



RENT STABILIZATION ASSOCIATION • 123 William Street • New York, NY 10038

Mitchell L. Posilkin
General Counsel

Tel: (212) 214-9244
email: mposilkin@rsanyc.org

April 23, 2018

John McConnell, Esq.
Counsel
Office of Court Administration
25 Beaver Street- 11th Floor
New York, New York 10004

Dear Mr. McConnell:

On behalf of the 25,000 members of RSA who own or manage approximately one million apartments in the City of New York, we are submitting these comments in response to the March 16th request for public comments relating to the proposed amendment of the notice of petition in non-payment proceedings in Housing Court (the "Proposed NOP").

At the outset, we would like to thank the Office of Court Administration for deferring the implementation of the previous amendment of the Notice of Petition (the "Amended NOP"), which had taken effect on January 1st. As you know, significant substantive and procedural concerns were raised with regard to the Amended NOP. We appreciate OCA's willingness to consider those concerns, to defer until further notice the implementation of the Amended NOP and to modify the provisions of the Amended NOP accordingly.

With regard to the Proposed NOP, while some concerns remain, the plain language of the proposed notice represents, overall, an improvement over the version currently in use. Our concerns relate to the fact that the Proposed NOP places the petitioner in the position of providing their adversary, the respondent, with the online link to the list of available defenses. That, to say the least, is unique in litigation and is particularly striking given the dramatic increase in funding and staffing under the universal access initiative. Nonetheless, the Proposed NOP does represent an improvement over the Amended NOP, which required the concurrent service by the petitioner of Form Civ-LT-92, which sets forth the actual defenses; under the Proposed NOP, the Clerk's Office in Housing Court will continue its current practice of distributing that document to respondents.

Thank you for this opportunity to submit these comments. If you have any questions, please let me know.

Sincerely,

A handwritten signature in black ink, appearing to read "Mitchell L. Posilkin", is written over a light blue horizontal line.

Mitchell L. Posilkin, Esq.

NOVICK, EDELSTEIN, LUBELL, REISMAN,
WASSERMAN & LEVENTHAL, P.C.
ATTORNEYS AND COUNSELLORS AT LAW
733 YONKERS AVENUE
YONKERS, NY 10704

FAX: (914) 375- 0699

(914) 375-0100

I. SCOTT EDELSTEIN
EUGENE S. REISMAN
EDWARD FRIEDMAN
PETER A. LIFSON
RAMONA L. GOODMAN
LAWRENCE T. SCHIRO
CRAIG D. ZIM
CHARLES D. WASSERMAN
GREGORY S. BOUGOPOULOS

MATTHEW L. GORDON
HAROLD BORDOWITZ
JASON FUHRMAN
PAUL T. FINKELSTEIN
STEPHEN I. WOHLBERG
MORTON M. GOLDBERG
MICHELI PEREZ
FRANCISCO RIVERA

April 19, 2018

John W. McConnell, Esq
Office of Court Administration
25 Beaver Street - 11th Floor
New York, NY 10004

**RE: Proposed Amendment of the Notice of
Petition in Nonpayment Proceedings in
NYC Housing Court**

Dear Mr. McConnell:

We appreciate the opportunity to comment on the proposed model Notice of Petition. We applaud OCA for delaying implementation of the new pleadings, inasmuch as we only learned of it the Friday before it was originally to go into effect.

Our office regularly appears in the various Landlord-Tenant Courts throughout the five NYC counties. On average we field about 12 attorneys daily in those courts. The proposal has a direct impact on our office and our clients. We are glad to be of assistance with respect to any new initiatives.

The proposed Notice of Petition is a significant improvement to the one currently utilized. We appreciate the plain English being used and the clarity of the instructions to the Respondent.

With respect to the proposal to eliminate concurrent service of Civ-LT-92 (as opposed to the earlier proposal which has been withdrawn), we agree. The Court should be cognizant of the physical requirements involved in adding three pages to the numerous copies of the pleadings that have to be served. In the event of conspicuous or substituted service, three full sets are served and adding Civ-LT-92 would add nine additional pages. Besides being environmentally

NOVICK, EDELSTEIN, LUBELL, REISMAN,
WASSERMAN & LEVENTHAL, P.C.

unfriendly, it would most likely increase the cost of postage. Those are not inconsequential considerations. In addition, the sheer volume of paper would make it that much more difficult to serve the pleadings. Further, all that additional material would as likely cause confusion as be helpful to the recipient. We also note that it is quite unusual for any court to provide litigants with assistance in defending their cases. We are not aware of any other litigation in which the court provides similar guidance.

