

I. AUTHORITY FOR REPORT

This report has been prepared by the undersigned as presiding judge of the Housing Division of the Hartford-New Britain Judicial District, in accordance with section 47a-73 of the general statutes, as amended by Public Act 81-419.

II. CASE ACTIVITY

Statistics compiled by the clerk of the court show the following case activity for calender year 1982:

HARTFORD DOCKET

	<u>Summary Process (evictions)</u>	<u>Other Civil Ac</u>	<u>Criminal Code Viol.</u>	<u>Small Claims</u>	<u>Totals</u>
Cases filed	4172	280	72	800	5324
Cases disposed	4207	238	110	819	5374

NEW BRITAIN DOCKET

	<u>Summary Process (evictions)</u>	<u>Other Civil Ac</u>	<u>Criminal Code Viol.</u>	<u>Small Claims</u>	<u>Totals</u>
Cases filed	1023	66	16	330	1435
Cases disposed	1047	56	21	423	1547

The statistics provide only the barest indication of the manner in which the court exercises its very broad jurisdiction. A major purpose in establishing the housing courts was to provide a forum for the speedy resolution of landlord/tenant disputes, especially those concerning the right to occupy premises. The statutes and case law have always recognized the necessity for moving these cases to a quick conclusion, avoiding the congestion that often afflicts the regular civil trial calendar. At the present time, the Hartford-New Britain housing court is meeting that goal. A summary process case is scheduled

for trial within two weeks after all pleadings have been filed in Hartford and immediately in New Britain.

Another aspect of the court's activity that deserves comment is the wide variety of matters that are brought before it. In addition to landlord-tenant disputes involving residential dwelling units, the court regularly hears cases involving commercial leases, requests for injunctive relief, the appointment of rent receivers, wrongful entry and detainer, and municipal housing code violations. With respect to summary process actions, the court has had occasion to consider and, to some extent, redefine its jurisdiction in the light of two recent decisions of the Appellate Session of the Superior Court. In Scinto v. Bridgeport Cash & Carry, Inc. 38 Conn. Sup. 514 (1980) and Sigros v. Hygenic Restaurant, Inc. 38 Conn. Sup. 518 (1982), the Appellate Session reaffirmed the traditional view of summary process actions that they are limited to "a few plain, simple questions of fact." The Sigros decision, taking perhaps the most extreme position on the subject, ruled that the trial court may, in its discretion, dismiss a summary process action if the issues raised are so complex that they would complicate or impede the speedy trial of the case. The complexity question was presented to the Hartford-New Britain housing court in Prudential Insurance Company of America v. Lisa James Enterprises, Inc., No. SP-H-8210-16733, December 20, 1982. In deciding that this court should not refuse jurisdiction, the court considered the fact that both the Scinto and Sigros cases were brought in geographical area courts, not housing courts. The distinction is that section 47a-68(h)

of the statutes provides that housing courts have jurisdiction over "All actions for back rent, damages, return of security deposits and other relief arising out of the parties' relationship as landlord and tenant or owner and occupant" (emphasis added). The practical effect is that this court does not turn away landlord tenant cases, including summary process actions, on account of their complexity. Instead, the court provides a forum for speedy trials of all matters properly falling within its statutory jurisdiction.

The varied case activity has continued to spawn a large number of written opinions, many of which are published in the Connecticut Law Tribune. In combination with those emanating from the New Haven housing court, they provide Connecticut attorneys with a well developed body of case law on landlord-tenant relations. All of the court's more important opinions are collected in looseleaf booklets, available for purchase at cost (about \$25). In addition, each litigant in a contested small claims case receives a written opinion, often handwritten, which sets forth the reasons for the decision in his or her case. Most of these litigants appear without counsel, and a special effort is necessary to ensure that they understand the basis of the court's actions.

III. COURTROOM FACILITIES

The Hartford session is now held on the fourth floor of 18 Trinity Street, having moved to that location in 1981. These facilities are perfectly adequate for the conduct of the court's business and represent an enormous improvement over the previous quarters at 83½ Lafayette Street. The New Britain facilities, located in the Superior Court building at 177 Columbus Boulevard, are likewise satisfactory.

