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HOUSING COURTS AND HOUSING JUSTICE: AN OVERVIEW

*RANDALL W. SCOTT**

Housing courts, a relatively recent phenomenon in judicial systems, developed in response to local dissatisfaction with existing courts' handling of serious housing problems.¹ Despite the trend to unify state and local court systems, several jurisdictions, hoping to improve housing justice administrations, began to establish specialized housing courts² typically characterized by their flexibility and innovative powers.³

By the mid-1970s, with a handful of housing courts newly established, the time had arrived to evaluate the widely publicized new court machinery to extract instructive lessons for other jurisdictions. In recognition of this need, the ABA's Special Committee on Housing and Urban Development felt that its new charter should include an investigation of housing courts' experiences. HUD consequently agreed to fund an eighteen-month study on housing courts through the auspices of

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1. *E.g.*, The Hampden County (Springfield, Mass.) Housing Court came into being after a destructive fire that catalyzed community groups. In Boston, Pittsburgh and New York City, the failure to effectively deal with code violations and general deterioration of the housing stock led to housing courts which, it was hoped, would provide redress. Reaction to "bad judging" has played a part in Chicago's recent reform initiatives.

2. *E.g.*, Boston's housing court was preserved in the revision of the judiciary articles in 1978 although it became the smallest judicial "department" in the state.

3. See generally Penkower, *The Housing Court of Pittsburgh*, 17 URBAN L. ANN. 141 (1979).

the newly created ABA-HUD National Housing Justice and Field Assistance Program.⁴

Designed to serve as a temporary, national clearinghouse for information on housing-related dispute resolution, the Program began work on a variety of publications.⁵ As part of this effort, the ABA-HUD Program sought the preparation of several background papers in various areas of housing dispute resolution, both judicial and non-judicial. Several authors, including judges, devoted their time and energies to prepare materials which provide the basis for this Volume. The wealth of material submitted was too voluminous for the present book, thus some articles could not be included, but will be published elsewhere.⁶ This Volume preserves the unique perspectives of each author. Countervailing viewpoints are not fully represented in this volume, therefore the reader's caution is suggested.⁷

In tandem with its informational role, the ABA-HUD National Housing Justice and Field Assistance Program provided field assistance to communities by a) awarding modest planning stipends to six com-

4. Contract N. M-2856.

5. Six types of publications were issued:

- (a) quarterly informational bulletin service (back issues free of charge)
- (b) final report on housing courts and courts of general jurisdiction to be published in mid-1980 as American Bar Association, *Housing Justice in the United States: Recommendations for Change and Innovation in our Courts* (R. Scott ed. 1980) [hereinafter cited as 1980 Recommendations]
- (c) a book on small claims courts, RUHNKA, *HOUSING JUSTICE IN SMALL CLAIMS COURT* (1979) [hereinafter cited as RUHNKA]. The book funded by the ABA-HUD Program, evaluates the experience of 15 small claims courts as they deal with landlord-tenant cases.
- (d) a book of perspectives on housing-related dispute resolution 17 *URBAN L. ANN.* (1979)
- (e) a publication on non-judicial dispute resolution, American Bar Association, *Housing Justice Out-Side of the Courts* (R. Scott, ed. 1979)
- (f) executive summaries series, Ruhnka with Scott, *Executive Summary: Housing Justice in Small Claims Courts* (ABA 1979).

6. See, e.g., note 5(e) *supra*.

7. There are many divergent points of view about the court systems. Probably the most forthright critics of the courts are legal services attorneys, and somewhat surprisingly, the court personnel themselves, often including the judges. For critical commentary, see generally Fusco, Collins & Birnbaum, *Chicago's Eviction Court: A Tenant's Court of No Resort*, 17 *URBAN L. ANN.* 93 (1979) [hereinafter cited as FUSCO]; Goodman, *Housing Court: The New York Experience*, 17 *URBAN L. ANN.* 57 (1979); Kargman, *An Analysis of Landlord-Tenant Disputes in Subsidized Housing*, 17 *URBAN L. ANN.* 227 (1979); Rothstein, *The Chicago Experience*, 17 *URBAN L. ANN.* 133 (1979).

munities to encourage local reform efforts;⁸ b) providing communities with information on recent publications⁹ and funding contacts; c) sending experts to communities to share their knowledge;¹⁰ and d) educating through special statewide and national conferences.¹¹

Another aspect of the Program involved primary research of the operations of thirteen local court systems.¹² The HUD-ABA Program also intensively examined existing literature and pertinent primary source materials. The Program staff conducted interviews in various cities¹³ to obtain representative viewpoints concerning the functioning of these courts.

