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Jerrold B. Winer

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PRO SE ASPECTS OF HAMPDEN COUNTY

HOUSING COURT:

HELPING PEOPLE HELP THEMSELVES

*JERROLD B. WINER**

INTRODUCTION

Great changes in American life have occurred over the last score of years. With these changes has come an increasing public interest in the law and how it affects individual rights. This growing interest may account for alterations in the administration of the law and in the legal profession itself. Today, attorneys find themselves hard-pressed to stay abreast of the ever-broadening law, as each decision weaves greater detail and specificity into the older law.

While the public continues to demand judicial resolutions to societal problems, the need for professional legal expertise in many routine "legal" matters is being questioned. It is often thought that laymen should be allowed to perform some of these tasks themselves. The legal profession itself is beginning to realize that some matters cost far more to handle than lawyers can properly charge. Often clients are better off doing some things for themselves, or having paralegals rather than lawyers perform the more routine services.

Public pressures to enable individuals to handle simple legal matters without attorneys have led to an increasing use of the courts by

*Clerk/Magistrate, Housing Court of Hampden County, Springfield, Mass. The author's views arise from his prior experiences as executive assistant to the Mayor of Springfield, Mass., and as Deputy Director of Community Development for that city prior to being appointed as Housing Court Clerk.

unrepresented parties. The extension of prose adjudication into the realm of landlord-tenant problems partially explains the creation of courts like the Hampden County Housing Court.

The Hampden County Housing Court began operation two years after the establishment of the Boston Housing Court. Hampden County tenants responsible for the court's creation cited the need for a specialized housing court since the district courts could not adequately deal with housing problems on a timely basis due to its crowded schedule and because the right to appeal to the higher superior court was non-discretionary. Additionally, the tenants felt that the juxtaposition of housing-related cases with the usual district court docket of more serious crimes would make housing matters appear relatively less important to the presiding judges.

With the advent of the Boston Housing Court in 1971¹ at a superior court level, a forum was created where urban housing cases could be heard by judges in a specialized atmosphere and with the assistance of a specially trained staff. In Springfield, the Commonwealth's second largest city, support for a second housing court was not widespread until fire destroyed a condemned, but still occupied house, taking the lives of two small children. The result was the bill creating the Hampden County Housing Court,² the first housing court in the nation with county-wide jurisdiction able to deal with urban, suburban and rural housing cases.

The atmosphere of a "people's court" surrounded the housing court from its early stages, when the governor agreed to allow an ad hoc public committee to participate in interviewing and recommending candidates for both the judge and clerk of the new court. A Citizens Advisory Committee to the court was created as a result. These actions helped to create the impression that the rules followed in other courts need not necessarily apply in the Hampden County Housing Court. In addition, the Massachusetts Supreme Court in *Commonwealth v. Haddad*³ affirmed the right of a private citizen "to enter complaints for a violation of the law," thus confirming the status of a citizen complainant in a criminal proceeding seeking to enforce the state sanitary code. This decision allowed the courts to take complaints from citizens when municipal officials failed to act.

1. 1971 Mass. Acts ch. 843, § 1, codified in MASS. GEN. LAWS ANN. ch. 185C, § 1 (West Supp. 1979).

2. 1973 Mass. Acts ch. 591, § 1, codified in MASS. GEN. LAWS ANN. ch. 185C, § 1 (West Supp. 1979).

3. *Commonwealth v. Haddad*, 364 Mass. 795, 308 N.E.2d 899 (1974).

Of course, the conception of the housing court as a “free-form” court operating with different rules is false. Hampden County Housing Court operates under the same rules of criminal procedure as the district courts of the Commonwealth, and under the same civil rules and appellate rules as the superior courts of the Commonwealth with a few exceptions.⁴ The most important special rules concern the right to transfer any case within the county to the housing court simply by filing a transfer form and the right to accept a written report from a housing, building or other governmental inspector into evidence without requiring that the inspector be in court to give testimony.

By giving the court concurrent jurisdiction with both district and superior courts, the advantages of both courts are gained. Additionally, equity powers which district courts lack, and the right of appeal to the Commonwealth's Appeals Court which negates appeals for the sake of delay are realized.

These few rule changes do not amount to a “people's court.” Rather, they create an aura of service and openness to the people who use the courts and pay the salaries.

