Special Commission *on the* Future *of the* New York City Housing Court

Report to the Chief Judge • January 2018

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Executive Summary

The New York City Housing Court, part of the Civil Court of the City of New York, is one of the busiest and most overburdened courts in the nation. On average, the Court handles a quarter of a million summary proceedings annually, as well as thousands of other housing-related cases. For many New Yorkers, Housing Court is their first and perhaps only experience with the legal system other than jury duty – and is aptly described by one observer as the "place where ordinary people build their personal understanding" of "fairness, justice, and the state."[1] Both tenants and landlords come to Housing Court under great stress. Some tenants face the frightening prospect of losing their homes; others seek to improve conditions that threaten the health and well-being of their families. Landlords may be concerned about losing their livelihood or property or face other dire financial consequences if they are denied timely disposition of nonpayment or holdover proceedings.

In 2017, the Universal Access to Legal Services law was passed by the City Council and signed into law by Mayor Bill de Blasio (26 NYC Admin. Code Section, Chap. 13) (Universal Access law). This law will provide access to free legal representation in Housing Court to low-income tenants facing possible eviction. Other unrepresented tenants in eviction proceedings, whose income does not entitle them to access free legal representation, will have access to a free legal consultation. We believe that most unrepresented tenants will avail themselves of such legal representation or consultation. This is a great step forward but also presents significant new challenges for the Court.

The Universal Access law will be implemented over the next five years and will transform Housing Court litigation. But even as the volume of unrepresented litigants substantially declines, there is a risk that without careful planning, an already overcrowded docket could become even more unwieldy and slow-moving. The Universal Access law creates new opportunities to improve the delivery of legal services to the most vulnerable populations but may also lead to increased litigation and, potentially, a greater volume of court users. How can we prevent court congestion and delays, which burden both tenants and landlords? What can be done to improve the perception, as well as the reality of the Housing Court, so that it is truly viewed and operates as a *court of law* with the dignity and decorum that such status entails?

The recommendations of the Special Commission on the Future of the New York City Housing Court are its response to these questions. Accordingly, the Special Commission's recommendations look both forward and backward. Looking forward, we recommend new procedures, new practices,

1 *New York City's Housing Court at 40: Controversies, Challenges, and Prospects for the Future* (synopsis of March 11, 2013 conference organized by the Association of Housing Court Judges, NYU's Furman Center for Real Estate and Urban Policy and the New York City Bar Association, based on recordings, and as compiled and written by the Housing Court Committee of the NYC Bar Association), at 8 [hereinafter *Housing Court at 40*].

new training, and in some respects, a new court structure. But it is clear from the experience of Special Commission members that we must also address long-standing and serious problems for these reforms to truly make a difference. For years there have been plans to expand and/or relocate courthouses – in particular, the Kings County and Bronx courthouses. In the Bronx, some trials are currently conducted in the lobbies outside elevator banks. Unless there are new and modernized courthouses, unless e-filing and other technological advances are instituted in every borough, and unless there is an increase in the number and status of Housing Court judges, the Housing Court will continue to suffer from the perception that it is a second-class court. Other recommendations – for targeted use of alternative dispute resolution, better interactions with government agencies, and a renewed focus on civility and decorum – are equally critical.

Chief Judge Janet DiFiore formed this Special Commission to provide "an effective blueprint for the Housing Court's future, one that will greatly improve the litigation experience" in Housing Court."[2] Each recommendation below – from new procedures and practices to new technology, from new courthouses to changes in court structure, from more judges, clerks, and interpreters to improved interactions with government agencies – forms an essential part of that blueprint.

2 Letter from Chief Judge Janet DiFiore to Special Commission Members (April 20, 2017); *see also* Chief Judge Janet DiFiore, *The State of Our Judiciary* (2017), at 9.

I. The Special Commission and its Process

In her 2017 State of Our Judiciary address, Chief Judge Janet DiFiore announced the appointment of the Special Commission on the Future of the New York City Housing Court. She asked the Special Commission to develop a plan for the Housing Court's future that "balances efficiency with a commitment to just results that are achieved in an orderly, comprehensible fashion."[3] The Special Commission began its work in April 2017.

A. COMPOSITION OF THE SPECIAL COMMISSION

In appointing the chairs and members of the Special Commission, Chief Judge DiFiore, in consultation with Chief Administrative Judge Lawrence K. Marks, selected members who represent all relevant constituencies.

Hon. Peter Tom of the Supreme Court, Appellate Division, First Department and Hon. Joan Lobis of Supreme Court, New York County (recently retired) were selected to chair the Special Commission. Notably, early in their careers both served as Housing Court judges. The members included four sitting Housing Court judges, two of whom are Supervising Judges. Other members included legal services providers; private attorneys who represent landlords, tenants, or both; the NYC Civil Justice Coordinator (whose office within the Human Resources Administration (HRA) oversees the administration and funding of the Universal Access law), and a lawyer from the Center for Court Innovation. Nancy Ludmerer, Counsel to Chief Judge DiFiore, and Barbara Mulé, Deputy Counsel, Office of Court Administration (OCA), served as counsel. A complete list of Special Commission members appears in Appendix A.

B. THE WORK OF THE SPECIAL COMMISSION

The Special Commission met six times between April and December 2017. Given the diverse membership, discussions were robust, challenging, and informative. At the first meeting, the chairs divided the full membership into four subcommittees. Each subcommittee was charged with investigating and reporting on the problems in a specific housing court or courts; each included judges, private practitioners, and legal services providers, with members assigned outside their regular boroughs of practice. Between the full Special Commission meetings, the subcommittees met and issued reports identifying problems in all boroughs of the City. Using that input, and additional input from the chairs and counsel, the full Special Commission began to focus on solutions and, at the end of October, began to draft specific recommendations.

3 *Id.*

The chairs and counsel also toured the Housing Court facilities in all five boroughs. During these tours and subsequent meetings, the chairs and counsel solicited the views of Housing Court judges, court attorneys, clerks, and Help Center personnel. They also met with the City Bar's Housing Court Committee. Counsel also reached out to other judges with relevant experience, including the Deputy Chief Administrative Judge for the New York City Courts; the Citywide Supervising Judge of the Housing Court; and the Supervising Judge of New York County Civil Court, as well as law professors, mediation experts, and legal design specialists – the latter to explore, among other things, how to make Housing Court and Housing Court forms more user-friendly.

C. FOCUS GROUPS

To ensure that all groups were heard, the Special Commission conducted focus groups with both tenants and landlords, organized by Special Commission Member Liberty Aldrich of the Center for Court Innovation. Overall, approximately 15 individuals actively participated in these focus groups. The comments from both tenants and landlords were consistent with the Special Commission's prior observations, visits to the courts, and discussions with stakeholders. Some complaints – about the long lines, the lack of signage, and the requirement that all litigants show up at 9:30 a.m., only to wait for hours – echoed the Special Commission members' observations and experience. In addition, both tenants and landlords described the confusion and discomfort they experienced, and provided some positive feedback:

> *"The average tenant going into the Court, whether they were a tenant for 50 or 20 years, they do not know what an order to show cause is. They don't know the ramifications of signing a stipulation…"*

> *"They have a late night, for people who work, Thursdays. That helps immensely. I don't know why they can't just do maybe two late nights because that was the biggest thing with my Housing Court [case], taking time off."*

> *"I had to look for [the landlord's attorney]. [The clerk] said, 'You go find him, and when you find him, come back in.'"*

> *"The landlord's attorney does not do a disclaimer when he's talking to you. You're in court…and someone's calling you. You're assuming it's a court person, you're assuming that it's somebody there to help you, and they start talking to you. 'Okay you owe $5000. How are you going to pay this?' You still don't know it's the landlord's attorney."*

> *"If it weren't for her [a Manhattan legal aid attorney], I would have been in a homeless shelter right now."*

"For some landlords, especially the smaller ones, you depend on one income in order for you to live…[T]he problem I've seen in the Court, time and time and time again, is that the landlord is seen as having all this money."

