

RENT COURT SUMMER WORK GROUP REPORT



DISTRICT COURT OF MARYLAND FOR BALTIMORE CITY

December 8, 2016

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1. Rent Court proceedings in Baltimore City District Court

When a tenant has failed to pay rent due and payable under a verbal or written lease, the landlord can file suit in District Court for repossession of the premises¹. This is called the summary ejectment procedure. Summary ejectment is a means by which a landlord may rapidly and inexpensively obtain repossession of the leased premises², while protecting the tenant from the risk of unmerited dispossession.

In order to file suit, the landlord must complete the form “Failure to Pay Rent - Landlord’s Complaint for Repossession of Rented Property, Real Property §8-401”³. In Baltimore City, summary ejectment proceedings are processed by the Rent Division of the District Court for Baltimore City and are held on three dockets each day. In other jurisdictions, depending on the number of cases filed, they may not be separately docketed and are included as part of the civil docket.

A landlord filing for failure to pay rent (i) may request an order of repossession of the premises or (ii) may request repossession of the premises and a money judgment for the amount of rent due.

The statute⁴ states that a trial is to be scheduled on the fifth day after the filing of the Failure to Pay Rent complaint. Given the large volume of Rent Court cases⁵ in some jurisdictions, trial dates are usually scheduled seven to fourteen calendar days after the complaint was filed. In Baltimore City, where trials are typically scheduled fourteen (14) days after the cases are filed despite having three Rent Court dockets daily: at 09:00 am, 10:45 am and 1:30 pm, there are currently a maximum of 1,100 cases that can be scheduled per day.

The tenant is notified of the lawsuit and the trial date by the Sheriff’s office by mailing a copy of the Failure to Pay Rent complaint to the tenant and posting an additional copy of the complaint at the property involved. The trial date and time are shown in the upper right-hand corner of the copy of the Failure to Pay Rent Form.

At trial, the Rent Court judge will hear both parties and rule. For good cause shown, the Court may grant a short postponement for up to one day. Given the high volume of cases heard on the Rent Court dockets and the limited nature of the scope of the issues covered by RP 8-401. Currently, there is no discovery process in Rent Court.⁶ An appeal can be noted to the Circuit Court if filed within four days after entry of judgment.

If the Court finds rent to be due, it enters a judgment for possession of the property in favor of the landlord, and if the tenant does not pay the amount determined to be due within four

¹ § 8-401 of the Real Property Article

² *Shum v. Gaudreau*, 317 Md. 49 at 59 (1989)

³ Form DC-CV-082. This is a 6 part , carbonized set form with each page designed to be filled out and then separated after filing with each page sent to the proper entity for filing or service.

⁴ § 8-401 (b) ((3) (i)

⁵ On a yearly basis approximately 150,000 cases in each of the high volume jurisdictions including, Baltimore City and Baltimore County, and Prince George’s County, and substantially less in other jurisdictions.

⁶ CJP 4-405 and MD Rules of Civil Procedure 3-701

business days after trial, the landlord may file a Petition for Warrant of Restitution⁷. This warrant, upon issuance, authorizes the sheriff to carry out the eviction. Annually, Baltimore City's Rent Court issues a Warrant of Restitution in approximately 45% of its Failure to Pay Rent cases.

The tenant has a right of redemption, allowing him to retain possession of the property by paying the landlord the amount of rent and late fees which the Court found due and owing, plus court costs, until the time of eviction. However, after a tenant has had three adverse judgments in the previous 12 months, four for Baltimore City, the landlord may ask the Court to foreclose the tenant's right of redemption.

Studies indicate that in Baltimore City tenants rarely appear to contest the summary ejectment cases and between 6,000 and 7,000 cases are scheduled for eviction for failure to pay rent yearly. Accordingly, most cases result in default judgments because of the tenants failure to appear.

Two studies were conducted recently highlighting aspects of Rent Court across the state. Although the Summer Work Group discussed the studies, it does not endorse either, or the conclusions reached.

2. Reports from Public Justice and the Legal Aid Bureau of Maryland.

Two studies highlighting aspects of Rent Court across the state were conducted by the Public Justice and the Legal Aid Bureau of Maryland. Although the Summer Work Group discussed these studies, it does not endorse either of them nor the conclusions reached. Many of the issues raised in the studies were discussed at great length. This information is being included in this Report as it served as the genesis of Senate Bill 801 and House Bill 796.