In addition, two positive steps have been taken to help citizens more easily use the court.

TIMELINESS

First, the important ingredient of timeliness has been added by streamlining procedures, reducing bureaucratic red tape and providing a more flexible scheduling method to assist attorneys and pro se clients in getting their cases into court as quickly as possible.

Some clerks' offices habitually reject legal filings which do not meet their interpretation of court rules. Often this is done without notifying the attorney involved. Other clerks have been known to invoke their own rules for acceptance or rejection.

Many attorneys are probably familiar with the law school axiom which has been expressed in various ways: “If thou goest against the clerk, thou may be invoking the quiet ire of the judge.”

In the Hampden County Housing Court that simply does not exist; almost any papers a party wishes to file in a case are taken leaving it to the opposing party to raise the issues of proper form, content or per-

4. Motions for summary judgments are filed by the date when answers are due and heard without further notice at the time of trial. Discovery is only permitted by order of the court after the hearing. Answers must be filed within one week; trial is set no later than two weeks. For small claims, the court may set a payment schedule.

missibility. If an attorney uses a form from another court and inserts the name of the housing court and judge, the filing will be accepted since the content and the intent are more important than from where the form came.

When a motion is filed with an assent from the other attorney, there is no requirement for the attorneys to appear. In addition, since September 1, 1978, the new Massachusetts Court Reform Act has allowed clerks to act as magistrates and "hear and rule on any uncontested non-evidentiary motion as may be allowed by rule of court."⁵

The court makes every effort to schedule motions and hearings at the convenience of parties where a problem of scheduling or appearances in other courts arises. There is a designated daily motion time, but it is dropped when the rigid schedules prove detrimental to the people using them.

Fortunately, the judges have never balked at hearing a motion or taking a view at 8:30 a.m. or at 6:00 p.m. Often, trials are continued until 8:00 a.m. the following morning to finish a case before the already scheduled daily docket call, or to allow other attorneys to appear on schedule in other courtrooms. The judges often sit until 5:00 or 5:30 p.m. to finish up on a particular witness or particular case. Sometimes this procedure plays havoc with a lawyer's office schedules, but it also, and more importantly, fosters the handling of cases in a timely fashion. While delay in courts leads to many out-of-court settlements, it is difficult to believe that this could be called "justice." People who use the court deserve to have their problems solved quickly; therefore, delay must be avoided.

FORMS AND PRO SE

The court has adopted special forms within the existing laws to allow pro se complainants and defendants to take legal action without lawyers wherever that is possible, as in simple equity situations.

Pro se applications are thus granted to apply for and receive tem-

5. Rules for summary process actions are basically the same in all of these courts. However, in the housing court, motions are filed by the date that answers are due and heard without further notice at the time of trial, and discovery is permitted by court order only and deadlines are moved up to speed resolution. If a motion is filed to remove default or a request is filed for a rehearing or a new trial, the clerk is authorized to notify all parties by telephone to schedule a hearing within three days. The housing court also follows its own unique rules for the disposition of small claims, allowing the court to set a payment schedule, holding the execution for as long as there is compliance to the schedule.

porary restraining orders (TRO's) and preliminary injunctions, both of which are court orders attempting to reestablish a normal situation until a hearing on the merits of the issue can take place.

The Hampden County Bar Association in cooperation with the housing court, assists TRO applicants by providing lawyers willing to work speedily for a reasonable fee. For the more simplified situations, where the aim is to get the tenant back at home or to restore peace to an apartment building, a simple pro se application based on an affidavit is used. The judge reads the affidavit and takes testimony from the applicant and witnesses, and then determines whether a TRO or a short order of notice should issue. On motion, pro se landlord applicants may receive court orders requiring tenants to pay their rent into court with the court acting to supervise and pay for repairs, rehabilitation, continuance of heat and other utilities, and other residential services.

The services offered to pro se tenants are necessary to solve immediate problems such as lockouts, utility turn-offs in self-help evictions, or waste by tenants in the midst of the eviction process. Furthermore, sharing jurisdiction with district courts, most of the property owners in the county file their summary process cases with the housing court instead of district court. Several district court judges have seized this opportunity to relieve a portion of their crowded dockets by shifting all summary process cases to the housing court.