"I [a landlord]…do the paperwork myself,…[I] couldn't afford [an attorney.] Of course, all the T's weren't crossed and the dots weren't all dotted…[The clerk] asked me if I'm an idiot…I've seen and heard her treat others that way."

"The pro se attorney's office in Staten Island is pretty helpful [procedurally], and…the DIY [Do-It-Yourself computer programs in Housing Court] has greatly improved the whole process. There's a table with an advocate that helps you fill out the paperwork."

"He [a Brooklyn Housing Court judge] was the teaching judge…Soon as the court started and he came to the bench, before he started calling his cases, he actually would hold a tutorial. He told the people what the courtroom was about, what you could do…"[4]

The Focus Groups highlighted the importance of representation, problems with the prevailing culture, and the unique role the judge can play helping unrepresented litigants feel comfortable and welcome in an otherwise forbidding environment.

D. HOUSING COURT LEGISLATION AND SUBSEQUENT REFORM EFFORTS

New York City's Housing Court has been the subject of numerous reports and initiatives since it was established 45 years ago as a necessary means to preserve New York City's housing stock and provide a single forum to resolve landlord-tenant disputes. Before then, cases involving housing issues were handled in various other courts, essentially resulting in what has been called a "dispersion of jurisdiction."[5] The critical housing shortage that began in the aftermath of the Second World War continued unabated (and, as it relates to affordable housing, continues to this day). Thus, the New York State Legislature in 1973 consolidated jurisdiction over housing matters by creating the Housing Part of the Civil Court of the City of New York to effectively maintain and improve existing housing standards and to encourage new housing investment by expeditiously delivering justice to both tenants and landlords.[6] The Governor's Memorandum approving the creation of the Housing Court described its goal as a "fair, effective and judicious forum within the Civil Court of the City of New York before which tenants, landlords and the City's Housing and Development Administration may bring the unresolved housing disputes of the City."[7]

4 *See* Transcript, September 26, 2017 Housing Focus Group (Tenants), at 4, 19, 23, 24, 26, and 29; Transcript, October 2, 2017 Housing Focus Group (Landlords), at 3 and 12 (both on file with the Special Commission).

5 Legislative Findings, L 1972, ch 982, § 1.

6 *Id.*

7 Governor's Mem approving L 1972, ch 982, 1972 NY Legis Ann at 373.

Thirteen years after the Court was established, a 1986 report issued by the City-Wide Task Force on Housing Court produced some stark statistics. Nearly 64 percent of all cases observed by Task Force members were nonpayments, and 19 percent of all cases were holdovers (actions to recover possession of apartments) brought by landlords. Seventy-nine percent of tenants were unrepresented, in contrast with 22 percent of landlords. The 1986 report observed that tenants in Housing Court "largely represent[ed] the City's most vulnerable population: 80 percent…Black or Hispanic; 66 percent…women; [and] nearly 50 percent receiv[ing] some form of public assistance."[8] Some of the recommendations in that 1986 report have only recently come to fruition – most notably, universal access to counsel for tenants unable to afford an attorney, which is now mandated in the Universal Access law passed in 2017. Other recommendations in the report – including the use of plain-language and accessible multi-language court forms, and the revision of pre-trial procedures – have only partially been realized.

A decade later, in 1997, then Chief Judge Judith S. Kaye and Chief Administrative Judge Jonathan Lippman sought to replace an outmoded Housing Court system with modern court procedures. Their report, entitled *Housing Court Program: Breaking New Ground,* commented on the Housing Court's problems:

> The combination of massive caseloads, litigants largely unfamiliar with the legal process and limited judicial resources has resulted in an environment that more closely resembles a hospital emergency room than a court. Courthouse decorum is notably lacking, with facilities ill-equipped to accommodate the large number of litigants that appear daily…Litigants, often accompanied by children, can wait for hours for their cases to be called and the opposing party to appear… If resolution cannot be reached, they are given a future date to return for trial. Throughout the process, settlement negotiations take place in every corner of the courthouse – resulting in stipulated agreements that in many instances are not honored and, as a consequence, tenants returning to Court for Orders to Show Cause to forestall evictions.[9]

Numerous changes and initiatives have been implemented since the 1997 report, yet the problems described above largely remain. These and other issues were referenced in a 2005 report by the New York County Lawyers Association and during a 2013 conference convened for the Court's 40th anniversary,[10] where it was noted that both the landlords' and tenants' bar strongly supported access to counsel for unrepresented litigants and recognized the pressing need to modernize the

8 *See* Monitoring Subcommittee of the City-Wide Task Force on Housing Court, *Five minute justice, or, "Ain't nothing going on but the rent!": A Report* (1986).

9 New York State Unified Court System, *Housing Court Program: Breaking New Ground* (1997), at 2.

10 *See* Justice Center of the New York County Lawyers' Association, Conference Report: *The New York City Housing Court in the 21st Century: Can It Better Address the Problems Before It?,* 3 Cardozo Pub. L. Pol'y & Ethics J. 601 (2006), http://www.cplpej.org/wp-content/uploads/2015/08/Conference-Report.pdf; *Housing Court at 40*, *supra* note 1.

Court. Yet the Judiciary has not undertaken a comprehensive review of the Housing Court in over 20 years.

With the rollout of the Universal Access law, the Special Commission believes we have an extraordinary opportunity to transform Housing Court. Together, the Special Commission's proposed reforms are designed to effect that transformation as well as facilitate a smooth transition to universal access through procedural and other changes. To place the Special Commission's recommendations in context, at the beginning of many sections, we identify the specific problems that prompted the Special Commission to propose its reforms.

II. New Procedures Before Initial Court Appearances

Most litigants' first experience with Housing Court is standing outside on a long security line for an hour or longer (sometimes in extremely cold or extremely hot weather) simply to get into the courthouse. After waiting to pass through security, litigants often find that the lines to file an answer or see a clerk are long as well. Litigants may be confused about where to file an answer or Order to Show Cause (OSC), what they should say in the filing, or what back-up materials they need. We believe that providing legal representation or consultation prior to the first court appearance or filing will relieve court congestion and expedite and improve the in-court experience for all parties. Providing access to counsel at the earliest possible time after a notice of petition is served will also enable some litigants to achieve out-of-court settlements without going to court. Our recommendations below address these issues.

A. ASSIGNMENT OF COUNSEL UNDER THE UNIVERSAL ACCESS LAW SHOULD BE AS EARLY AS POSSIBLE

The assignment of counsel under the Universal Access law should occur at the earliest possible time, to allow for early resolution of housing matters and possibly divert cases from court. The Special Commission believes that the best way to achieve this is to clearly advise tenants, at every point in the process, of their eligibility to access legal services. We recommend that the NYC Office of Civil Justice, in partnership with legal services providers, develop a messaging campaign to inform the public about the Universal Access law, the important role of counsel in resolving eviction matters, and when and how to access counsel.

B. THE NOTICE OF PETITION SHOULD BE REVISED TO FACILITATE EARLY ASSIGNMENT OF COUNSEL

The notice of petition for both nonpayment and holdover proceedings should be revised, pursuant to court rule, to inform the tenant about the tenant's eligibility for and access to legal services, with the goal of facilitating assignment of counsel at the earliest possible time. Ideally, this will enable legal services providers to conduct intake, screen for income eligibility, confer with clients, and assess the client's next steps, whether in counsel's office or another agreed-upon location, prior to the filing of an answer.

The revised text of the notice of petition should include at minimum: (a) instructions for accessing counsel; (b) contact information of legal services providers; and (c) instructions about documents and information the tenant should gather before meeting with counsel or coming to court.

We further recommend that landlords be required by court rule to provide the pleadings (the notice of petition and petition) in duplicate to the clerk's office. The second copy, instead of becoming part of the case file, would be designated for the respondent or respondent's counsel in court. In this way, assigned counsel can quickly access the critical information needed prior to meeting with tenants for the first time.