2.a. The Public Justice Center's Justice Diverted Report

From July 2014 through July 2015, the Public Justice Center partnered with the Right to Housing Alliance to study the experiences and outcomes of renters who appeared in Baltimore City's Rent Court to defend against a Failure to Pay Rent complaint.

As a result of this study, the Public Justice Center, in collaboration with the Right to Housing Alliance and the University of Baltimore, in December 2015 published the report *Justice Diverted. How Renters Are Processed in the Baltimore City Rent Court* (hereafter: the PJC Report).

The PJC Report alleges that the current Rent Court system in District Court ignores two predominating realities of poor renters and their housing in Baltimore City. First, renters lack access to timely legal advice and have insufficient knowledge to navigate the process in Rent

⁷ Form DC-CV-081, Maryland Rule 3-711

Court. Second, renters are poor, have few rental options other than Baltimore’s crumbling housing stock and look to the court to enforce housing standards.⁸

The PJC Report concluded with five recommendations to reform the Rent Court system:

1. Cut Rent Court dockets in half and strengthen overall fairness of the process by requiring a pre-filing notice and waiting period that would ensure that renters receive documentation of the landlord’s claims, time to remedy their situation before litigation begins, and time to prepare a defense if necessary.
2. Level the playing field in Court by implementing a program to increase renters’ access to legal information, assistance at Court, and legal representation.
3. Demand that landlords and their agents document their rent claims, as well as their alleged compliance with licensing and lead-risk legal requirements, and hold them accountable through a consistent application of existing legal standards and tenant protections.
4. Expand landlords’ licensing requirements that ensure annual health and safety inspections to all rental housing in Baltimore – not just multi-family dwellings and rooming houses.
5. Fund eviction prevention programs to meet the scale of what the PJC Report calls “the eviction crisis”.

2.b. Maryland Legal Aid’s *Human Rights in Maryland’s Rent Courts: A Statistical Study*

The Maryland Legal Aid study undertook a statistical analysis to determine the extent of the problems reflected by anecdotal evidence.

With the cooperation of the Maryland Judiciary, Maryland Legal Aid was granted access to 1,380 Failure to Pay Rent court records in order to complete the study. These cases were randomly chosen from jurisdictions across the state. Expert analysis was provided by the American Association for the Advancement of Sciences (AAAS) to ensure that sufficient data supported and validated the report’s findings. The findings offer opportunities for improvement in Maryland Rent Courts, where needed, with the objective of improving judicial administration of rent court cases, avoiding homelessness of tenants who should not have been evicted, and enhancing the overall fairness of the rent court process.

Legal Aid believes that Maryland law provides that Courts should disfavor evictions of residential tenants, and that strict compliance with legal requirements must be required for landlords seeking to evict. The report demonstrates that those requirements have not been satisfied in a significant numbers of cases across the state.

Some of the issues identified in the Study include:

⁸ Landlord advocates wish to point out that the study did not focus on Multifamily rentals.

- Errors in Failure to Pay Rent cases (i.e., Unclear, Insufficient or Incomplete Records necessary for judges to make a definitive conclusion);
- Default judgments were entered against tenants even though some landlords failed to meet their Legal Obligations to make a basic case for an eviction judgment;
- Tenants received No Service or Improper Service (i.e., adequate notice of legal claims and an opportunity to present defenses to their case in accordance with Maryland law) and thus the court in those cases had no jurisdiction to enter a judgment against those tenants.

3. Senate Bill 801 and House Bill 796

After the publication of the *Justice Diverted* Report, State Senator Catherine E. Pugh and State Delegate Samuel I. Rosenberg introduced Senate Bill 801 and House Bill 796, adopting the recommendations in the Report. However, they withdrew the proposed legislation believing that further inquiry about the fairness and effectiveness of Rent Court was needed.