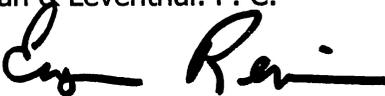
With respect to proposal 2 recommended by the Special Commission on the Future of the NYC Housing Court, we have no objection. Everyone should have the opportunity to be represented by counsel.

With respect to item 3, we agree that the revised Notice of Petition should be mandatory, as uniformity of pleadings will eliminate the potential for errors on the part of counsel as well as Court staff.

We would be happy to provide any other information that could be of assistance. We thank you for the consideration that you will no doubt give to our comments.

Very truly,

Novick, Edelstein, Lubell, Reisman
Wasserman & Leventhal. P. C.

By: 
Eugene Reisman

ER:jn

GUTMAN, MINTZ, BAKER & SONNENFELDT, LLP
813 Jericho Turnpike
New Hyde Park, NY 11040
516-775-7007 * Fax - 516-775-7052

April 10, 2018

John W. McConnell, Esq., Counsel
Office of Court Administration
25 Beaver Street, 11th Floor
New York, NY 10004

RE: Proposed Notice of Petition
New York City Civil Court

Dear Mr. McConnell,

This letter is written in response to the request by the Office of Court Administration for public comment on the proposal to amend the Notice of Petition used in the New York City Civil Court. Our law firm specializes in landlord-tenant litigation in all five boroughs of the City of New York and we appreciate the opportunity that your office has given us to comment.

Having served thousands of notices of petitions in New York City over the past years, our office recognizes the importance of simplifying the notice by using plain English and we support that change in the proposed notice of petition. As a member of Judge DeFiore's special commission, I also personally understand the objective of OCA to inform respondents in summary proceedings of their right to counsel and to facilitate respondents' ability to obtain counsel. We therefore also agree with the proposed notice of petition "linking" respondents with their potential attorneys.

Given the aforesaid, we strongly disagree with the proposed notice of petition insofar as it provides for a "link" to a list of tenant defenses. It is unheard of in any form of lawsuit in any forum for the plaintiff or petitioner to be required to notify the adversary of what their defenses are. It should not be any different in a summary proceeding and the commission report did not suggest any such requirement. In fact, we believe that advising our adversaries of their defenses borders on the unethical and would give an appearance to our clients of furthering or promoting litigation in what otherwise might be a very simple summary proceeding. It should be the responsibility of the respondent's counsel and/or the Court, as has always been the case, to provide the respondent in a summary proceeding with a list of their defenses. It should not be the Petitioner's responsibility.

Our firm very much appreciates this opportunity to comment as we did not have notice of or an opportunity to comment on the initial amended notice of petition. I am available to further discuss the matter at your convenience.

Thank you for your consideration.

Sincerely yours,


Neil Sonnenfeldt, Esq.

NS:bb

bbb041018



Belkin Burden Wenig & Goldman, LLP

A T T O R N E Y S A T L A W

005
270 Madison Avenue
New York, NY 10016
Tel 212. 867. 4466
Fax 212. 297. 1859

495 Post Road East
Westport, CT 06880
Tel 203. 227. 1534
Fax 203. 227. 6044

www.bbwg.com

Joseph Burden
Partner
212. 867. 4466 Ext 308
jburden@bbwg.com

March 22, 2018

BY REGULAR MAIL

John W. McConnell, Esq.
Counsel
Office of Court Administration
25 Beaver Street – 11th Floor
New York, New York 10004

Re: Proposed Notice of Petition in Housing Court

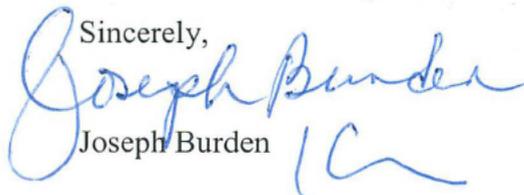
Dear Mr. McConnell:

I have three (3) comments regarding the Proposed Amendment of Notice of Petition in non-payment proceedings in New York City Housing Court.

1. The memorandum seeking comment provides that the Notice of Petition shall be mandatory in New York City Housing Court. Yet, the Administrative Order of the Chief Judge provides that the form is merely an example and not a mandatory requirement. The voluntary v. mandatory use of the form should be made clear for both the practitioners, the clerks, and the Housing Court Judges.
2. RPAPL §733 provides that in lieu of a Notice of Petition, an Order to Show cause may be served. I do not believe that it is applicable to the non-payment proceedings, but the Court should clarify that so that if an Order to Show Cause were brought, it would be permitted if even not using the Notice of Petition proposed by the Court.
3. Finally, in the actual Notice of Non-Payment Petition, paragraph 2 provides for the landlord asking for a money judgment for a certain amount of money plus interest. There is no provision there that allows the landlord to seek attorney's fees. The lease may allow attorney's fees and the landlord clearly is entitled to attorney's fees if it is the prevailing party and lease so provides. If you fail to seek the attorney's fees in the Notice of Petition, then the petitioner may not be entitled to attorney's fees. Thus, the proposed Notice of Petition should be modified to provide for a blank space to allow the petitioner to demand attorney's fees if so provided under the lease.