C. PROCEDURES FOR NONPAYMENT PROCEEDINGS SHOULD BE MODIFIED

Pursuant to RPAPL § 732, the statutory framework allows for a special procedure in nonpayment proceedings brought within New York City, mandating that the tenant appear in court "before the clerk" within five days after service of process to answer the petition. At the time of the answer, the case is given a date for the first appearance on the court calendar "not less than three nor more than eight days after joinder of issue." The five-day window to file an answer may be challenging for a tenant who seeks representation under the new Universal Access law. Accordingly, we propose the following new procedures:

Where a tenant receives notice of a nonpayment petition and retains counsel within the five-day window to answer, counsel should contact the opposing counsel to request a short extension of time, not to exceed ten days, for the filing of the answer. We urge opposing counsel to consent to such extensions as a matter of course and propose that such initial extensions be permitted without the need for court intervention. Should the petitioner oppose such extension, we recommend that tenant's counsel be permitted to file, *ex parte*, a pro forma order to extend the time to answer up to ten days. The latter procedure would comport with Section 208.7(d) of the Uniform Rules for the New York City Civil Court, which allows a defendant to extend the time to answer up to ten days by an *ex parte* order.

This ten-day extension would enable tenants to confer with their attorneys prior to the filing of an answer. It would give those legal services providers the opportunity to review the substance of the

case before such filing. It would also enable respective counsel for tenants and landlords in these cases to reach out-of-court settlements at the earliest possible stage.

D. APPEARANCE BY REPRESENTED PARTIES AT PRE-TRIAL COURT PROCEEDINGS SHOULD BE AT THE CLIENT'S OPTION

As in Supreme and Civil Court, whether a represented client attends a scheduled pre-trial court date should be the client's decision after consultation with counsel. This will enable some tenants to avoid missing work or having to arrange child care if counsel can handle the appearance or conference without the need for the client to be present. This would require, of course, that counsel understand the issues and the client's specific concerns; the client should also remain reachable by phone, text, or email.

E. WHEN PRIOR ASSIGNMENT OF COUNSEL IS NOT POSSIBLE, COURTHOUSE ASSIGNMENT SHOULD BE AVAILABLE

As set forth above, the Special Commission strongly encourages the assignment of counsel before coming to court so that intake interviews can take place in counsel's office or another agreed-upon location. Nonetheless, the Special Commission recognizes that some tenants eligible for legal services under the Universal Access law may not be able to access counsel until coming to court. For that reason, special offices or designated areas or conference rooms must be available in every courthouse for eligibility screening and intake interviews by legal services organizations providing services under the Universal Access law. This will ensure that court processes are not disrupted by the need to match litigants with counsel and will maintain client confidentiality.

III. New Court Structure and Practices

The resolution parts were established to resolve cases fairly and efficiently, without the need for trial. Unfortunately, they have been hampered by lack of resources and other impediments that have resulted in their failure to consistently achieve this goal. Most cases are currently calendared for either 9:30 a.m. (as many as 40 to 90 cases) or for the afternoon calendar (a much smaller number). Often attorneys (whether for tenants or landlords) "check in" but then leave to attend to other housing matters in another part or parts in the courthouse. At times, the clerk or court attorney will tell a tenant to go find his landlord's attorney and bring the attorney back to the part. This request is perceived by the tenant as the court helping the landlord's attorney. From a practical perspective, litigants are sometimes left waiting for hours, which is a particular hardship for those who are losing time from work or who have pressing child care responsibilities. There is also a perception that defaults are dispensed unfairly.

Part X, as currently configured, has been described by court users as exemplifying the maxim "hurry up and wait" – and as one of the more problematic aspects of the current Housing Court structure. When no resolution is reached in the resolution part and the case is deemed "trial ready," counsel and litigants report to Part X and are required to stay until 4:00 p.m. waiting for a trial part to open up. If that doesn't happen, they get a new date (often several weeks away) to report back to Part X (not a trial part) – and the same waiting process begins again. This is a waste of everyone's time, is highly costly for represented parties, and is ripe for gamesmanship, as one or the other side uses the congestion in Part X to delay cases or to judge shop. Our recommendations address these and other concerns.

A. STAGGERED MORNING CALENDARS SHOULD BE INSTITUTED AS A PILOT PROJECT

There was considerable debate among Special Commission members regarding the proposed staggering of morning sessions in the resolution parts, with specific assigned appearance times of 9:30 a.m., 10:30 a.m., and 11:30 a.m. The primary goal is to relieve congestion on security lines, and in the courtrooms and waiting areas generally. The consensus was to institute these staggered appearance times as a pilot project in one or more Housing Court resolution parts to see if they relieve congestion.

B. JUDGES AND COURT ATTORNEYS SHOULD BE ACTIVELY INVOLVED IN CONFERENCING AND SETTLING CASES

All resolution part judges and court attorneys should be present in the part during court hours and all should play an active role in the conferencing and resolution of cases. Matters should not be relegated to other areas of the courthouse for resolution, with no access to the resolution

part judge, as is the current practice in one courthouse. Both judges and court attorneys should receive training in mediating and settling cases (which is discussed in Section IX below among other recommendations for training). Judges should also refer matters in which both sides are represented to arbitrators or mediators where appropriate (discussed in Section IV below), subject to the parties' consent to such referral. We recommend that the supervising judge of Housing Court in each borough visit each part unannounced as a way to monitor and oversee the functioning of the resolution parts.

C. DEFAULTS SHOULD BE TIMELY TAKEN WITHOUT FAVORITISM TO EITHER SIDE

There is an all-too-common practice of attorneys simply ignoring a 9:30 a.m. appearance time and showing up instead shortly before 11:00 a.m., which is when the attorney would be defaulted on the 9:30 a.m. appearance. This practice reflects poorly on counsel, inconveniences litigants, and is disrespectful to the court. Unfortunately, it reflects a culture going back many decades, one which has no place in a modern court. Counsel and litigants must appear at the assigned time and will be defaulted much more promptly if they fail to appear. We recommend that, except in an emergency, the time to default should be no more than 30 to 40 minutes. The provision of time stamps to litigants or counsel waiting on security lines (which we discuss in Sections VI and VII below) will prevent this earlier default time from prejudicing the litigant or counsel who has taken pains to arrive in the courtroom on time. The judge will always have the discretion to extend this time period.

D. ATTORNEYS MUST INFORM THE PART CLERK OF ENGAGEMENT IN OTHER PARTS

The resolution part should require attorneys upon check in to inform the clerk which other parts they are covering and provide their cell phone numbers, so that opposing counsel or the clerk can locate them more easily. The attorneys should provide a time certain when they will return to the courtroom and must adhere to it. This, of course, applies to both landlords' and tenants' attorneys.

E. PRELIMINARY CONFERENCE ORDERS SHOULD BE REQUIRED

At the first appearance in the resolution part, both sides shall complete a Preliminary Conference/ Resolution Form Order. If either or both parties are unrepresented, the court attorney should assist in completing the form. The Preliminary Conference Order shall contain: (a) a one-sentence summary of the nature of the dispute; (b) any known significant legal or factual issues, including any that involve government agencies; (c) whether an interpreter is needed, and if so, in what language; and (d) what efforts, if any, have been made to reach a negotiated resolution.

F. THE DURATION OF CASES MUST BE MONITORED

Many cases settle at the first appearance; others are repeatedly adjourned and go on for months notwithstanding the summary nature of Housing Court proceedings. While the Special Commission recognizes that some delays may be beyond the control of counsel, litigants, or the court (for example, where the parties are awaiting action by a government agency), it is critical that each appearance be meaningful and productive in bringing cases to resolution. Where cases are still not resolved after three appearances, the parties will be required to provide a written explanation, giving the reason for the delay and why the case should not proceed to Part X for assignment to a trial judge.