IV. STAFF

The court is blessed with an absolutely superb staff, and this fact has been frequently and publicly acknowledged by members of the Bar, citizens groups and individual litigants. At the present time, the

Hartford staff consists of two assistant clerks, two housing specialists, one administrative assistant, two clerical assistants, and a court reporter/monitor. At New Britain, there is one assistant clerk and two clerical assistants, and the Hartford housing specialists and reporter service that court as well. The assistant clerks, one of whom is employed on a per diem basis, are attorneys, and this is considered important in view of the assistance they are required by statute to provide pro se litigants. The housing specialists perform an essential function in the court. Every contested summary process case involving residential premises is referred to one of the specialists prior to trial in an effort to mediate the differences between the parties. This procedure achieves about a 90% settlement rate and is of tremendous mutual benefit to the litigants. It also has the obvious advantage of allowing the court to handle its large caseload with just one judge in a timely and efficient manner. Both specialists are conversant in Spanish as well as English, and they possess excellent communications skills. In addition to their mediation duties, they also perform housing inspections at the direction of the court in summary process and receivership cases. They have both received training in this area.

Although staffing of the clerical functions is adequate to conduct the court's present level of business, there is a need to augment the housing specialist staff by at least one additional full time member. In terms of caseload, the Hartford-New Britain housing court is far ahead of the other two housing courts. For the last fiscal quarter, for example, statistics compiled by the Judicial Department show that this court disposed of 1199 summary process cases, while New Haven/Waterbury

and Bridgeport/Stamford disposed of 796 and 435, respectively. Yet this court has the same number of housing specialists as the others. This disproportionate allocation has imposed a personal toll on the incumbents at the Hartford-New Britain court and necessitated a cut-back on the performance of some of their statutory inspection duties. An additional full time position has been recommended.

V. CRIMINAL CODE VIOLATIONS

Section 47a-68(f) of the statutes provides that the housing court has jurisdiction over criminal cases involving violations of housing and building codes. The prosecution of individuals accused of such violations is the responsibility of the State's Attorney's office, and this activity has been the subject of controversy since the beginning of the court. On the one hand, tenant advocates press for vigorous prosecution and stiff penalties; on the other, there are those who contend that the imposition of severe penalties would unfairly punish the landlords, who in many cases are struggling against difficult economic problems of their own, and would not accomplish the primary goal of improving housing conditions. These opposing viewpoints have resulted in an understandably ambivalent attitude toward prosecution on the part of the State's Attorney's office, which is reflected in the very low figures in the statistics. As may be imagined, these figures represent only a fraction of the number of complaints which the various municipalities have referred to the State's Attorney's office. Rather than presenting most of these cases to the court for prosecution, however, the State's Attorney's office has attempted to rectify the conditions giving rise to the complaints by informal and unrecorded interviews with those accused of the violations. Because this procedure has not been part of the public record, it has created an impression of inactivity on the part of the State's Attorney's office, and this in turn has generated considerable adverse comment from

citizens' groups and in the news media. The State's Attorney's office has recently announced that it is conducting a thorough review of its procedures in the prosecution of housing code violations and has assigned its chief prosecuting attorney to the housing court for this purpose.

The position of the judge in the administration of criminal proceedings, whether they be housing code violations or any other, must remain neutral and impartial. The judge of the court where violations are prosecuted must refrain from interfering with or commenting on the prosecutor's decisions; otherwise, it would be impossible to avoid creating an appearance of bias which would be inconsistent with the rights of the individuals concerned to receive fair and impartial trials. Accordingly, as presiding judge of the housing court, I have not commented on the procedures which the State's Attorney's office has followed in this area. However, it is appropriate to state that absolutely no reports or evidence of wrongdoing or misconduct on the part of the State's Attorney's office have been brought to the attention of the court.

VI. CITIZENS ADVISORY COUNCIL

Section 47a-71, as amended by P.A. 82-461, provides for the appointment of a citizens advisory council for housing matters in each judicial district where a housing court is established. The duties of the council are described in section 47a-72 and include consulting with and making recommendations concerning housing matters to the housing court judge and the chief court administrator. Members of the council receive neither compensation nor expense reimbursement, so the cost to the state is nil. The Hartford-New Britain and New Haven councils' statutory existence is due to expire June 30, 1983.

I have found the council to be an extremely useful source of information on housing matters and especially the concerns of citizens affected by the operations of the court. Its function is particularly

valuable for the judge who is newly assigned to the housing court. I recommend that the councils be made permanent, with rotating membership appointed by the governor every two years.

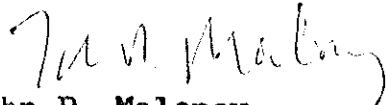
VII. LEGISLATIVE PROPOSALS

Section 47a-73 of the statutes suggest that this report include recommendations for legislative action on housing matters. These are annexed hereto in a separate memorandum to the Committee on the Judiciary.