The field work, interviews and research work produced some tentative findings:¹⁴

(1) Our court systems generally are ill-equipped to handle housing matters, although these cases constitute one of the largest caseloads in local courts.¹⁵ Compared to the massive caseloads, there is extraordinary under-investment in personnel and facilities for housing matters.

(2) There exists inadequate statistical information on caseloads which prevents appropriate judicial management of the courts. Most courts cannot account for the types of dispositions in various cases, the average numbers of hearings on continuances per contested case, or the fines imposed and the collection thereof. At best, most courts know the numbers of jury trials, contested cases and defaults; however, the

8. See generally, American Bar Association, National Housing Justice and Field Assistance Program Quarterly Information Bulletin of the ABA and HUD (1-4: 1978-79) [hereinafter cited as Bulletin].

9. *E.g.*, The Chicago Council of Lawyers was provided with a forthcoming "handbook" on landlord-tenant law.

10. Bulletin, *supra* note 8, at 3 (4: Fall 1979).

11. *Id.* at 4.

12. Baltimore, Boston, Buffalo, Chicago, Detroit, Hampden County, Hartford, Hennepin County, Los Angeles, New York City, Philadelphia, Pittsburgh, and San Francisco. A request to HUD to study new courts in still other cities was denied; these thirteen, therefore, constituted the final "sample."

13. Interviews, at least 25 per city, included: (a) landlord groups; (b) tenant organizations; (c) legal service attorneys; (d) court system personnel; (e) bar association representatives; and, (f) staff in administrative agencies, executive departments, and corporation counsel. Where non-judicial centers existed, further interviews also were held.

14. All opinions expressed herein are those of the author and not of the ABA or HUD. All remarks are subject to reevaluation and revision for the ABA-HUD Program Reports. 1980 Recommendations, *supra* note 5(b).

15. 1980 Recommendations, *supra* note 5(b).

probable causes of these defaults are still unknown.¹⁶ Careful management of judicial time, personnel, and resources cannot occur in this information vacuum; moreover, problem areas cannot be readily identified and corrected.

(3) Lack of information management and analysis leads to serious problems. If judgments are improperly cleared, damage results to the reputation of litigants.¹⁷ If problems such as lack of service are not spotted, violations of individual rights occur.¹⁸ If cases are not regularly tracked, agencies dealing with the courts will become demoralized and will abandon use of the courts to resolve their disputes.¹⁹ When the courts do not function properly, the housing stock quality suffers.²⁰

(4) In systems lacking special housing procedures, housing-related cases may take lowest priority. As a result of judicial disdain of assignment to these matters, housing cases, particularly code enforcement cases, suffer.²¹

(5) Judicial ignorance or incompetence in housing law, some observers claim, is rampant. This is unexpectedly true in small claims courts as well, where repetition is expected to foster familiarity with the law.²²

(6) Courtroom procedures typically need reform. Heavy caseloads²³ tend to breed (a) time pressures that intimidate defendants; (b) judicial failure to determine whether inarticulated defenses exist; (c) cursory examination of plaintiffs' proofs whereby plaintiffs win in spite of fatally defective proof;²⁴ (d) timesaving procedures may violate individuals' rights to a fair hearing;²⁵ (e) pressure on defendants in land-

16. The court papers may contribute to defendant misunderstandings causing default; however, this theory needs further investigation.

17. In code violation cases, not only credit reports, but also criminal records theoretically may result.

18. Careless work by the court in default actions is particularly notable. See RUHNKA, *supra* note 5(c).

19. Code enforcement personnel are especially susceptible. See Lo Russo, *The Buffalo Housing Court: A Special Court for Special Needs*, 17 URBAN L. ANN. 199 (1979).

20. Impacts on housing stock are constantly cited as a reason for creating housing courts; the corollary therefore is self-evident.

21. Eviction cases are generally treated less with disdain than with a desire to avoid these matters.

22. See RUHNKA, *supra* note 5(c) where he proposes that benchbooks and training courses be used.

23. Heavy caseloads are only part of the problem; judicial attitudes and lack of knowledge about substantive law magnify the difficulties experienced in court.

24. See FUSCO, *supra* note 7.

25. *Id.*

lord-tenant cases to settle in the hall resulting in imbalanced, unsupervised settlements.²⁶ Even more extreme problems reportedly occur in some jurisdictions in terms of courtroom behavior and decorum.