G. UNREPRESENTED LITIGANTS SHOULD RECEIVE ASSURANCE OF FAIR TREATMENT

As the Universal Access law is implemented, the number of unrepresented parties will decline, but there will always remain tenants who either do not qualify for representation or for other reasons choose to proceed without counsel. Landlords who cannot afford counsel will remain unrepresented as well. If a litigant is unrepresented, court personnel must explain the court process, identifying all the parties and whom, if anyone, they represent. Through their conduct as well as their words, court personnel must assure litigants of the court's impartiality. Not only must no favoritism be shown to counsel, there must not be the appearance of favoritism. Counsel may not approach the bench without the unrepresented litigant present (and, it goes without saying, without the court's permission) and any requests to review files must be honored and treated equitably whether the request comes from a litigant or counsel. In particular, the waiting areas in one borough, where attorneys can move freely, examine files, etc. and unrepresented litigants cannot (and are required to remain seated) must end. Further, where a litigant is unrepresented, the terms of any stipulation must be explained to the litigant by the court attorney and then meaningfully allocuted by the judge on the record with all parties and counsel present.

H. AFTERNOON CALENDARS SHOULD BE RESERVED PRIMARILY FOR HEARINGS, ARGUMENTS AND IN-DEPTH RESOLUTION OF CASES

We recommend that afternoon calendars in the resolution parts for first-time cases be eliminated. The afternoons should instead be dedicated to the following:

- in-depth resolution of cases, traverse hearings, and hearings and arguments on motions or OSCs (except where an emergency application requires that it be heard immediately in the morning session);
- review and/or hearing of OSCs on judgments in absence of a prior appearance. The supervising judge of the Housing Court in each borough should assign a resolution part judge

in that borough on a rotating, weekly basis to review OSCs where there has been no prior appearance. Except where an emergency arises during the morning session, these should be heard during the afternoon session. All other applications should go to the judge who so-ordered the stipulation or signed the judgment being challenged;

- addressing cases where a government agency's services are directly involved in the proceeding. We discuss below ways to improve the Housing Court's interactions and interventions with government agencies, which run the gamut from joining the agency as a party to holding regularly-scheduled sessions with stakeholders to examine and resolve intractable cases. These cases belong on the afternoon calendar so that they can receive the time-intensive attention required; and
- conferencing cases where either the court or counsel believes that mediation or arbitration may be helpful in resolving the matter, so that ADR referrals (as described in Section IV) may be made.

The Special Commission believes that if judges in the resolution parts have more time to resolve cases or narrow the issues in dispute, this will ease the burden on the Housing Court trial judges by reducing the number of cases going to trial.

I. NIGHT SESSIONS SHOULD BE EXPANDED AS NEEDED

A night session is held weekly in Kings County Housing Court, limited to cases in which both sides are unrepresented ("double pro se" cases). As evidenced by the Focus Groups, litigants welcome night sessions because they can avoid taking time off from work to pursue their cases. We recommend that Housing Court administrators assess the need for night sessions in each borough (whether limited to "double pro se" cases or otherwise), soliciting input from litigants and counsel as well as Housing Court judges, and that these sessions be instituted or increased accordingly.

J. PART X MUST ASSIGN CASES TO THE TRIAL PARTS ON THE DAY OF TRANSFER TO PART X

The Expedited Part (commonly known as Part X) should function purely as an assignment part. The clerk, acting as an expediter, should send out cases to the trial parts for scheduling the same day they come in. After being assigned by the Part X clerk to a trial part, the parties and/or their counsel will be required to report immediately to the trial part to receive a trial date.

K. TRIAL PARTS MUST PROMPTLY SCHEDULE PRE-TRIAL CONFERENCES AND TRIALS

A clerk or court attorney must be available to schedule cases assigned from Part X. Once scheduled, trials may be adjourned only in extraordinary circumstances, for good cause shown, or where

another trial is still ongoing on the date for commencement of trial. If this occurs, trial judges should be able to turn to a Civil Court judge to try the case or a referee or magistrate to hear the case and render a report and recommendation. Except for good cause shown, the trial date should be scheduled no later than 30 days after the date the litigants and/or counsel first appear in the trial part.

After receiving a date for trial, all trial-ready cases should be scheduled for a pre-trial conference with the trial judge. These conferences should be held within 14 days of the date the case is assigned to the trial part. To the extent relevant in the case, the pre-trial conference should finalize: (i) the time frame for trial; (ii) number of witnesses; (iii) dates for submission of trial memoranda; (iv) legal and factual issues in dispute; (v) identification of documents and subpoenaed material to be used at trial; (vi) pre-marking of exhibits; and (vii) to the extent possible, resolution of issues of authentication and admissibility.

L. CERTAIN SPECIALIZED PARTS SHOULD BE ELIMINATED

We recommend eliminating some specialized parts that are underutilized and the presence of which serves only to delay resolution as cases are reassigned to these specialized parts. The specialized parts that should be eliminated are those for cooperative and condominium apartments and those for cases involving military personnel or requests for a rent deposit.

M. THE SPECIALIZED PART HANDLING ILLEGAL DRUG CASES SHOULD BE CONTINUED

These cases present very different issues from other housing disputes. They often involve the district attorney's office and the New York City Police Department, and may require the issuance and execution of search warrants. Therefore, these specialized parts should continue. When a judge in the narcotics eviction part is not engaged in handling drug-related cases, the part should function as a resolution part or trial part, depending on the court's needs, to handle other types of Housing Court cases.

N. THE NYCHA PART SHOULD BE EXPANDED

The New York City Housing Authority (NYCHA) Part should be expanded to include all proceedings brought by or against NYCHA, including HP actions (proceedings commenced to secure repairs or amelioration of poor housing conditions). In some counties, the volume of cases may require the NYCHA Part to increase its days of operation.

IV. Alternative Dispute Resolution

A. ARBITRATION SHOULD BE IMPLEMENTED FOR CASES INVOLVING REPRESENTED PARTIES

Where both sides are represented by counsel, counsel may be able to agree to arbitration under the auspices of a well-respected arbitrator. We recognize that there are retired Housing Court judges and housing attorneys who are willing to take on this role on a volunteer or *per diem* basis. In that regard, there may be specific categories of cases – for example, cases where the defense to a non-payment petition is a breach of the warranty of habitability – that would particularly benefit from arbitration. Arbitrations can be scheduled as soon as the litigants are ready, usually much sooner than if they had to wait for a judge to try the case. Litigants would be required to sign a consent form agreeing to appear before an arbitrator and acknowledging the finality of the arbitrator's decision and that they are bound by it.

B. MEDIATION SHOULD BE CONSIDERED AS A MEANS TO EXPEDITE CASE RESOLUTION

We understand that the Civil Court is in the process of exploring a mediation program. Mediation should also be considered as a means of expediting the resolution of appropriate Housing Court cases where both parties are represented, particularly to help narrow and focus disputed issues early in the case. The use of mediation in the Housing Court should be explored in conjunction with any mediation program developed in the Civil Court. The Special Commission believes that the effective use of mediation in the Housing Court will help alleviate court congestion and reduce backlogs.

C. A FRAMEWORK SHOULD BE DEVELOPED FOR CASES REQUIRING INTERVENTIONS WITH GOVERNMENT AGENCIES

As described in Section VIII below, improved interaction with government agencies – agencies whose services are so vital to many Housing Court litigants – is a significant goal of these reforms. A mediation expert, Hon. Raymond Kramer, an administrative law judge at New York City's Office of Administrative Trials and Hearings (OATH) and Executive Director of the New York City Center for Creative Conflict Resolution, has offered to assist the Court in developing a model or framework for addressing the issues that arise in cases involving government agencies. We recommend that the Housing Court accept this offer and work towards the development of a model for promptly resolving these matters.

