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Honorable Glenn A. Grant, J.A.D.
Administrative Office of the Courts
Hughes Justice Complex
25 W. Market Street
P.O. Box 037
Trenton, New Jersey 08625

RE: COMMENTS ON THE REPORT AND RECOMMENDATIONS OF THE JUDICIARY SPECIAL COMMITTEE ON LANDLORD-TENANT

Honorable Judge Grant:

Greetings Your Honor. First and foremost allow me to thank Chief Justice Stuart Rabner and the Court for acknowledging the deficiencies of our pre-pandemic landlord-tenant process and for seeking to build a new and improved system that ensures procedural fairness and offers our inner city communities the possibility of surviving the present crisis. As for the work of the Special Committee, I am most grateful for having had the opportunity to contribute ideas, insight and on most occasions just offer silent support.

Your Honor's leadership and the incredible effort on the part of the members of your team and of the Committee have brought this comprehensive re-imagination of the landlord-tenant process, in record speed, to the cusp of implementation. Having served on countless Court committees, I am in awe of how much, in so short a time, has been accomplished. Having practiced tenancy law for almost forty five (45) years, excuse me when I say that what I am witnessing is akin to a mountain being moved. Still, the question remains whether the reset of tenancy court procedures embodied in the Special Committee's eighteen recommendations will yield a new horizon of greater morality, fairness and justice or whether in practice, its promise will be subverted by those for whom the pre-pandemic process worked perfectly well.

As a lead into my remarks, I offer this brief history of my experience and expertise with tenancy law. In 1976, following graduation from Rutgers-Newark, I was asked by the late Melville De Miller to head Legal Services of New Jersey's (LSNJ) housing law effort. In 1982, at De's direction, I authored the first edition of the handbook, Tenants Rights in New Jersey. That publication, with periodic updates, continues to serve as the primordial community legal education and self-representation tool for New Jersey's low income renters.

In 1989, I became Executive Director of Essex-Newark Legal Services (ENLS). From that time to the present, given the horrific eviction numbers in Essex County, I have been involved in one form or another on an almost daily basis with the goings on in tenancy court.

One of my chief responsibilities as head of ENLS has been to review and where appropriate approve program appeals of tenancy court decisions. In the course of that work, I have interviewed hundreds of tenants post judgment and examined at least an equal number of trial court records. On numerous occasions, I have taken on direct responsibility for challenging and sometimes defending the trial court's decision particularly in matters where the tenant proceeded below unrepresented. I have also prepared scores of tenants for self-representation, assisted ENLS staff attorneys with trial preparation, tried cases myself and brought to the attention of the judiciary practices or procedures negatively impacting the fair administration of justice.

For more than ten (10) years, I sat on the Supreme Court's Committee on the Special Civil Part and currently I am a member of the Essex Vicinage Committee on Diversity, Inclusion and Community Engagement. I also sit on the Essex County Human Services Advisory Committee (HSAC) and the Essex County Continuum of Care. The latter body focuses on the provision of emergency shelter to homeless individuals and families and on efforts to permanently re-house them. It is from that depth of experience and community involvement that I offer the comments that follow.

COMMENTS

THE REINVENTION OF TENANCY

As there has been extensive comment submitted by others as to the Special Committee's eighteen recommendations, my focus here will be on concerns related to the reinvention of the tenancy process but which have gone largely unaddressed.

THE EFFORT MUST PROVIDE FOR JUDICIAL SUPERVISION AND AOC COMPLIANCE REVIEW

The experience in Essex County, both pre-pandemic as well as during the Covid-19 moratorium on evictions and lockouts, suggests that absent ongoing AOC supervision, the tenancy reset in some court rooms will mean little.

Over the years, on countless occasions, I have been asked to advise tenants as to their rights. Rather than offer a rote recitation of the provisions of the anti-eviction statute, I have instead described our landlord-tenant process as a version of the Wild West. Whether you have any rights at all, I explain, will depend on what judge hears your case.