(7) The judicial process appears unfair to litigants. Many are confused and angered at the manner in which their cases are handled. People often cannot understand the judge's actions and they are not afforded the opportunity to present their "side." Even though the judge may be faulted in part, there is a definite lack of adequate personnel to advise litigants at various stages of the proceedings.²⁷

(8) Materials used in service of process on defendants greatly need reform.²⁸

(9) Some court systems invite delay in adjudication by their failure to institute administrative or legislative reforms. Justice delayed is more than justice denied: it is the administration of injustice.

(10) Technicalities in the law create unnecessary obstacles to justice.²⁹ Antiquated restrictions on court jurisdiction, which force a plaintiff to use several forms regarding one claim and one defendant, are commonplace.³⁰

(11) Most courts ignore potential reform despite its cost effectiveness³¹ and helpfulness to those who use the courts.

Critics often repeat the above-mentioned deficiencies which include

26. *Id.*; RUHNKA, *supra* note 5(c).

27. Housing specialists provide enormous assistance in this regard. See 1980 Recommendations, *supra* note 5(b).

28. A handful of courts have made progress in redesigning their forms and including substantial amounts of information along with the summons so that litigants can come prepared.

29. RUHNKA, *supra* note 5(c).

30. *Id.* See 1980 Recommendations, *supra* note 5(b). *E.g.* a landlord may have to seek eviction in a summary proceeding and separately sue in small claims court for unpaid rent. Meanwhile, the code enforcement agency may be prosecuting in still another court. In the meantime, the tenant may wish to seek injunctive relief, which he must take to a court with appropriate jurisdiction. This fragmentation is one of the problems that housing courts are designed to redress.

31. *E.g.*, in Baltimore the city agencies provide professional staff to handle the Eviction Prevention Center. The Center counsels tenant-defendants after the court has given a judgment for the landlord [for eviction]. The center assists tenants in numerous ways, at no cost to the judicial budget. Bulkley, Eviction Prevention Program: Cooperative Efforts in Baltimore, in American Bar Association, *Housing Justice Out-Side of the Courts* (R. Scott, ed. 1979). For the many other possibilities that are available, see other articles in this Volume.

only a partial litany of the offenses tolerated in courts dealing with housing cases. Even the most well-intentioned court personnel become frustrated by the apparent inability to alter the situation. Although they do the best they can, this is often not enough. Society itself must address this question. It can, and must come to grips with much needed reform and innovation in our courts.

The creation of specialized housing courts seems to offer hope for improvement. Care must be taken in their design, implementation and supervision or they can easily degenerate into institutions worse than those they replace.

There are many variations on housing courts; yet four basic types are distinguishable:

(1) the housing court that handles only code enforcement matters,³² more appropriately named a “residential code enforcement court;”

(2) the housing court that handles only summary proceedings such as evictions,³³ more appropriately titled “summary proceedings court;”

(3) the comprehensive housing court that handles all housing-related matters from code enforcement to evictions and from small claims to receiverships;³⁴ and

(4) the idealized fully comprehensive housing/structural/environmental court, approached only in theory in some existing housing courts.

Regardless of type, all housing courts have five basic features. First, the court focuses solely on housing related matters.³⁵ Simply setting aside one day a week in the civil calendar with judges assigned “by lot” to that day’s summary proceedings, is the antithesis of a specialized housing court.

Second, the subject matter jurisdiction is circumscribed. Some housing

32. Pittsburgh provides one such example. See Penkower, *The Housing Court of Pittsburgh*, 17 URBAN L. ANN. 141 (1979).

33. Baltimore calls this the “Rent Court.” See 1980 Recommendations, *supra* note 5(b).

34. *E.g.*, Hampden County. Peck, *The Hampden County Housing Court: An Overview*, 17 URBAN L. ANN. 65 (1979). New York City may adopt this comprehensive model as it strives to address certain deficiencies in its present system. See 1980 Recommendations, *supra* note 5(b).

35. Housing-related issues must be defined broadly to include litter problems, weeds, infestation, air pollution, or other nuisances. See Jester, *The Indianapolis Environment Court*, 17 URBAN L. ANN. 209 (1979). Air pollution is handled in Hampden County Housing Court. See Peck, *The Hampden County Housing Court: An Overview*, 17 URBAN L. ANN. 65 (1979).