V. Implementation of E-Filing and Other Technology

A. IMPLEMENTATION OF E-FILING SHOULD BE A TOP PRIORITY

The transition to e-filing is critical and ideally would be mandatory in all cases in which both sides are represented by counsel. Because e-filing would facilitate quick access to court records, it would benefit both litigants and counsel. To the extent legislative authorization is needed to make e-filing mandatory, seeking such authorization should be a priority. Unrepresented litigants could choose to participate in e-filing but would not be required to do so. To encourage the participation of unrepresented litigants, it is critical that the e-filing system use plain-language and user-friendly instructions and forms and that Court Navigators or other personnel be available to provide one-on-one assistance at publicly available computer terminals in the courthouse.

B. OTHER TECHNOLOGY SHOULD BE IMPLEMENTED IMMEDIATELY

We support the use of e-notification to City marshals that an eviction has been stayed. Technology would also be useful in permitting litigants and counsel to view and print Building Department, Division of Housing and Community Renewal (DHCR), and Department of Housing Preservation and Development (HPD) records, which can then be added to the case file (subject to applicable privacy and other legal protections). Technology may also be used to identify interlocking ownership of properties to detect patterns of harassment, and may be employed for recording and tracking the satisfaction of judgments.

C. COMPUTER TERMINALS SHOULD BE AVAILABLE AND READILY ACCESSIBLE

If feasible, computer terminals should be located near Help Centers and clerk's offices. These computers should provide public access to court records (to the extent these are electronically available) as well as Building Department, DHCR, and HPD records, and should also allow access to the DIY (Do-It-Yourself) computer programs developed for Housing Court litigants. With the advent of e-filing, these computer terminals will further reduce congestion in clerk's offices and courtrooms by providing for electronic submission of forms, answers and motions.

D. TECHNOLOGY SHOULD BE DEVELOPED TO FACILITATE EARLY ASSIGNMENT OF TENANT COUNSEL

Technology should be developed for mobile devices to facilitate all aspects of connecting tenants with counsel, including advising tenants of their ability to access legal services. Technology should also be used to notify litigants of upcoming meetings with counsel and court appearances.

E. WI-FI AND CONNECTIVITY TO THE INTERNET SHOULD BE UPGRADED

These upgrades can and should be implemented immediately.

F. SKYPE AND TELECONFERENCING SHOULD BE USED TO ALLOW REMOTE ATTENDANCE AT CONFERENCES AND OTHER APPEARANCES

These technologies may allow remote participation by litigants and counsel with physical disabilities, particularly in facilities that have problems with accessibility.

G. SKYPE AND TELECONFERENCING SHOULD BE CONSIDERED AS A WAY TO ACCCESS INTERPRETERS

When on-site interpretation is impractical or unavailable, remote interpreting is a useful alternative. It can avoid the need to reschedule a settlement discussion, appearance, or even a hearing.

H. TECHNOLOGY SHOULD BE DEVELOPED TO HELP JUDGES EFFICIENTLY MONITOR AND RESOLVE CASELOADS

A committee of court personnel – including interested Housing Court judges, court attorneys, and others – should work on developing software applications and new programs to serve the needs of the Housing Court and litigants.

VI. Long-Overdue Relocation and Redesign of Housing Court Facilities

Courthouses are inadequate in size and design for the volume of litigants, counsel, and court personnel who come to court each day. Long lines of tenants, often accompanied by children, snake around the block outside the courthouse. Inside the courthouse, there are more lines and little or no signage advising litigants where to go. Elevators malfunction regularly; wheelchair access is limited; and in the Bronx, there are simply not enough courtrooms: two trial parts are located in the hallways in front of elevator banks.

Notably, the building in which the Kings County Housing Court is located was not designed to be a courthouse, and its configuration and limited accessibility reflect that: there is no distinction between public and private space. Judges do not have the security of a private area, private entrance to chambers, or even private bathrooms for judges' use.

We are particularly troubled that the inadequacy of the Kings County Housing Court at 141 Livingston Street has been known for over 20 years without any remedial changes. Likewise, the overcrowding of the "new" Bronx courthouse and its unsuitability to meet the needs of court users became clear soon after it opened. Locating new space and designing the interior for the needs of the Court and its users is critical to address overcrowding and congestion. New and reconfigured facilities must incorporate design elements that recognize these pressing needs; unless they are addressed, there is no way the Housing Court can properly serve the people of this City or that the culture of the Court can be improved. We recommend that the plans set forth below – some of which have been "in the works" for years – be completed without delay and that other design problems be addressed promptly.

A. INADEQUATE HOUSING COURT FACILITIES MUST BE REMEDIED WITHOUT FURTHER DELAY

Plans to relocate and redesign Housing Court facilities, which are owned and maintained by the City of New York, must have meaningful input from judges, court staff, attorneys and other stakeholders. We recommend that OCA, the landlord and tenant community, and Housing Court administrators work together with the City to pursue new Housing Court facilities and/or additional and refurbished space within existing facilities. Our more specific recommendations are below:

- **Bronx County.** We understand there are plans to relocate the Bronx Housing Court to 851 Grand Concourse, a larger courthouse that is currently underutilized. To accommodate this move, Bronx Civil Court, which at present occupies 851 Grand Concourse, will move to 1118 Grand Concourse. Given the current lack of courtrooms in Bronx Housing Court, where trials are often conducted in elevator lobbies, the Bronx Housing Court's move is long overdue and should be effected immediately.

- **Kings County.** We understand there are plans to move Kings County Civil Court, including the Housing Court, from 141 Livingston Street to the Brooklyn Municipal Building. Unfortunately, although this anticipated move was first announced in 2014, the Special Commission has been advised that it is not likely to occur for another three to four years. In the meantime, it is critical that Kings County Housing Court judges and staff and representative court users have a voice in planning how to redesign and reconfigure the Municipal Building to meet the Housing Court's future needs. For example, Special Commission members have questioned whether there is sufficient space in the entrance to the lobby of the Municipal Building to accommodate the volume of court users. Some Special Commission members suggested reopening an abandoned entrance to the Municipal Building directly from the subway to solve this problem. This small example underscores the importance of soliciting input from those who use the Housing Court on a daily basis. Given that the anticipated move is several years away, the Special Commission recommends

that empty space on the ninth floor of 141 Livingston Street be put to immediate use as additional Housing Court space. Further, inadequate maintenance, a recurring problem at 141 Livingston Street, should be addressed immediately.

- **New York County.** New York County Housing Court, located at 111 Centre Street, lacks sufficient space for trials, court conferences, and settlement discussions or mediations. We recommend that the court expand into the Civil Court facilities in the same building, where courtrooms and jury rooms may be available for these purposes.

- **Queens County.** Queens County Housing Court requires additional space and a reconfiguration of existing space. At present, several courtrooms have been converted into what amount to "holding pens," shared by two parts, where litigants and counsel are required to wait for their cases to be conferenced by court attorneys. The conferences, when they finally occur (several going on at once), are hampered by the noisy environment and lack of confidentiality. Separate areas for confidential conferences between attorneys and litigants and for settlement discussions are needed.

- **Richmond County.** The Richmond County Housing Court is in a historic building which it shares with the Civil Court; the space allocated to Housing Court is fast becoming inadequate for its burgeoning caseload. One issue of great concern is that the small alcove available for confidential communications, including tenant-counsel intake, is on the second floor and is not wheelchair accessible. This problem can and should be immediately addressed by reconfiguring the large room adjacent to the courtroom on the first floor, which currently houses the Help Center and HRA's Rental Assistance Unit, to create additional space for confidential communications between tenant counsel and tenants. With the addition of a partition to preserve confidentiality, this room can be adapted to serve multiple purposes. We further recommend that Housing Court administrators seek an alternative site that is fully accessible and that will provide adequate space for the court's current and future needs.