Notwithstanding the court's affirmance of the right to file a pro se complaint to enforce the sanitary code in the case of *Commonwealth v. Haddad*,⁶ problems arise in the clerk's office due to the inability of pro se applicants to accurately determine that code violations actually exist, and to prove sufficient cause to justify a complaint. Additionally, code enforcement quality varies considerably in the twenty-six cities and towns within the court's jurisdiction; some inspectors, unfortunately, would prefer to have residents bring their problems directly to the court, rather than become involved.

The housing court requires the pro se applicant for a criminal complaint to first show that he has reported the violations to the local inspection authority and that no action has been taken before filing the complaint. The district attorney from Hampden County has been cooperative in assigning a staff member to specifically act as prosecutor in these pro se complaints. Having a substantial role in pro se litigation, the clerk's staff is heavily involved in assisting pro se applicants, setting up show cause hearings, and taking care of the other myriad of details.

6. 364 Mass. 795, 308 N.E.2d 899 (1974).

Due to the heavy slate of small claims, one can immediately see that Hampden County Housing Court has far more than the normal court's share of pro se complainants. As a result, new court forms have been designed which are easier for pro se complainants to use, allowing them to tell their story more directly. These new forms indicate to both parties the nature of the problem as well as when court appearances and answers are due.

While some attorneys view pro se litigation as a threat, the vast majority of the bar realizes that this is occurring in cases where the time of the attorney involved would be greater than he could bill the client; even at reduced rates, the bill would be higher than the client would ever expect to pay. The enlightened members of the bar are delighted in the services provided pro se complainants by the Hampden County Housing Court.

Despite the obvious advantages inherent in pro se litigation, the court never hesitates to tell inquirers that they ought to see an attorney, where attorney expertise is clearly needed. The housing court staff has enough experience to advise people who do not already know, that lawyers can save a good deal of time, money and grief if they are consulted at the proper time.

TELEPHONE OFFICE SERVICES

Another interesting factor which is unique to the housing court is the great number of telephone inquiries. Some of these involve obvious code complaints, and callers are first referred to their local housing, building and health inspection offices. Other calls recount landlord-tenant problems, and wish to be apprised of the applicable law briefly and understandably.

Some purists who might say that the heavy involvement with the public both over the phone and over the counter is perilously close to the practice of law. It also holds the court open to charges that wrong information had been provided when, in fact, correct information had been given.

However, the facts asserting the court's success cannot be ignored. If personal service and simple forms can help solve some of the human and legal problems of housing, then the Hampden Housing Court has successfully performed its legislatively assigned function.

SUMMARY PROCESS

The summary process section is probably the court's most time-

consuming task. To remedy the situation an attempt has been made to simplify the eviction process so that landlords can handle them without court intervention and to work out a mechanism whereby tenants would be allowed to stay in their homes if the landlord was given an opportunity to collect back rent.

Some of these remedies involve supervision by the housing specialists to insure that repairs are made to correct code violations that exist, and to escrow rent to be paid out when these repairs are completed.

The unique duties of housing specialists are provided for by statute.⁷ The specialists are required to be “knowledgeable in the maintenance, repair, and rehabilitation of dwelling units; the problems of landlord and tenant as they pertain to dwelling units...,” and in effect they perform similarly to probation officers working to help solve problem cases, acting as the eyes and ears of the court on inspections.

In those summary process cases where rent is withheld and both parties accept third-party intervention, or where it is ordered by the judge, rents may be paid into the court while the owner makes repairs. Such procedures are supervised by the housing specialist; subsequent adjudication returns fair rent to the landlord when repairs are completed.

Because attorneys' time has become so expensive and landlords with few tenants are unable to pay even scaled-down legal fees, the housing court spends more and more time assisting landlords in handling evictions themselves. To accomplish this, landlords are instructed how to begin an eviction proceeding, provided simplified forms which all parties can understand and are supplied with any other additional specialized forms and services necessary to solve particular eviction problems.

