



CONNECTICUT ADVISORY COUNCIL  
ON HOUSING MATTERS



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**NOTICE OF NEXT QUARTERLY MEETING**

**2:00 p.m.**

**Wednesday, December 14, 2022**

This meeting will be held electronically by Zoom. Details as to how to access the meeting have been distributed.

**Minutes of the Special Meeting of November 30, 2022**

Members present: Loo Dahlke, Kathy Flaherty, Venoal Fountain, Sam Neves, Raphael Podolsky, Dave Purvis, Margaret Suib, John Wirzbicki, Michael Clinton (late in the meeting only)

Members absent: Richard DeParle, Houston Putnam Lowry, Carl Lupinacci, Jane Kelleher, Stephanie Ma, J.L. Pottenger, Jr.

Public officials: John Kerwin (Chief housing prosecutor)

Members of the public: Denice Chancey, Catharine Freeman, Jeff Mastrianni, Cyd Oppenheimer, Jenn Shukla, John Souza

The meeting, on Zoom, was called to order by the Chairperson, Raphael Podolsky, at 2:07 pm. The Chairperson announced that the purpose of the meeting was to review the most recent draft of the 2023 biennial report. The draft report is attached to these minutes as Appendix A. It has been reformatted so as to show the version recommended by the Chairperson, with page numbers so as to make its sections easier to identify. The members discussed possible changes to be made in the draft prior to its presentation to the December 14 meeting. Below is a summary of the discussion. The summary should be read in conjunction with Appendix A. No formal decisions were made and no formal votes were taken. The Chairperson was directed to redraft the report, taking into consideration the discussion at the meeting and any additional information that becomes available.

Summary of the November 30 discussion:

Page 1

- Introduction: No changes.
- Virtual hearings: No changes.

## Page 2 (begins at the end of p. 1)

- Access to courts
  - Overcrowding: Not all courthouses are overcrowded. The courthouses where overcrowding is greatest should be identified. There is a problem in courthouses with mixed criminal and housing dockets because settled housing cases may have to wait until lengthy criminal matters are disposed of. Some concern was expressed about the lack of a masking requirement (no consensus). A suggestion was made for staggered calendars (no consensus).
  - Calendar calls: There was discussion of how to make sure that unrepresented parties with limited understanding of English were able to understand the initial explanations of process given by court personnel. Hartford and Waterbury were suggested as courthouses with a great need. It was suggested that written introductory materials or introductory videos could be developed in multiple languages. More bilingual housing mediators were suggested, since mediators sometimes handle the calendar call. It was suggested that more bilingual staff generally would be beneficial. It was also suggested that it is sometimes difficult to get a certified interpreter.
  - Reasonable accommodation for disability: One person described a case in which the court initially denied a remote hearing, but such the request was ultimately granted. Concerns were expressed about the need for remote access in rural areas where transportation to the courthouse might be difficult. What happens if one party wants a remote hearing and the other prefers in-person?
- Administration-related issues
  - Evictions when courthouse closed: It was argued that the situation is unusual and is unnecessary because litigants have opportunities to object to execution earlier in the proceeding. It was suggested that marshals sometimes provide extra time to minimize conflict. There was no consensus, and it is anticipated that the section will ultimately be deleted.
  - Notice of fee waivers: No changes.
  - Notice by mail: No changes.

## Page 3

- Clerks office structure: There was a question raised as to whether there is a housing clerk in Waterbury. It needs to be verified.
- Data-related and other procedures in housing-related cases
  - Data entry guidelines for clerks: No changes.
  - Small claims data: No changes.
  - Criminal data: No changes.
  - Judgment notices: Concern was expressed that, at least in some cases, tenants who entered into a stipulated judgment with an extended vacate date were receiving computer-generated notices from the court information that they had five days in which to vacate. Concern was expressed that some unrepresented defendants who entered into negotiated “agreements” did not understand that these were judgments that would show up in the court records as judgments for the landlord.
  - Docket markings: No changes.
  - Housing civil cases: No changes.