Some housing courts maintain subject matter jurisdiction over commercial and other non-residential structures. See Spada, *The Hartford–New Britain Judicial District Housing Court*, 17 URBAN L. ANN. 187 (1979).

courts handle only code enforcement or evictions;³⁶ other more comprehensive housing courts may handle all problems arising out of ownership on rental of residential dwellings.³⁷ Commentators argue that comprehensiveness is unnecessary or undesirable since it would divert the court from focusing on the real problems.³⁸ Yet, this problem appears indicative of staffing shortages rather than the comprehensive structuring.³⁹

If housing courts are to operate satisfactorily, they must receive adequate staffing. It is unlikely that a housing court will result in major "savings" in the judicial system budget. Rather, local housing courts encourage additional caseloads as the public becomes aware of the ability to enforce their rights. Additionally, the courts must take more time to dispose of these cases; the prior cursory proceedings resulted in the need for housing court reform.

The third basic feature of housing courts is its specialized and experienced personnel who deal exclusively with housing matters: (1) judges, (2) housing specialists, (3) clerks, and (4) support staff and volunteers who work as hearing officers and mediators.⁴⁰

Housing court judges are either permanently⁴¹ assigned or rotated.⁴² Preferably, judges should spend at least one year in the housing court

36. Eviction proceedings should not be limited to "possession," but should include suits for back rent and other small claims.

37. The housing court also should be able to handle small claims, such as return of security deposits. See generally RUHNKA, *supra* note 5(c). Title actions, however, would not be brought in a housing court.

38. See, e.g., Reed, *Detroit Code Enforcement and the Housing Court Debate* 17 URBAN L. ANN 215 (1979) (Reed warns that housing courts will not work in reality). There are many counterarguments to Reed's assumptions. See 1980 Recommendations, *supra* note 5(b).

39. E.g., overloading one judge with every type of housing-related case, as is done in Baltimore's rent court and housing court illustrates the nature of the problem. Spada argues that certain cases must be spun off from the housing court. This approach is regularly taken in Los Angeles. See Epstein, *The Los Angeles Landlord-Tenant Court*, 17 URBAN L. ANN 161 (1979).

40. Epstein, *The Los Angeles Landlord-Tenant Court*, 17 URBAN L. ANN. 161 (1979) (regarding similar services by other personnel); See generally Rogers, *An Alternative to a Housing Court*, 17 URBAN L. ANN 177 (1979) (regarding hearing officers).

41. Boston Housing Court judges are permanent unless they request transfer. The Pittsburgh Housing Court judge has remained with the court for seven years. New York City Housing Court judges are assigned until they are promoted.

42. Reason for longer assignments are described in 1980 Recommendations, *supra* note 5(b).

and should receive intensive training prior to assignment. Expertise gained over time benefits the public by providing continuity. Whatever the mode of appointment, judges, as other court personnel, need periodic scrutiny.⁴³

Housing specialists are key members of the court system. They serve as (a) investigators for the judge; (b) pre- and post-trial litigant advisors; (c) the clearinghouse for information and advice before filing complaints; (d) mediators in dispute settlement; (e) insurers that other agency referrals are followed up;⁴⁴ (f) probation officers; (g) ombudsmen between government and the public; and (h) executive and enforcement officers of the court. Some courts attempt to do without such specialists in code enforcement matters, instead arranging certain special relationships with code enforcement and prosecution agency offices.⁴⁵

The clerk's office should be specialized as well. Many combinations of unique responsibilities can be devised: (a) the clerk-magistrate,⁴⁶ who hears certain matters or motions, relieving the judge of these responsibilities; (b) the attorney-clerk,⁴⁷ who may serve in expanded roles by giving legal advice, preparing opinions, and offering connections with the organized bar; and, (c) the pro se clerks, trained to assist litigants in drawing up complaints,⁴⁸ collecting claims and understanding the judicial proceedings.⁴⁹ This aspect of court operations is often neglected,

43. *Id.*

44. When code enforcement is at issue, the court must maintain contact with the agency and its inspectors, particularly if reinspections are required prior to the next hearing. In Pittsburgh, this is done by a person known as the "court administrator." *See id.* In Boston, and some other housing courts, the housing specialists conduct the inspections. In eviction matters, housing specialists may deal with social service agencies or even the tenants' employers, with the tenants' permission.

45. New York City and Chicago use this approach. *See id.*

46. Clerk-magistrate programs are a relatively recent phenomenon, worthy of special study. *See id.* Little has been written on this approach. *See* Bulkley, Clerks Transformed for Duties as Clerk-Magistrates, in ABA, National Housing Justice and Field Assistance Program Quarterly Information Bulletin of the ABA and HUD 11 (4:1979).

