



NEW YORK STATE
Unified Court System

OFFICE OF COURT ADMINISTRATION

LAWRENCE K. MARKS
CHIEF ADMINISTRATIVE JUDGE

JOHN W. McCONNELL
COUNSEL

MEMORANDUM

December 14, 2016

To: All Interested Persons

From: John W. McConnell

Re: Request for Public Comment on a Proposed "Plain Language" Amendment of the Model Notice of Petition in RPAPL Residential Eviction Proceedings for Nonpayment of Rent in New York City (22 NYCRR §208.42[d])

=====

The Administrative Board of the Courts is seeking public comment on a recommendation by the New York State Access to Justice Program to amend the uniform civil rules for the New York City Civil Court which currently provide a model notice of petition in residential eviction proceedings for nonpayment of rent in the City of New York under the Real Property Actions and Proceedings Law (22 NYCRR §208.42[d]) (Exh. A).

According to the Access to Justice Program, the current model notice of petition (Exh. B) is drafted at a twelfth grade reading level; since the average American-born English speaker reads at a 5th to 7th-grade level, the notice is often misunderstood by self-represented tenant litigants; recipients often mistakenly believe that the notice of petition is an eviction notice, and that they must move immediately from their homes. The Access to Justice Program notes that the redrafted notice of petition (Exh. C), aimed at a 7th-grade reading level, will more effectively inform recipients of their legal responsibilities, alleviate some burdens of court operations, and – together with other mandatory notifications – provide self-represented tenants with a fairer opportunity to participate meaningfully in eviction proceedings. The Program anticipates similar amendment of the model notice of petition in evictions proceedings in both city courts outside New York City (22 NYCRR §210.42[b]) and district courts (22 NYCRR §212.42[b]) in the future (Exh. A, p. 2).

=====

Persons wishing to comment on the proposed amendments should e-mail their submissions to rulecomments@nycourts.gov or write to: John W. McConnell, Esq., Counsel, Office of Court Administration, 25 Beaver Street, 11th Fl., New York, New York 10004. **Comments must be received no later than February 15, 2017.**

All public comments will be treated as available for disclosure under the Freedom of Information Law and are subject to publication by the Office of Court Administration. Issuance of a proposal for public comment should not be interpreted as an endorsement of that proposal by the Unified Court System or the Office of Court Administration.

EXHIBIT A



STATE OF NEW YORK
UNIFIED COURT SYSTEM
NEW YORK STATE COURTS
ACCESS TO JUSTICE PROGRAM
111 CENTRE STREET
NEW YORK, N.Y. 10013
(646)386-4200

LAWRENCE K. MARKS
Chief Administrative Judge

FERN A. FISHER
Deputy Chief Administrative
Judge of NYC Courts
Director, NYS Courts Access to
Justice Program

Memorandum

To: John W. McConnell, Counsel, Office of Court Administration, Unified Court System
From: Hon. Fern A Fisher, Deputy Chief Administrative Judge for NYC Courts, and Director, NYS Courts Access to Justice Program and Rochelle Klemptner, Chief Counsel, NYS Courts Access to Justice Program
Date: September 9, 2016
Subject: Amendment to section 208.42(d) of the Uniform Rules of the New York City Civil Court to provide for a mandatory plain language Notice of Nonpayment Petition

This memorandum is offered in support of amending section 208.42(d) of the Uniform Rules of the New York City Civil Court which sets forth an example of a Notice of Petition form to be used in a proceeding brought pursuant to RPAPL section 732 on the ground that the respondent has defaulted in the payment of rent. (A copy of 208.42(d) is attached). The amendment requested would replace the Notice of Petition example contained in the rule with a mandatory simplified Notice of Petition written in plain language that advises the respondent-tenant of the legal and procedural information necessary to comprehend the petitioner-landlord's claims and respond accordingly. (A copy of the proposed Notice of Nonpayment Petition is attached).

Since 2010, federal agencies are required to utilize plain language in all public documents. This year, the National Center for Access to Justice released its updated Justice Index ranking each state's court system on best policies for civil access to justice. The New York State Unified Court System, often a leader in civil access to justice issues, ranked poorly on simplification of court forms for unrepresented litigants. This is clearly an area where responsiveness and reform is needed.