In Massachusetts, most evictions begin with a notice to quit, either fourteen-day, where rent is owed,⁸ or thirty-day, given prior to the day rent is due and effective the last day of the ensuing month.⁹ The statutory requirement of a notice to quit is extremely vague, and cries out for replacement by something far more specific.¹⁰ In the meantime the court staff can ameliorate the situation by apprising the landlord as to the legal requirements of the notice, giving detailed directions on the mechanics of proper service of notice. A good deal of the specialists' time is spent on

7. MASS. GEN. LAWS ANN ch. 185C, § 16 (West Supp. 1979).

8. MASS. GEN. LAWS ANN ch. 186, § 11 (West Supp. 1979).

9. *Id.* § 12.

10. Issuance of the notice to quit as a standard legal form from the court would be welcomed so that the problems of improper notice could be avoided, at least as to form.

this function.¹¹

The second step in the eviction process is service of the summons which the housing court has combined into one form to reduce the paper handling cost and the chance of error by half. The summons itself has been rewritten several times to increase the probability that both the landlord and the tenant will understand what they must do. By indicating to the tenant the day, date, time and place he or she must appear, the housing court summary process complaint contrasts sharply with that of district courts which tell the tenant to appear "on the Thursday following the expiration of seven days from the date of service of this summons."¹²

Although the complaint/summons form indicates that a written answer should be filed to avoid entry of a default judgment, it is almost impossible to educate tenants that an answer should be filed prior to the hearing. Whether it is an inability to express one's feelings in writing, or perhaps the human reaction that if one ignores a situation it will go away, the vast majority of tenants simply appear in court to give their side of the story without any prior notice. To aid these defendants, the court has developed a simple check-off form to organize defenses so the judge can grasp their case. Believing that everyone's best interests are served when both parties are present at the hearing, owners are told to appear ready for a hearing even though no answer has been filed, thus avoiding delay by having the tenant return the next week for a hearing if the landlord had not been present.

With a crowded docket and too few employees, considerable office correspondence and filing time is saved by using these forms. From both landlord and tenant points of view, their time is saved as well.

In cases where witnesses are required, and the landlord simply cannot be prepared because no answer has been filed, the court attempts to schedule the hearing within the ten-day appeal period. Obviously, there is an urgency about an eviction proceeding from both parties' points of view; questions concerning rent owed or condition of premises require immediate determination and solution.

11. Some time has been saved by reducing these directions to writing, yet in spite of this, personal service to landlords takes up a large bulk of the staff's work.

12. Under the aegis of the new Chief Administrative Judge of the Trial Court of Massachusetts, the Hon. Arthur M. Mason, a judicial committee has been appointed to revise the summary process writ, of which the Hon. Edward C. Peck, Jr., Judge of the Hampden County Housing Court, is a member. Preliminary recommendations of this group have been to adopt the Hampden County Housing Court summary process complaint as the standard for the Commonwealth.

In addition, a procedure has been instituted with cooperation of the Welfare Department, for those who qualify, in which both landlord and tenant sign a special form signifying that the owner agrees to allow the tenant to stay providing the Welfare Department pays the back rent, and the tenant agrees to directly pay the rent in the future. This solves the landlord's problem regarding back rent, keeps the tenant in the apartment, and assures that such delinquent payments will not happen again. In such cases the judgment is entered, but issuance of the execution is delayed until the Welfare Department can approve the back payment. As soon as this is done, the case is dismissed. If no approval is forthcoming within two weeks, the execution issues as scheduled.

One of the most worthwhile innovations of the Hampden Housing Court has been the development of a notice of default letter. Since some federal or state program exists to protect people from almost everything, it is rather difficult for the person who receives a public assistance check, free medical assistance, food stamps, free education or retraining, and a rental subsidy to realize that in spite of the government's intervention and assistance, it is still possible for a landlord to regain possession of the premises if the rent is not paid. As a result of this misconception, tenants who ignore notices to quit and summary process complaints, also ignore simple default postcards and are stunned when the sheriff pulls up to the door with the moving van.

By instituting the default letter, the gap has been bridged. Our letter tells of the default, indicates how much back rent and costs are owed, tells how the default can be removed if there is good and sufficient reason, and lastly, gives the date after which the sheriff can be expected. There are always a few tenants who are shocked into action by this letter who are able to thwart their eviction.