VIII. CONTINUANCE OF THE HOUSING COURT

As may be evident from the foregoing report, I consider the housing court in the Hartford-New Britain Judicial District to be operating efficiently and successfully. Landlord-tenant disputes receive prompt and thorough disposition without losing sight of the human concerns of those involved. The quest for shelter and the desire to accumulate and protect one's property are among the most basic human impulses, and disputes involving them often warrant special attention. It is my unqualified recommendation that the existence of the court be continued.

Respectfully submitted,



John P. Maloney
Presiding Judge, Housing Division
Hartford-New Britain Judicial District

MEMORANDUM

To: Hon. Howard T. Owens, Jr.
Hon. Richard D. Tulisano
Chairmen, Committee on the Judiciary
State Capitol
Hartford, Connecticut

From: John P. Maloney
Presiding Judge, Housing Division
Hartford-New Britain Judicial District

Re: Legislative Recommendations

This memorandum has been prepared in accordance with section 47a-73 of the general statutes, which provides that each judge of a housing court may include with his report to the General Assembly "recommendations... for legislation with respect to hearing housing matters." I interpret this invitation to be limited to recommendations which seek to correct or clarify the landlord-tenant statutes so that the judge who hears housing matters will have a better statutory guide for his or her decisions. The aim of the suggestions contained herein, therefore, is not to suggest legislative solutions to the myriad economic and social problems that the landlord tenant statutes address, but merely to resolve conflicts or ambiguities that currently exist in those statutes. My recommendations are as follows:

Section 47a-4a. This so-called "Warranty of habitability" provision has inspired a wide diversity of treatment by the courts. The decisions have consistently held that the somewhat awkward phraseology "is not merely a prohibition against contractual waiver, but rather a legitimate excuse for nonpayment of rent". Steinegger v. Rosario 35 Conn. Sup. 151(1979). But there is considerable confusion and difference of opinion over what is necessary to trigger the rent abatement and whether the tenant might still be obliged to pay

a reduced amount as compensation for his use and occupancy of the premises while the violation or defect exists. The Hartford and New Haven housing courts have generally excused all payment during any period when there exists a code violation or failure to repair which creates a material risk to the safety or health of the tenant. By contrast, some cases have held that rent is excused in all cases where the landlord has failed to comply with section 47a-7, no matter how minor the dereliction, and then charged the tenant a reduced amount for use and occupancy. The latter cases disagree on the subsidiary issue of who should bear the burden of proof as to the amount to be paid for use and occupancy. To resolve these conflicts and clarify the law, I recommend that section 47a-4a be amended to provide that no rent or other compensation is payable for any period when the landlord's violation of section 47a-7 creates a material risk to the tenant's safety or health. Further, section 47a-13 should be amended by specifying that the tenant has the option of procuring necessary repairs, after notice to the landlord, and deducting the cost from the rent. Such a provision would be an alternative to the "all or nothing" approach which the statutes currently take. In any action brought by the landlord after the tenant had deducted the cost of the repairs (i.e. summary process for nonpayment of the full rent) the tenant would be entitled to prove the necessity and reasonableness of the deduction as a special defense.

Section 47a-15. This section should be clarified by providing that the notice from the landlord is mandatory and that it is

applicable to all cases except nonpayment and illegal or disorderly conduct.

Section 47a-21d(2). The last sentence of this subsection should be clarified. Does it apply even when unpaid rent and/or physical damages to the premises exceed the amount of the security deposit? Is the double security deposit reduced by any such damages?

Section 47a-23(c). The normal practice is to have the notice to quit delivered in the same manner as service of civil process as provided in Title 52. But this subsection does not specify such service and instead uses the word "deliver", which suggests that a less formal method of giving notice is valid. The provision should be clarified by providing that the notice to quit must be served in the manner required for civil process in Title 52.

Section 47a-35 through 47a-40. A provision should be added which specifies that the court may also grant a stay of execution on such terms as the parties may agree, including payment of arrearages over a period of time and for a duration longer than the three or six month maximum period. The Hartford and New Haven housing courts permit parties in summary process actions wide latitude in the terms of stipulated judgments which exceed the statutory limits on stays of execution and payment of rent arrearages. We are aware that other courts, however, have been reluctant to grant such judgments. In our experience, the more lenient policy promotes settlement and permits the parties to obtain what they both really want.

Section 47a-46. This section should be combined with section 47a-45a so as to make clear that damages and punitive damages may be awarded as part of the action for restitution in lockout cases.

The implication of the present statutory arrangement is that the action for damages is separate from the action for restitution - a needless multiplicity of lawsuits.

I will be glad to discuss these proposals with the Committee at any time at your convenience.

John P. Maloney
Judge