2d & 11th Jud Dists], *citing Cabbad v. Melendez*, 81 AD2d 626 [2d Dept 1981] and *Solack Estates v. Goodman*, 102 Misc2d 504 [App Term 1st Dept 1979], *affd*, 78 AD2d 512 [1st Dept 1980]; *see also Seaman Assoc. v. Jaiman*, NYLJ, Nov. 5, 1996, at 25, col. 2 [App Term 1st Dept]; *221 Sherman Assoc. v. Fulgencio*, NYLJ, Oct. 29, 1996, at 26, col. 1 [App Term 1st Dept]; *Table Run Estate, Inc. v. Perez*, NYLJ, Feb. 23, 1994, at 21, col. 2 [App Term 1st Dept]). As judges rely on Court Attorneys to ensure that the stipulations they allocute are thoroughly reviewed (*see* Advisory Notice AN-1 amended April 6, 2007), Court Attorneys must comply with the following procedures during conferences:

1. **Parties**: Establish the identities of everyone present at the conference and their relationship, if any, to the premises. Determine the whereabouts of any party named in the petition who is not present in court. Flag for the judge, any named party who is deceased, no longer living in the apartment, serving in the military, institutionalized or is otherwise suffering from a mental and/or physical impairment precluding their appearance in court. If someone is to be added to the petition as a party, determine whether he/she is being added as a respondent-occupant, respondent-undertenant, respondent-tenant, etc. Explain to that person the significance of being added to the petition. Ensure that the stipulation provides for the added party(-ies) and that the parties worksheet is completed correctly.
2. **Petition**: Review each allegation in the petition to ascertain if they are correct and/or whether each unrepresented party agrees with those claims. For example, in a nonpayment proceeding, determine, among other things, if the petitioner is correct; the rent regulatory status is accurately plead; the proper monthly rent is charged; the rent sought was properly demanded; and the amount due is correct. If the tenant receives a NYCHA-Section 8 subsidy, also determine whether the petitioner has obtained permission from NYCHA to commence the proceeding pursuant to the *Williams* consent decree. Likewise, in a holdover proceeding review the allegations in the petition and/or predicate notices with all unrepresented parties. Any problems with a petition and/or predicate notice(s) must be highlighted for the judge.
3. **Answer**: Review the answer in a nonpayment proceeding with the parties and ascertain any facts supporting each defense and any counterclaim(s). If a defense is discerned during the conference that is not in the answer, flag the omission for the judge. Similarly, in a holdover proceeding review each answer with the parties and determine the facts supporting each defense and any counterclaim(s). If any unrepresented respondent has not filed an answer, ascertain their response and defenses to the allegations in the petition and flag them for the judge.
4. **Stipulation**: Determine whether each unrepresented litigant understands and agrees to the terms of any stipulation. Specifically, ascertain whether the unrepresented litigant understands:

- (a) his/her claims and/or defenses to the case. Any claim or defense raised should be addressed in the stipulation. If the claim or defense is withdrawn, the stipulation should state so.
- (b) all available options in light of his/her claims and defenses, including that he/she may have a trial of the case if an acceptable stipulation cannot be negotiated;
- (c) the consequences of non-compliance with the stipulation by either side;
- (d) that if he/she intends to apply for rental assistance from a community-based organization or HRA, the stipulation should contain an appropriate rent breakdown or that he/she should be provided with a separate breakdown by the time of the conference;
- (e) the implication of an unsatisfied judgment and petitioner's legal obligation to file a satisfaction of judgment upon full payment; and
- (f) how the unrepresented litigant can seek to restore the case to the court calendar to obtain relief under or from the stipulation (obtaining repair compliance, staying enforcement of a judgment, etc.).

This directive establishes the minimum requirements for Court Attorney case conferences. Court Attorneys must thoroughly conference all cases and conduct a review appropriate to the particular facts and circumstances of each case.

/S/

Fern A. Fisher
Deputy Chief Administrative Judge
Of New York City Courts
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