



Empire Justice Center

Making the law work for all New Yorkers

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June 5, 2017

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Counsel
Office of Court Administration
25 Beaver St., 11th Floor
New York, NY 10004

Submitted by e-mail to: rulecomments@nycourts.gov

Re: Proposed Amendments to Various Uniform Rules of the Trial Courts to Require
Early Disclosure in Landlord-Tenant Proceedings

Dear Mr. McConnell:

Empire Justice Center submits these comments in response to the Administrative Board's request for comments dated April 6, 2017. Empire Justice Center is a non-profit civil legal aid organization with offices throughout New York State in Albany, Rochester, Westchester County and on Long Island. Our mission is to protect and strengthen the legal rights of people in New York State who are poor, disabled or disenfranchised through systems change advocacy, training and support to other advocates and organizations, and high quality direct civil legal representation.

Empire Justice Center supports the requirement in the proposed rules for the various Trial Courts that Petitioners be required to disclose at the outset of an eviction proceeding whether the premises are regulated as a result of any government subsidy program. We also support the requirement that the Petitioner must disclose outstanding health or housing code violations, but suggest that the rule and the form (Attachment D) be amended to make clear that, in addition to disclosing violations outstanding on the date the statement is signed, the Petitioner must also disclose any violations which were outstanding during any of the months for which back rent is claimed. Finally, we encourage the Administrative Board to extend these proposed rules to the Justice Courts.

The proposed requirement that Petitioners must identify any subsidy or regulation covering the premises or the building from which removal is sought will both help the courts achieve just results between the parties and will serve to reduce court caseloads. There are dozens of housing subsidy programs, administered by many different agencies, and many of them have some sort of procedural

and/or substantive requirements before a landlord can seek to remove a tenant. Some are financing subsidies for construction of the units; others are rent subsidies for the tenant. The landlord should be aware of the subsidy programs that are applicable, and the legal requirements at the time it brings an eviction proceeding. The tenant often is unaware of the requirements because they often are contained in the program's regulations and the financing agreement with the landlord, but do not appear in the lease. Since the landlord has the knowledge of the subsidies and regulatory requirements that flow from them, it is only fair that the Petitioner be required to make the disclosure at the outset of the case. In cases where the landlord has not followed the requirements, for example to seek approval for the eviction from the regulator, it would be unfair and a violation of law for the tenant to be evicted.

The requirement to identify subsidies and regulations should serve to reduce the number of eviction petitions filed. Almost all of the subsidies cover units owned by corporations or Limited Liability Partnerships, which must appear by counsel. The disclosure requirement will give counsel the opportunity to assess whether the landlord has complied with the regulatory obligations that are conditions precedent to bringing an eviction proceeding, and if not, to make sure the landlord uses the required processes and applies the legally required standards. In so doing, many cases will resolve without the need for Court intervention.

The requirement that Petitioners must disclose outstanding health and housing code violations will also make it more likely that the results in litigation and settlement are congruent with the substantive law, including New York's Warranty of Habitability, and other laws that set substantive housing standards. Like with information about subsidies, again there is asymmetry of information, with the Petitioner being aware of the violations in a building or unit, as well as the legal effect of violations, and the tenant not necessarily having the same information. This is particularly the case when the violations are in common areas or the tenant rented the unit after the landlord was cited for the violations. Again, the disclosure to counsel may well lead to cases not being filed, because counsel informs the landlord that, given the violations, the tenant is likely to receive a substantial or full abatement.

However, the proposed rules as currently drafted only require disclosure of "all pending health and housing code violations...." While this is a very important improvement, the proposed rules should be amended to require the disclosure of all health and housing code violations "pending at the time of filing of the Petition, or pending during any period of time for which removal for non-payment of rent or unpaid rent is sought in the Petition..." Otherwise, a landlord could clear the violations on the day before it filed a non-payment eviction where the tenant has withheld rent, and the Court would unaware that rent impairing violations existed during the time period covered by the Petition.

Finally, while these proposed rules will create much fairer and more accurate legal results for those residing in cities (including New York City) and on Long Island, where the rules will be applicable, they do not cover the Justice Courts. Many communities covered by Justice Courts have subsidized housing, and those communities contain many housing units that have been cited because they do not comply with health and housing codes. Indeed, some of the worst housing conditions I have ever seen were in the homes of clients in very rural communities. These communities have health and housing code inspectors who issue violations and landlord who ignore them. There is no reason why tenants in these communities should be excluded from the benefits of these proposed rules. Therefore, we encourage the Administrative Board to add the same rule to Part 214 the Uniform Civil Rules for the Justice Courts.

Thank you for considering our comments. Please do not hesitate to contact me if I can provide you with any further information.

Very truly yours,

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June 5, 2017

Office of Court Administration
By email only: rule comments@nycourts.gov

Subject: Personal comment on proposed rule early disclosure

While a member of the Nassau County Bar Association District Court Committee for many years, at our last meeting we could only discuss the mandated rule for postcards and answers. The committee chair did not know the entire proposed rule and we had no time to discuss it. (The committee had unanimous objection to the form of the answer). Unfortunately, given the Bar Association rule that the committee could not officially comment on this rule unless they are approved by the Bar Association Board of Directors--a process which will take many months and only once has been invoked, no official action was taken by the committee to this rule which was mandated without any input by the the practicing Bar. Not to have this input is a major defect in the comment process which will cause the mandated rule and proposed rule not to be properly debugged and an unnecessary burden on the system without any improvement in the "delivery of justice."

It appears that these new rules are part of a process by OCA to bring better "delivery of justice" in Landlord-Tenant Courts. You have missed the primary defect in the system--we have a generalized judiciary system trying to implement a specialized legal system. Judges in the Nassau County Landlord-Tenant Part, prior to taking the bench, have little or no experience or training in this area of law which is very complex and confusing based upon the fact that there has been no comprehensive revision to the law in over one hundred years and there is conflicting case law.

I have practiced landlord-tenant law since 1971 in both Nassau and Suffolk Counties. Looking at this proposed rule, it is apparent that the reality of the availability of departmental records was not considered. I know of no such records accessible on the internet. To get such records, an attorney will be required to get a department search as is used for title reports. This will take time and money and some such departments require a FOIL request to release such information.

The regulatory status of the premises is already required by Court decisions; however, the building code status is not. The status as a one or two family home is hard to determine in many cases due the fact that many rental homes were built prior to the adoption of building codes. The courts are split on the right to collect rent in illegal use situations such as rooming homes and illegal two family rentals.

Rather than burden the legal system with a "rush to justice" by a clearly flawed process, it is suggested you take time to get the process right so that the result will be practicable and just.

Very truly yours,

William D. Friedman