B. ALL HOUSING COURT FACILITIES MUST BE FULLY ACCESSIBLE

The Kings County and Richmond County courthouses present significant barriers for court users with physical disabilities. Accessibility must be a primary consideration in any facility design or redesign. We recommend that the newly-formed Advisory Committee on Access for People with Disabilities be consulted as to the most efficient design solutions to address the needs of court users with disabilities. In the meantime, Housing Court administrators should seek input from the Advisory Committee on best practices for implementing interim procedures to ensure appropriate accommodations in limited-access or non-accessible court facilities.

C. WAIT TIME ON SECURITY LINES MUST BE REDUCED

A litigant's first experience of Housing Court is invariably a long security line. The court system's Department of Public Safety should be consulted as to the best design and processes to reduce wait time while still maintaining the security of each facility. To the extent possible, additional entrances and additional magnetometers should be made available and additional court officers assigned to help move the line. As discussed in Section VII, Court Navigators should assist and answer questions from people on line and provide special assistance to the elderly or those accompanied by young children. They can also provide time stamps to litigants and counsel, which will enable Housing Court administrators to monitor wait time and find ways to reduce it.

D. DIRECTORIES AND SIGNAGE MUST BE CLEAR AND TRANSLATED INTO MOST COMMON LANGUAGES

All Housing Court space needs to be designed to be more welcoming and user-friendly. This should include a building directory and signage to direct a person entering the courthouse to the appropriate "check-in" locations in the courthouse including, for example, clerk's offices, Help Centers, and tenant-counsel intake locations. As set forth below, Court Navigators may play a vital role in helping direct litigants and counsel.

E. CLERK'S OFFICES AND HELP CENTERS SHOULD BE CENTRALLY LOCATED

Clerk's offices should be clearly identified and located in a logical place near the entrance to the courthouse. Help Centers, which serve as the informational hub in the courthouse for unrepresented litigants, should be adjacent to space where social services agencies handle public benefit applications or other services. Most important, now that the Universal Access law is in effect, Help Centers must assist in connecting tenants with counsel by directing them to the tenant-counsel intake location in the courthouse. This is in keeping with the Special Commission's view that the most effective way to implement the Universal Access law is to provide opportunities at every point for tenants to access counsel.

F. SPACE MUST BE AVAILABLE FOR CONFIDENTIAL TENANT-COUNSEL INTAKE

As emphasized above, where feasible, the matchup of tenants with their assigned counsel should occur before the first court appearance. Experience has shown, however, that some if not many tenants will not connect with counsel until their first appearance in court. Counsel and tenants who are meeting for the first time at the courthouse need space to hold an initial confidential intake interview or consultation. Small conference rooms in each courthouse specifically designated for this purpose would allow for confidentiality. When not needed for intake, these rooms could be used for other confidential meetings or settlement conferences.

G. COURTHOUSES MUST HAVE SEPARATION OF PUBLIC AND PRIVATE SPACE

The courthouses should be designed to provide enhanced security for judges and staff, and to avoid inappropriate contact between judges and court users and between other court personnel (for example, Help Center personnel) and court users. A simple security partition may resolve this issue in some cases, for example in the Bronx Help Center; in other circumstances, more robust reconfiguration of the courthouse may be necessary. Judges need private access to their chambers, private bathrooms, and other secure private space.

H. CONCESSION STANDS AND FAMILY-FRIENDLY AREAS SHOULD BE AVAILABLE

Court users should not have to leave the courthouse to purchase coffee or simple refreshments. Concession stands would also reduce the congestion at the security line at lunchtime from litigants re-entering the facility. Because litigants sometimes bring their children, there should be a designated area with children's books and snacks.

I. DECOR AND OPEN SPACE OUTSIDE COURTHOUSES SHOULD BE ENHANCED

In partnership with non-profit entities such as the Fund for the City of New York, Housing Court administrators should consider the feasibility of art installations and gardens to enhance each Housing Court facility. The creation of a more inviting space will help improve the morale of court personnel and court users, and enhance mutual respect.

J. MAINTENANCE MUST BE IMPROVED THROUGHOUT THE FACILITIES

This is key for our other recommendations concerning the Housing Court's facilities, which are City-owned and maintained. Maintenance staff must be equipped to promptly address all facility needs, from dirty bathrooms, stairwells, and reports of vermin or piled-up trash to malfunctioning elevators. This will require ongoing coordination with the NYC Department of Citywide Administrative Services and the possible addition of more full-time maintenance staff.

VII. Need for Increased Judicial and Staff Positions and Enhanced Role for Volunteers

The pressing need for more judges and court attorneys was among the most common complaints we heard. The current number of 50 Housing Court judges across all boroughs is grossly inadequate. Over five years ago, during the *Housing Court at 40* conference, Andrew Scherer, the author of *Residential Landlord-Tenant Law in New York,* pointed out that the Court "handl[es] an astounding volume of cases with far too few judges" – in the region of "a surreal 7,000 cases per year per judge." At least ten additional Housing Court judges are not simply requested, but mandated. Similarly, each judge and each Help Center should have two court attorneys. The insufficient number or lack of interpreters was also cited time and again. This is a significant problem in Queens, where over 160 languages are spoken in the borough but the Housing Court has staff interpreters for only three languages (Chinese, Spanish and Bengali). While the Court arranges for and hires interpreters in other languages on a per diem basis, their availability requires advance scheduling. A litigant may be concerned that requesting an adjournment to obtain an interpreter will be viewed by the judge as delaying the proceeding. Our recommendations are below.

A. AN INCREASE IN THE NUMBER OF JUDGES IS MANDATED

At present, there are 50 Housing Court judicial positions citywide. Notably, the number of judicial appointments has not been increased in nearly 20 years, notwithstanding a longstanding and recognized need for more judges. The implementation of the Universal Access law is expected to significantly increase pre-trial motion practice. It is recommended that legislative authorization be sought to increase the total number of Housing Court judges by at least ten judges, which would bring the total number of Housing Court judges citywide to 60.

B. THE STATUS OF HOUSING COURT JUDGES SHOULD BE ENHANCED

Currently, the short five-year term for Housing Court judges limits the pool of potential applicants and creates undue pressure on judges by requiring frequent reapplications. We recommend that legislative approval be sought for a renewal term of ten years following the initial five-year term, with enhanced supervision and review (as needed) in the first five-year term.

In addition, Housing Court judges should rotate throughout the boroughs. This is already done to some degree but should be expanded to include all Housing Court judges. This will give the judges a broader perspective and a better understanding of the problems facing the Housing Court throughout New York City, which in turn will enhance respect and accountability.

C. CIVIL COURT JUDGES SHOULD CONDUCT HOUSING COURT TRIALS TO REDUCE BACKLOGS

This recommendation should be implemented immediately by having Civil Court judges designated as backups to the Housing Court trial parts on a rotating basis. This will help alleviate backlogs in the trial parts.

D. THE NUMBER OF COURT ATTORNEYS SHOULD BE INCREASED

Every Housing Court judge should have two court attorneys to handle everything from researching and writing decisions on motions and post-trial decisions to conducting settlement conferences and pre-motion and pre-trial conferences. Similarly, the Help Center in each borough should have two full-time court attorneys to assist unrepresented tenants and landlords. The process for hiring new court attorneys, now burdened with red tape and delays, should be expedited and streamlined.

E. THE NUMBER OF CLERKS AND OTHER OPERATIONAL STAFF SHOULD BE INCREASED

While recognizing the budgetary constraints, we recommend that, to the extent possible, the number of clerks and other operational employees be increased to the 2010 level, before the 2011 workforce reductions and subsequent attrition and a hiring freeze substantially reduced their number. Clerks and other operational staff must be cross-trained on all potential assignments, so that someone assigned to handle the receipt of motions or requests for interpreters can also handle the filing of an answer if needed or a request for assistance from an unrepresented litigant in an HP action, in which both tenants and small landlords are usually unrepresented. This increase should include additional pro se clerks in each borough to assist unrepresented tenants and landlords.