An analysis of the current Notice of Petition reveals that it is written at a 12th grade reading level. Unfortunately, the average American born English speaker reads

comfortably at the 5-7th grade reading level. Lowering the reading level and putting the text into plain language will help tenants better understand the landlord's claims against them and the urgency required for their response. Court statistics reveal that the overwhelming majority of tenants appearing in Housing Court are unrepresented while most landlords have counsel. The consequences for these unrepresented litigants when they do not understand the Notice of Petition can be daunting. A default judgment can result in an eviction, and possible homelessness. An Answer that does not raise valid defenses is not much better than a default. Feedback from Help Center staff has shown that many tenants receive the Notice of Petition and mistakenly believe that it is an eviction notice and they have to move out right away.

The proposed mandatory Notice of Petition is written at a 7th grade reading level. It explains legal procedures, such as the answering process, raising defenses and rent deposits. Difficult concepts are stated in simple short sentences, employ an active voice, personal pronouns, and common, everyday words. The Notice of Petition advises tenants of their rights and interests under the law and includes contact information for legal and rental assistance, as well as interpreters and ADA liaisons. It also advised tenants where they can find a translated copy of the Notice. Most importantly, an information sheet on answering a nonpayment Petition (Civ-LT-92) is required to be delivered to the tenant along with the service of the Notice of Petition and Petition. (See copy of Civ-LT-92 attached).

Additionally, amending the court rule may improve court operations. When tenants are better informed about their rights and legal procedures before they come to court, it alleviates some of the burden on our court personnel who provide legal and procedural information in the Civil Court Help Centers and L&T Clerk's Offices. The proposed amendment may also lead to fewer default judgments and Orders to Show Cause to vacate default judgments; saving judicial and non-judicial staff time and improving court efficiency.

Last year, the Conference of Chief Justices and Conference of State Court Administrators unanimously passed Resolution 5, "Reaffirming the Commitment to Meaningful Access to Justice for All." The Resolution states, "the promise of equal justice is not realized for individuals and families who have no meaningful access to justice." The court system has a constitutional mandate to provide equal access to justice to all parties. Access to justice means that our courts are available regardless of a litigant's economic status, language ability, or physical or mental challenges. The summary nature of nonpayment proceedings and the potentially dire consequences of an eviction when a tenant fails to knowingly act, call for the court system to ensure that tenants are given the basic tools to meaningfully participate in their court proceedings. This amendment is one step toward levelling the playing field. It is therefore recommended that section 208.42(d) be amended to require use of a mandatory Notice of Petition in the simplified form attached to this memorandum. Thereafter, District Court and City Court rules for landlord-tenant cases outside the city of New York should be similarly amended.

EXHIBIT B

Section 208.42 Proceedings under article 7 of the Real Property Actions and Proceedings Law.

(d) Real Property Actions and Proceedings Law, section 732, shall be applicable in this court in a proceeding brought on the ground that the respondent has defaulted in the payment of rent. The following form is set forth as an example of a notice of petition to be used in such proceedings:

CIVIL COURT OF THE CITY OF NEW YORK
COUNTY OF _____

Petitioner (Landlord))	Index No.
)	_____
)	L & T
)	_____
)	19_____
-against-)	NOTICE OF
)	PETITION
)	
Respondent (Tenant))	Business
)	Address:
Address)	
Respondent (Undertenant))	
Address)	
)	

To the respondent[s] above named and described, in possession of the premises hereinafter described or claiming possession thereof:

PLEASE TAKE NOTICE that the annexed petition of _____, verified the _____ day of _____, 19____, prays for a final judgment of eviction, awarding to the petitioner possession of premises described as follows:

Apartment No _____, on the _____ floor, consisting of _____ rooms, in premises known as and located at _____, County of _____, in the City of New York, as demanded in the petition.

TAKE NOTICE also that demand is made in the petition for judgment against you for the sum of \$_____, with interest from _____, 19_____.