- Notices: No changes.
  - Magistrate small claims manual: No changes.
- Forms and materials
  - Introductory paragraphs: No changes.

#### Page 4 (begins at the end of p. 3)

- CARES Act affidavit of compliance: There was discussion of the Advisory Council's previously-approved recommendation to Judicial and Judicial's response.
  - C.G.S. 47a-23c pro se form: There was discussion of the need for the form. There was no consensus.
  - Various guides: No changes.
- Housing mediators:
  - Expanded staffing: Concerns were expressed that additional mediator training is needed, particularly in light of the new Rent Bank program.
  - Rent bank: No changes.

#### Page 5

- Other Judicial Branch programs: No changes.
- Housing prosecutors
  - Criminal database improvements: No changes.
  - Police training manual: No changes.
  - Full-time prosecutors: No changes.
  - Centralized Infractions Bureau: No changes.

#### Page 6

- Right to Counsel program
  - Introductory paragraphs: No changes.
  - Funding: There was discussion of the impact of the program of the cost and speed of evictions for landlords and whether it would result in landlords rejecting riskier tenants. It was also suggested that it might be premature to make a recommendation on extension of the program, since the program itself was gathering data. No changes to the draft were recommended at this time, but the intent is to review this bullet.
  - Expansion of program area coverage: No changes.
  - Judicial Branch website: No changes.

#### Page 7 (begins at the end of p. 6)

- Case processing data: No changes, but the draft of this section is expected to be expanded upon by the December 14 meeting, assuming that additional data is available.
- Eviction records: There was preliminary discussion of the proposal but no consensus was reached. It was deferred to the December 14 meeting.

- Advisory Council role and involvement: No changes.
  - Introductory paragraphs: No changes.

## Page 8

- Anticipated Advisory Council projects:
  - Magistrate Manual: No changes.
  - Data gathering capacity: No changes.
  - Input into housing court judge assignments: No changes.

Respectfully submitted,  
Kathleen Flaherty, Secretary

# **APPENDIX A**

## **DRAFT**

### **REPORT OF THE CONNECTICUT ADVISORY COUNCIL ON HOUSING MATTERS**

Pursuant to C.G.S. §47a-73, every two years the Connecticut Advisory Council on Housing Matters makes a report to the General Assembly on the administration of housing matters in the court system. This report constitutes the Council's report and recommendations for 2023.

Two years ago, the Council recommended that the Judicial Branch return housing matters to in-person status as soon as reasonably practicable, considering the status of the health emergency. The Council is pleased that the Branch has done so. This report attempts to survey a number of issues that the Council has discussed since then.

#### **Virtual hearings**

The Council's 2021 report included a number of recommendations for improving the way in which virtual hearings were being handled. The concerns centered on the ability of self-represented litigants to effectively access and participate in virtual hearings. To the extent that hearings in housing matters have returned to in-person status, those concerns have become moot. To the extent, however, that some housing hearings or trials are still held remotely, those recommendations may still be relevant. These included:

- Ability to access assistance from the clerks' offices by phone, including during a virtual hearing;
- Recognition of litigant difficulties in accessing hearings;
- Adequacy of remote courtrooms in the courthouse;
- Use of electronic notices;
- Readability of computer-generated notices;
- Recognition of the potential unreliability of receipt of email.

To the extent that remote hearings continue to occur in housing cases, the Judicial Branch should review the Council's 2021 recommendations, including the ones listed above.