47. Hartford requires that an attorney fill the clerk's position. *See* 1980 Recommendations, *supra* note 5(b).

48. New York City employs clerks of this type. *See generally* Cohen, *The New York City Housing Court—An Evaluation*, 17 URBAN L. ANN. 27 (1979). The clerks in many housing courts, including Boston and Hartford, informally function quite effectively in conjunction with the housing specialists in this way. Hennepin County's clerks fulfill similar roles. *See also* 1980 Recommendations, *supra* note 5(b).

49. Ruhnka criticizes small claims courts for their failure to provide assistance to defendants in housing-related matters. He believes plaintiffs are well served by the *pro se* clerks. *See* RUHNKA, *supra* note 5(c).

yet the clerks are the first contact many litigants have with the court. Typically clerks' offices are not structured to deal with housing related cases.⁵⁰

Another category of personnel can be extremely helpful to the housing court: (a) hearing officers;⁵¹ (b) mediators;⁵² (c) post-hearing ombudsmen;⁵³ (d) law clerks;⁵⁴ (e) court administrators;⁵⁵ (f) non-judicial personnel who deal with housing-related dispute resolution;⁵⁶ (g) specially assigned agency staff;⁵⁷ and, (h) citizen committees.⁵⁸ Many of these mechanisms are mentioned briefly in this volume and are covered more fully in the ABA-HUD Program reports.⁵⁹ Each has a unique and valuable role to play; many can be integrated into the court structure with substantially no cost. Therefore, if a locality is considering a housing court, it should thoroughly research these additional "personnel" functions to see which ones are appropriate in that community's

50. Intake procedure on hearing days is typically poor. Confused defendants receive no assistance. Although clerks may be available in the court building, the public is not so informed. Hampden County, however, has revolutionary ways of assisting the litigants. See Winer, *Pro Se Aspects of Hampden County Housing Court: Helping People Help Themselves*, 17 URBAN L. ANN. 71 (1979).

51. See, e.g., Rogers, *An Alternative to a Housing Court*, 17 URBAN L. ANN. 177 (1979). Hearing officers are particularly suited to clearing the calendar of uncontested cases. For lawyer-referees in small claims courts, see RUHNKA, *supra* note 5(c).

52. Volunteers from the Los Angeles bar association handle mediation on hearing days. See Epstein, *The Los Angeles Landlord-Tenant Court*, 17 URBAN L. ANN. 161 (1979). In Boston, complex disputes are assigned to an attorney with the court. See 1980 Recommendations, *supra* note 5(b).

53. Housing specialists or the clerk's office may do this.

54. New York City judges, as well as the Boston judge handling landlord-tenant matters, agree that a law clerk (part-time or full-time) would tremendously help in the research and preparation of opinions. See 1980 Recommendations, *supra* note 5(b).

55. *Id.*

56. Programs of this type are described by several authors in this volume. See the Non-judicial Resolution section in 17 URBAN L. ANN. 225 (1979).

57. E.g., in Pittsburgh, code inspectors and prosecutors regularly work directly with the court. Penkower, *The Housing Court of Pittsburgh*, 17 URBAN L. ANN. 141 (1979). The entire code enforcement system is specially geared toward effective compliance programs with specially assigned personnel, trained to handle cases from mediation through court proceedings.

58. Citizen advisory committees are an essential aspect of a properly designed housing court system. Preferably, legislation will mandate such a body to hold public hearings, and suggest reforms. See 1980 Recommendations, *supra* note 5(b).

59. See *id.*

courts.⁶⁰

The reader should examine the articles in this Volume with the following caveats. Some details are treated so succinctly that they appear minor, when instead, they are crucially important. Each of the housing courts covered in this Volume remains, to some extent, in a state of flux, not the least of which concerns the assignment of new court personnel. It is the court staffs who operate the system and dictate the success or failure of the reforms described throughout this Volume.⁶¹ Because of this constant flux, by 1980, the court systems may operate differently from those described herein. The reader should thus refer to the 1980 Recommendations Report and make first-hand inquiries to gain information on future changes.

60. This can be achieved by convening a thoroughly representative leadership committee. Not only will it suggest the structure the court will take, but it also will help attain support from the private and public sector.

61. See 1980 Recommendations, *supra* note 5(b).

JUDICIAL RESOLUTION