TAKE NOTICE also that within five (5) days after service of this Notice of Petition upon you, you must answer, either orally before the clerk of this Court at _____, County

of____, City and State of New York, or in writing by serving a copy thereof upon the undersigned attorney for the [FN1] petitioner, and by filing the original of such answer, with proof of service thereof, in the Office of the Clerk. Your answer may set forth any defense or counterclaim you may have against the petitioner. On receipt of your answer, the Clerk will fix and give notice of the date for trial or hearing which will be held not less than three (3) nor more than eight (8) days thereafter, at which you must appear. If, after the trial or hearing, judgment is rendered against you, the issuance of a warrant dispossessing you may, in the discretion of the Court, be stayed for five (5) days from the date of such judgment.

TAKE NOTICE also that if you fail to interpose and establish any defense that you may have to the allegations of the petition, you may be precluded from asserting such defense or the claim on which it is based in any other proceeding or action.

In the event you fail to answer and appear, final judgment by default will be entered against you, but a warrant dispossessing you will not be issued until the tenth day following the date of the service of this Notice of Petition upon you.

TAKE NOTICE that under section 745 of the Real Property Actions and Proceedings Law, you may be required by the Court to make a rent deposit, or a rent payment to the petitioner, upon your second request for an adjournment or if the proceeding is not settled or a final determination has not been made by the Court within 30 days of the first court appearance. Failure to comply with an initial rent deposit or payment order may result in the entry of a final judgment against you without a trial. Failure to make subsequent required deposits or payments may result in an immediate trial on the issues raised in your answer.

Dated: City of New York, County of

_____ the ____ day of _____, 19____

Clerk of the Civil Court of the City of New York

Attorney(s) for the Petitioner

Address

Telephone No.

[FN1] If the petitioner appears in person, strike out the words "undersigned attorney for the".

EXHIBIT C

CIVIL COURT OF THE CITY OF NEW YORK
COUNTY OF _____

Petitioner(Landlord),

Index No. L&T _____

-against-

Notice of Nonpayment
Petition

Respondent(Tenant),
Address:

Petitioner Business Address:

Respondent(Undertenant).
Address:

Your landlord is suing to evict you.

1. Your landlord has started an eviction nonpayment case against you in this Court to make you move out of the place where you are living for the reasons given in the attached Petition.
2. Your landlord is asking this Court for:
 - a money judgment for \$_____, plus interest from _____, 20___, and
 - permission to evict you from:

Address or description of the premises

3. You have a right to a trial to determine if you can be made to move, but you must Answer the Petition first by going to the landlord-tenant Clerk's Office at: _____, _____, New York. You must do this within **5 days** after the date these papers were given to you or a person who lives with you, or were posted at your home.
Warning! If you don't Answer the Petition within 5 days, a judgment may be entered against you by default. If that happens, the landlord will have the right to evict you. You can be evicted as early as 10 days after you get this notice.
4. Your Answer says the legal reasons that you don't owe all or part of the rent. The legal reasons are called defenses. You will have to prove your defenses in court. To Answer the Petition you must either:
 - Go to the landlord-tenant Clerk's Office and tell the Clerk your Answer, or
 - Give the landlord-tenant Clerk your Answer in writing (Civ-LT-91a).Information to help you Answer the Petition is attached (Civ-LT-92).

Important! If you don't tell the Clerk about a defense in your Answer you might not be able to talk about it later in this case or any other case.