#### **Access to courts**

Three issues about the return to in-person proceedings have been brought to the attention of the Council. We urge the Judicial Branch to address each of them:

- Overcrowding: The return to in-court hearings has resurrected the long-standing issue of overcrowding in the courthouses that hear housing cases. Some courts do not have sufficient seating and litigants must crowd together in the hallways in close quarters. Overcrowding sends the wrong message to litigants, since it is inherently disrespectful to them. It can also impose physical burdens on litigants who cannot find a place to sit and practical burdens on those who may miss courtroom instructions or the call of a case because they are outside the courtroom. In addition, because COVID-19 continues to be a health issue, overcrowding continues to have health overtones. The Branch should attempt to find ways to minimize overcrowding.
- Calendar calls: Calendar calls in the housing courts usually include the presentation of information about the day's proceedings that is important for self-represented litigants to hear and understand. They are currently made only in English. A significant portion of self-represented litigants are not fluent in English. The Branch should devise ways to provide these presentations in languages other than English, particularly in Spanish.
- Reasonable accommodation for disability: It has been reported to the Council that requests for remote proceedings based on disability have not always been honored. The proper procedure is a caseflow request, although a request based on the Americans with Disabilities Act request can also be made. Judicial should review these requests, determine the extent to which they are denied, and evaluate whether any changes in the system need to be made.

#### Administration-related issues

- Evictions when courthouse closed: The pandemic, during which at one point provision was made for pre-execution hearings, highlighted a long-standing problem with execution on summary process judgments. Such actual executions are often begun at the time the courthouses are still closed, most commonly before 9:00 am on weekdays. Concerns have been expressed that, at such a time, there is no way to communicate with the clerk or to attempt to obtain a court order if the defendant claims that implementation of the execution is wrongful or wants to seek relief from the execution for other reasons. Unless implementation of executions is limited to hours when the courthouse is open, some mechanism should be developed to allow timely communication with the court.
- Notice of fee waivers: Questions have been raised as to the extent to which low-income litigants are informed in the clerk's office of their right to apply for a fee waiver. The Judicial Branch should assure that indigent litigants are always made aware of the right to request a fee waiver, both by appropriate signage and in communication with clerks' office staff.
- Notice by mail: Mailed notices of hearings should recognize the existence of significant delays in both the mailing of notices within the court system and in the actual delivery of mail. At least 14 days' advance notice should be allowed except where otherwise required by statute. The Council is aware of cases where notices did not arrive until the day before, the day of, or the day after the hearing.

- Clerks' office structure: The Judicial Branch should identify clearer lines of responsibility for housing cases for the clerks offices in New Britain and Waterbury and in the non-housing court districts. Any clerk's office handling housing matters that does not have a formally-designated clerk for housing matters should have a clerk or assistant clerk who is assigned to supervise housing matters. Such employees should be trained by and responsible to the Chief Clerk for Housing Matters so as to assure consistent procedures and policies throughout all courts handling housing matters. Parties will thereby have access in all locations handling housing matters to a clerk trained in housing law to answer questions and provide assistance to self-represented litigants.
- Data-related and other procedures in housing-related cases: The Judicial Branch should adjust procedures so as to establish:
  - Data entry guidelines for clerks: Guidelines for clerks in regard to the uniform inputting of data;
  - Small claims data: In small claims actions, a sortable field for the address of affected properties;
  - Criminal data: In criminal cases, the posting of full court orders on the web, including all conditions related to those orders;
  - Judgment notices: The ability to issue judgment notices promptly and with separate copies to each defendant;
  - Docket markings: The ability to track the history of attorney appearances for parties and of continuances and off markings;
  - Housing civil cases: The ability to identify civil cases filed in civil clerks' office as being housing cases that should be transferred to the appropriate housing session;
  - Notices: The adequacy of notices to self-represented and non-appearing parties.
- Magistrate small claims manual: The Council's preliminary update of the manual was completed in 2019 so that it is substantially current. The Council is concerned, however, that it is not in fact being used by magistrates. The Council requests that Judicial give specific guidance to magistrates on its use as a resource and that it provide a hard copy of the manual to magistrates newly hearing housing small claims cases and to any other magistrates hearing housing cases who have not previously received a hard copy.

#### Forms and materials

During the past two years, the Advisory Council has submitted proposed changes to the summary process Answer and Special Defense form (JD-HM-5) and the Motion to Open form (JD-HM-42). The Council is appreciative that its suggestions were implemented in regard to both forms.