F. THE NUMBER OF INTERPRETERS SHOULD BE INCREASED

Additional interpreters should be hired and assigned, with their assignments expanded beyond the courtroom. There should also be additional language access resources as set forth below.

As an initial matter, the need for an interpreter in any given case should be brought to the court's attention as early as possible – at the time of answering certainly, if not at the time of filing the notice of petition itself. The availability of an interpreter can then be factored into the scheduling of future appearances or hearings.

Interpreters should be assigned to the resolution parts in each borough. For efficiency purposes, there should be specific days of the week on which the interpreter in a particular language is assigned to the part so that litigants and counsel, with the court's assistance, can plan accordingly. To the extent interpreters are not available on the day and in the part in which they are needed, SKYPE or other video conferencing may be useful to avoid an adjournment.

Additional interpreters also should be assigned in the clerk's office, particularly to assist Limited English Proficient (LEP) litigants with OSCs and other emergency requests. Interpreters should also be available to work with court-appointed Guardians ad Litem, who must be able to effectively communicate with the litigants they were appointed to represent.

Overall, we support the recommendations, developed in conjunction with the Advisory Committee on Language Access, which are outlined in the report "Ensuring Language Access: A Strategic Plan for the New York State Courts" (March 2017). In addition to interpreters, multi-language signage and translated materials are necessary to provide meaningful access. We recommend the use of assisted listening technology in the courts, and the expansion of multi-lingual audio, visual and online information for all litigants.

When meeting with litigants for initial eligibility assessment or consultation, counsel must arrange to provide their own means of language access.

G. HEARING OFFICERS, REFEREES, AND MAGISTRATES SHOULD BE USED TO REDUCE BACKLOGS

We have been advised that retired Housing Court judges and housing attorneys would be willing to serve as *per diem* or volunteer hearing officers, referees, or magistrates. Their presence could help reduce the backlog of Housing Court cases in certain boroughs.

H. THE COURT NAVIGATOR PROGRAM SHOULD BE EXPANDED

The Court Navigator Program, supervised by the NYS Courts Access to Justice Program, trains non-lawyers (college students, law students, and others) to support and assist unrepresented litigants by providing general information, written materials, and one-on-one assistance. Court Navigators may offer moral support, help litigants access and complete court forms either by hand or through the DIY computer programs, and help litigants access interpreters and other services. They may accompany litigants in negotiations and in the courtrooms; however, because they are not admitted attorneys, they may not actively participate in these conferences and proceedings. We believe that this program has been successful and should be continued and that the number of Court Navigators should be increased.

In addition, the role of Court Navigators should be expanded to provide assistance and reassurance to litigants as they await entry into the building and go through the security line. Navigators should answer non-legal questions and provide general assistance and directions to courtrooms, clerk's offices, Help Centers, and on-site social service agencies. Where litigants or counsel are waiting to get through security, a Court Navigator should provide them with a "time stamp" that will be useful both to collect data to reduce wait time and to prevent a default if the litigant or counsel does not arrive in court at the scheduled appearance time due to delay at security.

Further, we believe that Court Navigators can also be helpful in connecting tenants with counsel by directing them to tenant-counsel intake locations in the courthouse or by otherwise providing tenants with information about how to connect with counsel.

Court Navigators should also be trained to help unrepresented tenants and landlords in HP actions.

I. EACH COURTHOUSE SHOULD HAVE AN OMBUDSPERSON TO ASSIST LITIGANTS

A specially-trained court employee should serve as an Ombudsperson, to assist litigants in dealing with court personnel or navigating the courthouse. An Ombudsperson should be available on site in every courthouse to provide information and assistance, including regarding the procedure for filing a complaint about a specific problem or issue.

J. SOCIAL WORKERS AND SOCIAL WORK STUDENTS SHOULD BE ENGAGED TO ASSIST LITIGANTS

Social workers and social work students can assist tenants, whether represented or otherwise, in accessing appropriate benefits, whether by directing them to the proper agencies or by assisting them in applying for benefits. They can also be helpful in directing tenants to tenant-counsel intake locations at the courthouse or otherwise providing tenants with information about how to connect with legal services.

VIII. Improved Interactions with Government Agencies

Tenants in Housing Court who are sued for non-payment of rent may rely on information or action from government agencies regarding benefits or subsidies that can affect the tenants' ability to maintain their tenancy. This can include the provision of public assistance, emergency rent arrears, Section 8 subsidies or other benefits for eligible tenants. Improved interactions between the Housing Court and government agencies is necessary to resolve such issues in a timely way and to ensure that agencies act promptly and expeditiously to address them.

A. MORE GOVERNMENT AGENCY LIAISONS SHOULD BE ASSIGNED TO THE HOUSING COURT

We recommend that the number of designated liaisons from government agencies that frequently interact with tenants be increased, and that they be on-site in Housing Court on specific days on a regular basis. This should include all government agencies, not only those under the auspices of

HRA, which have offices and staff assigned in all of the Housing Courts to assist with issues related to benefits, subsidies and legal services programs. To streamline the interface between Housing Court and government agencies, we urge that these liaisons be given substantial authority by their respective agencies to resolve bottlenecks in applications for assistance or other administrative determinations.

B. DESIGNATED DAYS SHOULD BE SCHEDULED FOR SPECIFIC CATEGORIES OF CASES

Manhattan and Brooklyn Housing Courts currently designate one day per week to be "APS days" – that is, a pre-arranged day on which eviction proceedings involving Adult Protection Services are scheduled. This is effective in making these services more immediately accessible, and should be implemented in other boroughs and with other agencies as well.

C. HOUSING COURT SHOULD APPROPRIATELY EXERCISE ITS STATUTORY AUTHORITY

If a government agency is unresponsive to repeated requests for information or action on subsidies or benefits, Housing Court judges should exercise their authority to join relevant government agencies to assure the timely provision of information and/or services to parties in Housing Court cases. NY City Civil Court Act Sec. 110 (d) permits any party, city department, "or the [Housing Court], on its own motion" to "join any other person or city department as a party in order to effectuate proper housing maintenance standards and to promote the public interest." At present that authority is usually exercised for the enforcement of housing maintenance standards; nonetheless, courts have recognized this authority in eviction proceedings as well (*see, e.g.*, *McQueen v Grinker,* 158 AD 2d 355, 359 [1st Dept 1990] [CCA 110(d) "expressly authorizes joinder of a 'city department' where it will promote the public interest"]; *Ryerson Towers v Jackson,* 173 Misc. 2d 914, 916-917 [Civ Court, Kings County 1997] [relying on, *inter alia*, *McQueen* and CCA 110 (d) to permit HRA to be impleaded to protect an elderly person with an alleged mental disability from eviction]).

While the law is clear that the Housing Court has the authority to join a government agency, we do not believe the Court currently has the authority to order equitable relief – *i.e.*, mandamus an agency that has failed to act – unless the agency's actions relate to effectuating "proper housing maintenance standards." We recommend that consideration be given to a legislative change to expand the equitable power of the court in limited situations where requiring specific action by a government agency will '"promote the public interest."

D. REGULAR MEETINGS WITH AGENCY REPRESENTATIVES SHOULD BE SCHEDULED

We recommend appointing a committee consisting of one or more Housing Court judges, along with representatives of relevant government agencies, to meet regularly to address impediments to the resolution of cases. The relevant agencies may include HRA, DHCR, HPD, NYCHA, the Department of the Aging, and the Mayor's Office to Combat Domestic Violence. Representative counsel for tenants and landlords should also serve on this committee.

IX. New and Additional Training

A. JUDGES, COURT STAFF AND PRACTITIONERS MUST BE APPROPRIATELY TRAINED IN SUBSTANTIVE AND PROCEDURAL LAW

The enactment of the Universal Access law makes it critical that all attorneys practicing in the Housing Court be appropriately trained and supervised, particularly those new to Housing Court practice. Housing Court practitioners, judges, court attorneys, and clerks, as well as Civil Court judges, should receive appropriate training in all aspects of housing law and civil practice, as well as the eligibility requirements of the Universal Access law and available social services.