For instance, this January, ENLS had a month-to-month tenant call our office regarding a complaint for ejectment she had received. After reviewing the complaint, we advised her that, as a month-to-month tenant who was current in her rent, she had nothing to worry about. We assured her that she could not be ejected and that she could safely self-represent at the hearing. We also

told her about the health emergency moratorium on evictions and lockouts and that as such, she and her family had absolutely nothing to fear. Well, one of our tenancy judges ruled that this month-to-month tenant appearing before him unrepresented had lost her status as tenant and was therefore subject to ejectment when the building's new owner refused to accept her as its tenant. Citing no legal authority for his decision, while ignoring forty five years of statutory and judicial precedent, this jurist showed absolutely no concern that the lockout he was authorizing of this African-American litigant and her two minor children would be taking place during the pandemic.

Still another Essex County tenancy judge, also earlier this year, conducted a proof hearing on a pre-pandemic warrant of removal based on the barking of a six pound dog. The record in that case is clear that in authorizing the prompt lockout of the tenant and her two children, his Honor did not express a single thought as to whether the tenant had been served with the notice of the hearing or whether the matter fit within the interest of justice exception.
Instead, it appears that for the court it was just business as usual.

These examples demonstrate why it is imperative that as part of implementing the reinvention of tenancy and upholding the commitment to fairness, the Court consider the need for ongoing judicial supervision and periodic compliance reviews of trial records by the AOC.

The laisse-faire approach that relies on the adversarial system and appellate review to correct injustice simply does not work well where approximately ninety-nine (99) percent of tenant litigants are low income and lack counsel. Over the years, I have tried to protect pro-se litigants by taking on appeals of cases where the tenant proceeded below unrepresented. Those efforts, while gaining a reversal in virtually every case, have not had a beneficial impact on the overall treatment of unrepresented tenants.

Hence, for the sake of delivering justice to unrepresented tenants while protecting the independence and upholding the integrity of the judiciary, there needs to be, within this reinvention, an investment made in judicial supervision and policing by the AOC.

THE LANDLORD-TENANT LEGAL SPECIALISTS (LTLS) MUST BE PROTECTED AGAINST INTIMIDATION AND COAPTATION

The LTLS job posting sought recent graduates. Though the Courts will hire highly qualified individuals, their lack of experience raises some concerns. The LTLS should be extensively versed in LT law, procedural defenses, and tenant's options. It is important to the integrity and fairness of the process that the LTLS not provide unrepresented tenants' incorrect information about their rights or obligations.

Cautions about developing bias should also be strongly emphasized and constantly reinforced. That said, my greatest concern is the undue influence the landlord bar exerts in the Essex County courthouse. Pre-pandemic we saw its hand in the Court's December 2019 decision to eliminate the live reading at calendar call of the Harris announcement. Then there was also, the

practice of the rapid low voice calendar call aimed at producing tenant defaults and the landlords rent collection table located just outside of where the calendar call was being held. If judges can feel intimidation, what then will be the fate of the young inexperienced LTLS?

That concern is heightened by Recommendation 5 which calls for the block scheduling of cases for large landlords. Yes, in Essex County we have seen that form of partnership before: that smooth joint operation working in tandem taking shortcuts to swiftly move the calendar. Given that block scheduling will foster cooptation, my recommendation is that it be dropped and that there be ongoing local supervision and periodic compliance reviews of the LTLS personnel by the AOC.

OTHER CONCERNS

Given that so many tenants lack counsel, the court rules and the rules of evidence are tools that in but a few cases, one side and one side alone is wielding against the other. This is particularly true where the court chooses to allow the repeated use of objections to completely frustrate the efforts of the pro se litigant to communicate with the court. Too often, the court will act as if it is protecting a jury from the improper utterance of the pro se while in the absence of objections, seemingly relaxing the rules for the represented side. We frequently see little or no effort from the court to allow tenants cross-examination. Further, where the court itself directs questions at the landlord witnesses it is in an almost a helpful way. In the interest of advancing the reinvention, the Court should visit this issue.

In closing and on behalf of the community I serve, I thank the Court for moving with urgency to improve systemic fairness and access to justice for low income people of color who comprise the overwhelming majority of New Jersey's tenant litigants.

Respectfully submitted,

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