The Advisory Council recommends a substantial revision of one other form, the creation of one new form, and the updating of litigant guides.

- CARES Act affidavit of compliance (JD-HM-41): The federal CARES Act (15 USC 9058), which was adopted in 2020, imposed a number of restrictions on state law (including an eviction moratorium) as it applied to "covered" dwellings and dwelling

units, i.e., covered under a very broad definition of federal assistance. Eviction from such dwellings requires a 30-day notice as a matter of federal law. In order to assure compliance with the CARES Act, the Judicial Branch drafted and required an affidavit of CARES Act compliance. Since then, the federal moratorium requirements have ended but the notice to quit requirement remains. The affidavit, however, needs to be revised to focus on that single requirement. In addition, the affidavit never adequately provided guidance to landlords or landlord attorneys as to what properties were covered dwellings. This led to routine but incorrect claims as to the “covered” status of properties. The Advisory Council recommends a substantial revision of the affidavit for both accuracy and comprehensibility. A copy of the Council’s recommended draft is attached as Appendix \_\_\_\_.

- C.G.S. 47a-23c pro se form: The Judicial Branch should develop a pro se form for actions brought under C.G.S. 47a-23c(c)(2). C.G.S. 47a-23c(c)(1) limits rent increases for seniors and persons with a disability living in buildings or complexes with five or more units to no more than “the extent that such increase is fair and equitable, based on the criteria set forth in section 7-148c.” C.G.S. 47a-23c(b)(1) prohibits the eviction of such renters for “lapse of time” or “right or privilege...has terminated” but permits eviction for “refusal to agree to a fair and equitable rent increase.” C.G.S. 47a-23c(c)(2) provides that protected tenants who live in a town with no fair rent commission “may bring an action in the Superior Court to contest the increase.” Twenty-five towns currently have fair rent commission ordinances, and P.A. 22-30 requires an additional 27 towns to create such commissions by July 1, 2023. Thus, 144 towns currently have not adopted a fair rent commission ordinance, and, even after July 1, 2023, 118 towns will have no commission.
- Various guides: Changes in eviction law during the pandemic made many of the Department’s eviction-related guides out-of-date, as pandemic rules substantively changed the laws. Many of those changes are no longer in effect, but some remain. We urge the Judicial Branch to review such guides for continuing accuracy.

#### Housing mediators

- Expanded staffing: The legislation creating the Right to Council program also included funding that has resulted in more than tripling the number of housing mediators. With a larger number of mediators, it should be possible to expand the tools available to mediators, the range of settlements that can be reached, and the types of matters in which mediators are routinely involved. For example, housing court mediation is likely to be a key referral point to the re-established state-funded Rent Bank Program (see below). Its success will depend on an active role by mediators. Another example might be post-judgment eviction filings, such as motions to open and audita querelas. We urge Judicial to examine these possibilities.
- Rent bank: The reestablished Rent Bank program, amended and initially funded one year with a \$1.5 million budget by P.A. 22-118, offers another opportunity for the involvement of housing mediators. Even before the program launched, however, the Governor has allocated an additional \$11 million in federal funds for the program, with



an expectation that the funding will cover at least three years' operation of the program. An important function of the program is to provide a resource to help work out settlements in evictions based on non-payment of rent in which the rent arrearage is relatively small. In reviving the program, the General Assembly increased the maximum amount of assistance per unit from \$1,200 to \$3,500. The use of federal funds, however, is allowing the Department of Housing, which will administer the program, to increase the maximum payment to \$5,000. The availability of these funds will create opportunities for the in-court settlement of eviction cases that would not otherwise exist. The Council urges the housing court mediation system to be acutely aware of these funds and to encourage their use whenever possible to bring about reasonable workable settlements that will allow tenants to remain in place.