B. JUDGES AND COURT STAFF MUST BE TRAINED IN HANDLING MATTERS INVOLVING UNREPRESENTED LITIGANTS

Judges must not be reluctant to ask questions of an unrepresented litigant or to spend extra time explaining the process. Because these interactions call for skills different from those ordinarily employed by judges, special training in dealing with unrepresented litigants is warranted for all Housing Court judges. Non-judicial staff, including court attorneys, court clerks, and court officers, also should receive training on their role in serving unrepresented litigants. In particular, court attorneys should be trained to function as fact-gatherers, examining rent breakdowns and checking housing violations and DHCR registrations. Housing Court administrators should work with the Office for Justice Initiatives and the Judicial Institute in developing these trainings.

C. ANTI-BIAS TRAINING MUST BE MANDATED FOR COURT STAFF

All court personnel must take pains to assure litigants of the court's impartiality through their words and actions. Any conduct that may be viewed as partial or that reflects inappropriate familiarity or informality vis-à-vis counsel – even if well-intentioned – must be zealously avoided. That includes conduct of clerks and court officers as well as judges and court attorneys. Specific training for all court personnel in avoiding the perception of bias or favoritism is mandated.

D. SETTLEMENT SKILLS TRAINING SHOULD BE DEVELOPED FOR JUDGES AND COURT ATTORNEYS

Judges and court attorneys should receive training in settlement and mediation techniques. Among other things, the training should focus on the issue of settling cases where there is an unrepresented party on one side and counsel on the other.

E. CIVILITY AND ANTI-HARASSMENT TRAINING MUST BE MANDATED FOR JUDGES AND COURT STAFF

Special Commission members observed a disturbing lack of civility in some Housing Court facilities and also heard reports of sexism and sexual harassment. A lack of decorum by attorneys and others – in everything from manner of addressing or approaching the court to appropriate attire – was sometimes evident. All Housing Court judicial and non-judicial staff must receive training in ethics, decorum, civility, and cultural competency. Specific training for all court personnel designed to root out any sexist or harassing conduct (whether by court staff, counsel or litigants) must be mandatory, and Housing Court judges must receive additional training in how to address such misconduct when it occurs. In addition, information should be readily available and posted in the courthouses regarding the court system's sexual harassment policy and encouraging victims of sexual harassment to promptly report incidents through the Ombudsperson and/or the established complaint procedures provided by the court system's Office of the Managing Inspector General for Bias Matters.

F. TRAINING ON ELDER ABUSE AND DOMESTIC VIOLENCE MUST BE MANDATED

Because elder abuse and domestic violence are significant concerns for some litigants who appear in Housing Court, we recommend that court staff, including those assigned to the Help Centers, be trained on these issues and how to detect and screen for them. As an example of such training, the Harry and Jeanette Weinberg Center for Elder Justice, in conjunction with the NYS Courts Access to Justice Program, runs training programs for Guardians ad Litem in Housing Court.

G. CLE CREDIT SHOULD BE OFFERED FOR ALL ELIGIBLE PROGRAMS

All of the above training should be offered for CLE credit, whether under the auspices of the Office for Justice Initiatives, the NYS Courts Access to Justice Program, the Judicial Institute, a bar association, or another organization or entity.

X. Help Centers and Other Services Designed to Assist Unrepresented Tenants and Small Landlords

A. COURTHOUSE SERVICES TO ASSIST UNREPRESENTED LITIGANTS SHOULD BE CONTINUED

Until the Universal Access law is fully implemented, Housing Court administrators must proceed on the assumption that a significant number of tenants in nonpayment and holdover proceedings will be unrepresented; even after the rollout is complete, some tenants as well as small landlords will be unrepresented. Accordingly, programs and initiatives such as Help Centers, the Court Navigators Program, and Housing Court Answers must continue. The Court should monitor usage statistics for these programs to determine if resource reallocation is necessary.

B. ASSISTANCE FOR LITIGANTS IN HP ACTIONS SHOULD BE EXPANDED AS APPROPRIATE

The Universal Access law does not provide access to attorneys in HP actions. Both tenants and small landlords are largely unrepresented in such actions. The Housing Court's website provides legal and procedural guidance and forms for HP actions for both sides; information is also available from Housing Court Answers and HPD. The Court should assess the sufficiency and accessibility of the available information on HP actions and determine if additional, revamped, or more widely disseminated materials are needed. The court should also ensure that court staff and Court Navigators are able to provide appropriate assistance to unrepresented litigants in HP actions.

C. PLAIN LANGUAGE POLICIES SHOULD BE IMPLEMENTED

All court forms, notices, and informational materials should be in simple, easy-to-understand plain English. We recommend that Housing Court administrators develop a process for reviewing court documents for readability in consultation with a plain-language specialist.

XI. Standing Task Force on Implementation of Recommended Reforms

A. A STANDING TASK FORCE SHOULD BE APPOINTED TO ASSESS IMPLEMENTATION OF THE RECOMMENDATIONS

This is particularly important in light of the extended rollout of the Universal Access law which, while already underway, is not expected to be fully implemented until 2022. Such ongoing assessment would allow for a reallocation of resources if appropriate.

B. DATA SHOULD BE COLLECTED AND EVALUATED

Among the subjects to be examined are the length of and reasons for adjournments and the volume of and reasons for case backlogs. The standing task force should seek to work with OCA, the NYC Office of Civil Justice, and the Center for Court Innovation to identify other areas where data collection would be useful. In connection with assessing the impact of the Universal Access law on Housing Court and housing litigation, including tenants' utilization of counsel and its effect on the progress, duration, and outcome of cases, we recommend that Richmond County possibly be used as a bellwether of the law's overall impact. Because the Housing Court docket in Richmond County is relatively small compared to the other boroughs, it will be possible to expedite a complete rollout of the Universal Access law throughout the borough. The impact of the law could therefore be assessed much sooner in Richmond County than elsewhere. We recommend that Housing Court administrators consider using the experience of Richmond County not only to assess the law's impact, but also to gather data about how best to implement the law in other boroughs while the rollout is still underway.

C. PILOT PROJECTS SHOULD BE DEVELOPED TO TEST NEW PROCEDURES AND PROCESSES

To the extent any of the recommendations above cannot be accomplished system-wide in a timely way, the standing task force should consider pilot projects to assess feasibility.

D. INNOVATIVE TECHNOLOGY, DESIGN AND PROCESS CHANGES SHOULD BE DEVELOPED IN COLLABORATION WITH SUBJECT MATTER EXPERTS

A number of entities have offered to assist in implementing the changes in Housing Court forms, procedures, and processes recommended above. The NYU Furman Center has expressed interest in helping to develop a portal that would provide judges easy one-screen access to comprehensive housing information maintained by various state and local agencies. Stanford University Law School's Legal Design Lab has offered to work with us on revising court forms and signage and

proposing design changes for courthouses, all with the goal of making them more navigable and user-friendly. A clinic at New York University School of Law, Advanced Mediation: Dispute System Design, has agreed to work with the Court on system design. The standing task force should be a resource and guide for these efforts going forward.

Conclusion

It is the belief of this Special Commission that the implementation of all the foregoing recommendations together will improve the accessibility of the Housing Court for both tenants and landlords, improve facilities and the dignity of the Housing Court, enhance the workings of the Court, speed up dispositions, reduce the backlog of pending matters and the overall caseload, advance the quality and skills of judicial and non-judicial staff, and alleviate court congestion. The implementation of these recommended changes will prepare the Housing Court for universal access to counsel for low-income tenants and ultimately allow the Housing Court to meet the needs of the housing stock of New York City. This will be in accord with Chief Judge DiFiore's Excellence Initiative.

Appendix A

SPECIAL COMMISSION ON THE FUTURE OF THE NEW YORK CITY HOUSING COURT

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