A preliminary survey of the 2,604 summary process cases filed during 1978 indicated that 1,391 or some fifty-three percent were defaulted,¹³ and 310 were dismissed due to pretrial settlement. In the remaining 903 cases, approximately thirty-five percent, either answers were filed or tenants appeared to protect their rights. Of these cases, there were 395 trials, 457 agreements, and 51 tenancies reinstated through the Welfare Department.

In addition to helping the landlord begin the eviction process, and

13. While the author has no comparative statistics on defaults in other courts, a 53% rate would seem to be rather low. Further, many of these defaults are recorded with public housing tenants, who are very much aware that they rarely are evicted, and can usually work out some repayment schedule.

assisting the tenant to understand it and know when to be in court, the housing court further assists the defaulting tenant by providing two predrawn forms by which motions to remove default and to stay execution can be filed if the tenant is willing to pay the back rent in full or by a payment schedule. This procedure results in savings to both tenant and landlord. Stimulated by the default letter, some tenants who had good reason for not paying their rent, or who had been assured that they need not appear because their rent was paid up, call or appear in person; they are then given a predrawn Motion to Remove Default.

If execution has already issued and the tenant appears with a good reason for not having answered or appeared previously, the court allows the tenant to file the predrawn Motion to Restrain Use of Execution, and a rehearing often takes place. In both instances, the cases often are settled by payment in full or an agreed payment schedule, thus satisfying both tenant and landlord.

SMALL CLAIMS

Small claims courts were specifically designed for use on a pro se basis, so it is no surprise to find ninety-nine percent of both plaintiffs and defendants appearing unrepresented. It is surprising, however, that these courts created for simplified hearings still use the traditional, unintelligible forms.

Realizing that the plaintiff ought to be able to state his claim on a simple form quickly and easily, and that a defendant ought to be able to understand with clarity what the claim is and when he has to appear, the Hampden Housing court has provided such a form for its own use in small claims cases.

Since much of the court's small claim practice involves the return of security deposits, guidelines are also provided in the clerk's office which enable those seeking their return security deposits to include the necessary information to constitute a proper claim.

Hampden County was also the first court in Massachusetts to allow service of process by first-class mail as well as by registered mail, thus insuring legal service if the certified mail is unclaimed or refused, and the first-class mail does not return. This is not only easier for the plaintiff, but far easier for the court's understaffed, overworked office. Many defendants who would not have answered, and would therefore be subject to additional costs for sheriffs' service, or who would have allowed themselves to be defaulted are stimulated to answer because they receive the regular mail claim, even though they have refused to accept the certified mail.

In the court's early days, the number of defaults recorded in our small claims court was shocking; a survey of small claims in Massachusetts a few years later supported our figures. If one believes that every effort ought to be made to get both parties together either in court or under the court's auspices, the number of judgments by default is an important index of the court's effectiveness.

To remedy this situation, the housing court immediately made available a financial form and a payment schedule where some agreement was possible. The numbers of answers, however, really did not begin to increase until the court developed its answer form, which not only provides a paper on which defendants can "X" a block or jot down their answer, but also gives them the opportunity to say, "Yes I owe the money, but cannot pay it all at once."

The ability to ask for a time payment plan immediately increased the numbers of answers filed. Defaults dropped considerable, and in providing this opportunity to answer, we uncovered defendants with perfectly good defenses who otherwise would not have come into court, and thus would have lost their case simply through nonappearance. Again, the Hampden County Housing Court believes that its clientele deserve an opportunity to appear before the judge and have their case heard; this opportunity should not be lost simply because the forms and procedures are too difficult to understand.

CRIMINAL AND CODE VIOLATIONS

When the Hampden County Housing Court was created in 1974, criminal jurisdiction was conferred upon it for purposes of dealing with violations of the health, fire, lead paint, building and allied codes, since violations of these codes are criminal misdemeanors in Massachusetts. In addition, such charges as tenant waste and criminal trespass have come before this court.¹⁴

Part of the justification for the creation of a housing court was the reluctance of district or superior court justices in labeling housing and building code violators as "criminals." Therefore, the specific statute dealing with the housing court does not allow the proceeding to be stamped "criminal" unless it is found that the offense charged was "willful, intentional, reckless or repeated."¹⁵

14. MASS GEN. LAWS ANN. ch. 185C, § 19 (West Supp. 1979).

15. *Id.* Since the court's inception, the judges were reluctant to have the "criminal" summons served by uniformed police officers. In Massachusetts, judges are permitted to

Housing and building inspectors, appointed as constables in the larger cities in the court's jurisdiction, make service of their own summons. This procedure solves two problems; the inspectors know the people to whom they are making service and police departments do not view the service of summons as their highest and best job.