5. When you Answer the Petition you will get a court date between 3 and 8 days later.
6. If you are not named on this Notice and you claim to have a right to live in the premises, you have a right to come to Court and Answer the Petition.
7. Available Resources:
 - **Language Help:** If you don't speak English well you have a right to a free court interpreter. Tell the Court Clerk you need an interpreter, or call 646 366-5670 or visit <http://www.nycourts.gov/COURTINTERPRETER/faqs.shtml>. To read a translation of this Notice in another language visit www.nycourts.gov/languages/index.shtml.
 - **ADA Help:** If you need special accommodations to use the court because of a disability, tell a Court Clerk or an ADA contact person listed at: www.nycourts.gov/accessibility/listbycounty.shtml.
 - **Financial Help:** If you owe the rent and don't have the money, contact HRA's Infoline at (718) 557-1399 for more information about getting help to pay the rent.
 - **Legal Help.** The court does not give you a lawyer. If you do not have money to hire a lawyer, contact the Legal Aid Society 212 577-3300 or Legal Services 212 431-7200 or visit LawHelpNY at www.lawhelp/ny.org. If you can afford to hire a lawyer, you can contact the New York City Bar Legal Referral Service at 212 626-7373.
 - **Help at the Courthouse:** There is a Help Center in the courthouse where you can speak to a Court Attorney or a Volunteer Lawyer.
 - **Online Help:** Visit the Housing Court's website at: www.nycourts.gov/nychousing (also available in Spanish and Chinese) or visit LawHelpNY at www.lawhelpny.org.

Postponements and Rent Deposits. In court you can ask to postpone your case. But, if your case is not finished 30 days after the first court date, or you ask to postpone the case twice, the court can order you to deposit money in court or make a rent payment to the landlord. If you don't do this, the landlord may get a judgment against you without a trial. If you fail to make future payments ordered by the court, your case may go to trial right away. RPAPL Sec. 745.

After Judgment. If the court orders a judgment against you after a trial, the court may give you up to 5 days to pay the judgment and not be evicted. Once the warrant of eviction is issued, the landlord can still evict you even if you pay the rent. After the warrant is issued, you will get a Notice of Eviction from a Marshal giving you at least 72 hours to move. If you don't move you will be evicted.

City of New York, County of _____

Dated: _____, 20__

Clerk of the Civil Court of the City of New York: _____

Petitioner or Attorney for Petitioner: _____

Address: _____

Telephone No. _____

**INFORMATION ON ANSWERING A NOTICE OF PETITION AND PETITION
(EVICTION/DISPOSSESS PAPERS for NON-PAYMENT of RENT)**

If you are in court for a "Non-Payment" case, because the Landlord claims you owe rent, you have the right to tell the Court the reason(s) why the rent may not be owed. Below are some reasons, called defenses, which the Court can consider in deciding how much rent you may owe to your Landlord. Tell the Clerk any reason(s) which you believe you are able to prove to the Judge. You may go to the Help Center if you need more information to help you answer in your case.

SERVICE

1. I did not receive a copy of the Petition and Notice of Petition (Eviction papers/Dispossess).
2. I did not receive the court papers correctly as required by law. *(See a Housing Court Counselor (Pro-Se Attorney) or seek legal advice if you think you did not receive the eviction papers properly.)*

PARTIES

3. My name is not correct, is wrong or is missing from the court papers. The tenant is dead.
4. The Petitioner is not the Landlord or Owner of the building, or otherwise a proper party.

RENT

5. I was not asked, either orally or in writing, to pay the rent before the Landlord started this case.
6. I tried to pay the rent, but the Landlord refused to accept it.
7. The monthly rent being requested is not the legal rent or the amount on the current lease.
8. The Landlord owes money to me because of a rent overcharge. I paid for repairs or services.
9. The rent, or a portion of the rent, has already been paid to the Landlord.

APARTMENT

10. There are conditions in the apartment/building/house which need to be repaired and/or services which the Landlord has not provided.
11. The petition does not describe the apartment/house correctly: wrong apartment/house number; wrong or missing program(s)/and or laws covering my tenancy.
12. The apartment/house is an illegal apartment.

OTHER

13. Laches: the petition comes as a surprise, the landlord knew for a long time that I owed the rent and waited too long to bring me to court. This delay has caused me harm.
14. I am not certain the petition is correct.
15. NEW YORK CITY ONLY The Petitioner has harassed me _____.
16. I am in the military /dependent on someone in the military.
17. The petition seeks the HUD OR Housing Authority Section 8 part of the rent. The petitioner did not notify HUD OR Housing Authority about this case. Other _____.
18. I seek a judgment and/or order based upon the above defense(s). _____
19. Other counterclaim(s): *(Please tell the Clerk any other reason(s) why you believe you do not owe your Landlord some or all of the rent or tell the clerk if you wish to file a counter claim).*