These are my comments and please pass them along to the appropriate authorities.

Sincerely,


Joseph Burden

JB:cmm

From: jacklglasserpc@aol.com
Sent: Sunday, March 25, 2018 4:05 AM
To: rulecomments; jacklglasserpc@aol.com
Subject: Proposed Notice of Petition in Nonpayment proceedings in New York City Housing Court

I respectfully wish to submit this comment in connection with the proposed Notice of Petition in New York City Housing Court Non Payment Proceedings. Presented for comment is a Proposed Notice of Petition for Non Payment Proceedings in New York City Housing Court. ("NOP") The NOP is a proposal which eliminates the concurrent service of the Civ-LT-92 Notice with the NOP upon tenants in Non Payment Proceedings in New York City Housing Court. (since the original announcement of the inclusion of the Civ-LT-92 Notice, my office has with little or no effort included the contents of this notice in our Non Payment Petitions) This comment addresses the proposal to eliminate the Civ-LT-92 Notice which is used to assist unrepresented tenants in fashioning defenses in non payment proceedings. This writer has experienced 40 years of development in Landlord Tenant Court in New York City. My experience began as an Associate at Rosenberg & Estis PC and Lindenbaum & Young PC. I was thereafter General Counsel to Fisher Real Estate for 16 years after leaving Lindenbaum & Young. While at Lindenbaum & Young I represented the Trump Organization in Queens County and tried cases for the Helmsley Organization in New York County. The first 20 years of my career was devoted almost extensively to the Landlord Bar of the Court. After resigning as General Counsel for Fisher Real Estate, my L&T practice has largely focused on tenant cases for at least the last 20 years of my career largely because of the location of my office in Queens County. My office is located as a storefront directly across the street from Queens Civil Court and because of my location, I have the opportunity of experiencing a tremendous volume of cases, especially those on the tenant side of the equation. From my experience, I have absolutely seen the reality of the vast majority of unrepresented tenants passing through the court system and being denied their rights of due process of law merely due to ignorance of the law. I have personally seen hundreds if not thousands of cases where a tenant has significant defenses to the payment of rent for a variety of reasons and not just due to habitability defenses. I have seen evictions resulting from sewer service, I have seen evictions in non payment cases where dwellings are occupied in violation of the certificates of occupancy, I have seen people evicted from apartments who have nothing to do with pending cases, aren't named in the cases and the cases state no fictitious appellations and these are only a few examples of issues that unrepresented tenants must grapple with on a day to day basis in housing court. The problem in non payment proceedings especially is that if the tenant cannot qualify for legal aid or doesn't have the wherewithal to even know that legal aid may exist for them, they are in court because of non payment (as opposed to a holdover) because they have money problems in the first place and they are unlikely to be able to afford counsel because of that. The result is that many thousands of tenants are needlessly evicted into the streets merely due to ignorance of the law. We all know that ignoracia legis non excusat (ignorance of the law is no excuse) However, here we are dealing with a persons home, not a business or an enterprise, a home, a home for people and even children and they are also entitled to the protection of the law. I have seen on more then one occasion, a suicide with the Marshal banging on the front door. In order to protect these innocents by making sure they get due process of law, it may be necessary to educate them as to their defenses. In this case, in my opinion based upon the 40 years of experience I have had, I believe that the burden of educating these people of their defenses that could very well stop a needless eviction, is far outweighed by the benefit that is provided by the minimal intrusion of simply inserting language in the NOP to conform to the Civ-LT-92 Notice. A summary proceeding is clearly a creature of statute! If you don't follow the statute, the case is dismissed! If the statute says you must plead 5 things and you only plead 4 things, your case is defective. So whats the difference if the statute says you have to plead 6 things instead of 5? Thats why 90% of landlords have counsel and 90% of tenants don't! In sum, I believe that due process requires the inclusion of the Civ-LT-92 Notice and that it's inclusion is minimally intrusive on the landlord Bar and it's benefits far outweigh its burdens. My belief is predicated upon the age old rule of waiver of affirmative defenses that are waived if not plead and I also believe that the inclusion of the Civ-LT-92 notice "levels" the playing field in this regard. Thank you

JACK L. GLASSER, P.C.
Attorneys and Counsellors At Law
89-10 Sutphin Blvd
Jamaica, New York 11435
Phone: 718-206-2500
Fax: (718) 526-4623
email: jacklglasserpc@aol.com