- Other Judicial Branch programs: Because of the existence of multiple special housing-related assistance programs during the pandemic, mediators were expected to have a broad knowledge of such programs. Judicial should be sure that mediators are trained in these non-Judicial Branch programs so that such programs can effectively be integrated into the settlements that mediators work out.

#### Housing prosecution

- Criminal database improvements: The Council recommends that the computerization of criminal cases in non-housing court districts include a way to identify and isolate those that are housing cases.
- Police training manual: The Council encourages the Chief State's Attorney, with the Advisory Council's participation, to review and update the police training manual for housing. The Council has been asked in particular to look at the way in which the manual addresses apartment access problems related to the issuance of temporary restraining orders and to the treatment of guests.

Full-time prosecutors: It is not clear if the vacant housing court prosecutor position in the Bridgeport/Norwalk Housing Court will be filled by a prosecutor who is assigned full-time to housing. C.G.S. 51-278(b)(1)(B) requires that at least three of the housing prosecutors handle housing matters full-time "to the extent practicable." The Council recommends that the Bridgeport/Norwalk prosecutor be full-time.

- Centralized Infractions Bureau: Section 18 of P.A. 22-26, a bill sponsored by the Judicial Branch, amended C.G.S. 51-164n(b) to include the violation of numerous statutes within the scope of the Centralized Infractions Bureau (CIB). These are statutes for which the penalty is a fine. Inclusion in the CIB means that the fine can be paid by mail, like a parking ticket, without normal court involvement. This is reasonable and efficient for most fines, but it is inappropriate for fines associated with housing code-related violations. That is because the purpose of housing fine enforcement is not to collect money but to obtain compliance with an order. Housing code enforcement, for example, would break down if a resistant landlord could simply pay a small fine without making the required repair. Unfortunately, P.A. 22-26 added blight fines (C.G.S. 7-148o) and fair rent commission fines (C.G.S. 7-148f) to the CIB list. Neither is appropriate for

payment without a hearing. The Council recommends that the Judicial Branch ask the General Assembly to remove them from the CIB list.

#### Right to Council program

The Right to Counsel (RTC) program was created by P.A. 21-34 in 2021 as part of an effort to provide legal representation to tenants in eviction cases and to help encourage residential stability. Prior to the pandemic, more than 80% of landlords were represented by counsel in eviction cases, while less than 7% of tenants were represented, a ratio of more than 10:1. The RTC program has been in operation since January 31, 2022, but a late start and the limited pool of available attorneys to staff the program has slowed hiring. It is currently operational in 13 zip codes, covering about one-fourth of eviction cases. As of September 10, 2022, the coverage areas are:

New Haven/West Haven:	06511, 06513, 06516, 06519
Hartford:	06105, 06120
Bridgeport:	06605
Stamford:	06902
Waterbury:	06702, 06710
New Britain:	06051
New London:	06320
Northeastern Connecticut	06239 (Danielson), 06226 (Willimantic), 06260 (Putnam)

Early data suggests that the attorney representation rate for tenants in covered zip codes has approximately doubled since the start of the program.

The RTC program has its own advisory 11-person Working Group, which includes four members of the Connecticut Advisory Council on Housing Matters. That working group, however, has played only a small role in setting RTC policy.

- Funding: Although the RTC program is a permanent program and not a pilot, its funding source is guaranteed only for the first two years. The Council recommends that the legislature assure continuation of at least the existing level of funding for the program on a long-term basis.
- Expansion of program area coverage: Within the capacity limits for providing legal assistance, the Advisory Council recommends that the RTC program explore ways to provide RTC coverage in a wider range of areas within the state.
- Judicial Branch website: P.A. 21-34 requires that Judicial post on its website a notice of the availability of attorneys for tenants. The notice is to be attached by landlords to notices to quit and summary process writs. The notice is very hard to find on the website and still contains the text it used in January before the RTC program was operational. The Council recommends that the Judicial Branch review its website, including the website "search" function, so as to make it easier for tenants and landlords to find the RTC notice.