Additionally, a pamphlet has been developed which the officer gives out at the time of service telling the defendant what is going to happen at the court appearance. This insures a higher level of appearance at the first notice, and reduces the problem of issuing warrants for those who do not appear.

In the court room bilingual appointment cards are handed to the defendants at the time of their appearance to tell them of their next court date. The court uses simplified waiver of counsel forms for those few defendants who are entitled to public counsel, but choose to waive it. Equally simple waiver forms are used for defendants who wish to waive a jury trial.

If a defendant wishes a jury trial, the housing court utilizes the superior court jury pool, and in most cases offers trial within a few days by rearranging schedules. While it does not involve forms, the housing court has always maintained a flexible schedule to allow for hearings and court reviews early in the morning or late in the afternoon, thereby enabling both parties to attend court without missing work.

CIVIL CASES

While the civil side of the court does not really lend itself to pro se utilization, its restraining order mechanisms prove valuable in solving specific problems. Numerous cases involve both landlord and tenant plaintiffs where the issuance of a restraining order provides a temporary remedy. Impatient after waiting for back rent, landlords often take the "self help" approach to law and lock the tenant out of his or her apartment. Often, a telephone call from the clerk or a housing specialist will convince the landlord that the consequences of such action could be far worse than any benefits. An offer from our court's office to explain the summary process procedure will convince a recalcitrant owner to let back in the tenant. Where the tenant is not interested in pressing charges, no complaint is filed, and the incident is forgotten. However, in those situations where the owner does not respond and there is an over-

deal with criminal violators by employing the rules of civil procedure and Judges Greaney and Peck, past and present judges of the housing court, have utilized the civil treatment extensively.

whelming need to get the tenant back into the apartment, the tenant may use a "pro se" application, developed by the court, for a temporary restraining order.

If in the opinion of the clerk, the matter can wait a day or two longer, and if the plaintiff agrees, a short order of notice is issued for a hearing within a few days. If not, the matter goes *ex parte* before a judge who determines whether to issue the order.

Problems of the opposite type emerge when tenants, having received a notice to quit, proceed to interfere with the quiet enjoyment of other tenants in the building with loud parties, late night noise, and damage to the apartment. The landlord needs a device with which to control the tenant until possession is recovered; this can be achieved by a temporary restraining order.

In both cases, neither plaintiff may wish to pursue the matter beyond gaining control over the immediate situation; then other facets of filing a civil complaint are not necessary. Just as in a normal civil action, service of the affidavit/complaint and restraining order or order of notice must be made by a deputy sheriff with proper return. However, unlike usual civil procedure, the resolution of the problem determines whether or not a full-blown civil case is necessary.

The Hampden County Housing Court has also initiated the use of a similar form of a restraining order which allows the owner of the property to enter a tenant's apartment at reasonable times and with reasonable notice for purposes of making an inspection, making emergency repairs, or showing the apartment to a prospective tenant. Again, the application may be cause for a short order of notice or may go before the judge *ex parte* for determination of the order.

CONCLUSION

Certain people have expressed disapproval with the Hampden County Housing Court. They point to the procedural informality that facilitates problem solving rather than punishment as reason for their view. They criticize the court's forms as well as the methods and procedures by which the public can benefit without formal legal representation where this is possible. Obviously, these criticisms are made by people who are unaware of the fact that the housing court is similar to all other superior and district courts in procedures, jury and jury-waived trials and motion procedures.

The procedural changes that have occurred in the Hampden County Housing Court have been aimed at allowing parties to speak to one another or to tell their story directly to the judge without the artificiality

which the law sometimes forces lawyers to inject, and without the procedural motions and delays. Thus, the judge can hear the facts while they are timely, question the witnesses, and weigh the evidence without the superstructure of red tape which has arisen around many of our nation's courts.

Courts were designed to solve disputes in the most effective and efficient manner possible. It is just such solutions that the people of Hampden County are receiving in their housing court.