#### Case processing data:

After an extended period in mid-2020 in which the number of evictions filed was greatly reduced, eviction filings rose steadily at first and then, in early 2022, jumped radically, reaching a peak of nearly 3,000 new filings a month. Since then filings have dropped to around 2,000 per month, but an annualized rate of 24,000 filings per year would be more than 20% above pre-pandemic levels. It is no surprise that such numbers would impose substantial burdens on the court system.

[Additional data not yet available. This section will be drafted for the December meeting.]

#### Eviction records

The Council has previously raised concerns about the use of the online Judicial Branch database for tenant screening. The website itself warns that it “is not intended for use in landlord or tenant screening,” explicitly noting that “it does not contain personal identifying information necessary to adequately identify the parties.” Notwithstanding this warning, and in addition to the risk of misidentification, such records are often used to filter out applicants based solely on the presence of a record for an applicant, without regard to the disposition of the case or the ground of eviction. This can have severe consequences when a tenant attempts to find an apartment. A tenant will have an “eviction record,” even in regard to cases that are withdrawn or which the tenant actually won.

The Judicial Branch keeps eviction records on its public website for three years if a case goes to judgment (including judgments won by the defendant) and for one year for withdrawals and dismissals. However, these time limits do not apply to bulk sales of the database to consumer reporting or tenant screening agencies, because the data base sold to them is the “permanent” database, in which eviction records remain long after the one- and three-year periods end. In effect, the only limit on access and usage is the federal seven-year lookback period for credit reporting agencies.

The Council recommends that the Judicial Branch reconsider these time limits. In particular, the Council suggests that (1) withdrawals, dismissals, and judgments for the tenant should be removed from the public website within 30 days and (2) the database sold to commercial bulk purchasers should be matched to the online database so as to exclude records that have been taken off the online database.

#### Advisory Council role and involvement

The Connecticut Advisory Council on Housing Matters, whose authorizing statute can be found at C.G.S. 47a-71a and 47a-72, is the statutory advisory board to the housing court system. It was created by the first Housing Court Act in 1978 and has therefore been part of the Connecticut housing court system from its very beginning. It is comprised of a mixture of landlord and tenant representatives (many of whom are experienced summary process attorneys). It is intended as a primary resource with which the Judicial Branch can consult to make the housing court system work more effectively and smoothly. Although the Advisory Council also has a role with other state entities dealing with housing matters (e.g., the Chief State’s Attorney,

the Governor, and the legislature), its primary focus has always been the Judicial Branch.

The Council has long advocated that its role in Judicial Branch planning be significantly enhanced. Effective participation by the Advisory Council, however, requires more than a general invitation to submit comments. It requires some structure that permits a back-and-forth discussion, initiated by Judicial, that allows the Council to react and respond to actual proposed procedures before they are implemented. For example, the Council was not consulted or brought into discussion about the relocation of the Norwalk Housing Court to Stamford. The Council urges the Judicial Branch to facilitate such a process. In particular, the Council urges the Judicial Branch to proactively contact the Council when considering changes that will impact the hearing or processing of housing cases and take the initiative in bringing the Council into those discussions.

Anticipated Advisory Council projects: The Council has several projects in process that it hopes to complete in 2023. These include:

- Magistrate manual: The manual was preliminarily updated in 2019, but the full updating by the Council has not yet occurred. Its completion remains a priority for 2023.
- Data gathering capacity: The Council continues to work to develop computer programs that will better allow the sorting of data so as to improve understanding of the actual operation of the housing courts. For example, the data system now makes it possible to cumulate and analyze information about the representation of parties by counsel in summary process actions. Much housing data is now being gathered through the Right to Counsel program, and the Council will attempt to make increased use of that data.
- Input into housing court judge assignments: The Judicial Branch and the Advisory Council have never reached full agreement on how the Council can best provide input into the assignment of housing court judges. The Council hopes to develop a mechanism, in consultation with the Judicial Branch, by which more effective input can be provided.