In a letter to Chief Judge John Morrissey of the District Court of Maryland dated April 5, 2016, Sen. Pugh and Del. Rosenberg suggested that the Honorable Mark F. Scurti, Associate Judge in the District Court for Baltimore City, and Judge in-charge of its Civil Division, convene and chair a work group.⁹ (see appendix) The broad mission of the work group would be to consider and make recommendations as to needed changes in legislation, judicial policy, and procedures, as well as local government programs particularly in Baltimore City, to fairly and effectively adjudicate the rights and responsibilities of both landlords and tenants. The letter acknowledged that any changes could be evaluated for statewide consistency. Sen. Pugh and Del. Rosenberg specifically suggested that the work group should consider reforms to:

- Reduce the number of eviction cases that require involvement of the legal system.
- Fully and fairly determine both the tenant’s responsibility to pay rent when lawfully due and the landlord’s obligation to provide safe and habitable housing in those eviction cases that do require judicial intervention.
- Enforce and/or reform existing lead compliance and licensing/registration laws.
- Encourage fair out-of-court resolutions.
- Establish a level playing field for parties in contested cases.
- Increase renters’ access to information, legal advice, and representation in order to bridge the justice gap.
- Establish and adequately support the infrastructure and personnel needs of the court system to handle eviction cases fairly and efficiently.
- Address the issues and solutions set out in HB 796/SB 801.
- Address other issues identified by the work group.

Further, Sen. Pugh and Del. Rosenberg suggested that the work group be composed of representatives from tenant advocates, community-based organizations, landlord advocates, the judiciary and court administration, the Access to Justice Department, Baltimore City

⁹ Neither the Chair, Judge Scurti, nor any other judges participating in the Summer Rent Court Work Group have made legislative recommendations, but rather they facilitated or participated in the work group on various levels.

Government, and others identified by the work group who can bring a valuable perspective. A formal opinion was provided to Del. Rosenberg providing guidance that the summer work group was not subject to the open meetings law.

Finally, Sen. Pugh and Del. Rosenberg mentioned that the work group's goal should be to report its conclusions to the relevant committees of the General Assembly by December 1, 2016.

4. Convening the Rent Court Summer Work Group / List of participants

In response to the request, Chief Judge Morrissey of the District Court of Maryland, appointed Judge Mark F. Scurti to chair the Rent Court Summer Work Group. An Ethics opinion was obtained. (see appendix)

Consecutively, Judge Scurti reached out to tenant advocates, community-based organizations, landlord advocates, the judiciary and court administration, the Access to Justice Department of the judiciary, and Baltimore City government, and invited all of them to take part in the Rent Court Summer Work Group and to identify any additional organizations or groups that needed to participate.

The following organizations/persons have, at one or more times, participated in the Rent Court Summer Work Group:

Administrative Office of the Courts, Government Relations and Access to Justice Department

Apartment and Office Building Association of Metropolitan Washington

Baltimore City Department of Housing and Community Development

Baltimore City Sheriff's Department

Baltimore Neighborhood Association

Baltimore Neighborhoods, Inc.

Ben Frederick Realty, Inc.

Blibaum & Associates, P.A.

Bristol Credit, Inc.

Bristol House Tenant Association

Del. Sandy Rosenberg

District Court of Maryland, various judges and clerks

Eviction Prevention Unit

Green & Healthy Homes Initiative

Housing Authority of Baltimore City
Jews United For Justice
Kenny Law Group, LLC
Law Offices of Edward J. Maher
Leon & Allen Amernick, LLP
Mid Atlantic Real Estate Investors Association
Maryland Legal Aid Bureau
Maryland Multi-Housing Association
The Maryland State Bar Association
My Rent Court
National Association of Residential Property Managers
North Star Realty
Office of the Attorney General, Consumer Protection Division
Public Justice Center
Right to Housing Alliance
Regional Management, Inc.
Sagal, Filbert, Quasney & Betten P.A.
University of Baltimore

5. Meetings of the Rent Court Summer Work Group

The first plenary meeting of the Rent Court Summer Work Group was on June 1, 2016. At this meeting, Judge Scurti outlined the purpose of the Work Group as directed by Sen. Pugh and Del. Rosenberg in their letter to Chief Judge Morrissey. Further, Judge Scurti laid out the scope of the work that needed to be done, pointing out that the Work Group's deadline to provide a report to Sen. Pugh and Del. Rosenberg is December 1, 2016. Consecutively, the organizations taking part in the Work Group introduced themselves. Del. Rosenberg laid out the specific goals for the Work Group from the legislature's perspective. In the course of the meeting, the Work Group separated into three subcommittees, one of each working on:

- recommendations for Judicial Policies/Practices
- recommendations for changes to legislation
- recommendations for Local Government Programs.

The Rent Court Summer Work Group had 8 meetings, on the following dates:

- June 29, 2016
- July 21, 2016
- September 7, 2016
- October 13, 2016
- October 26, 2016
- November 15, 2016
- November 19, 2016
- Report Drafting Meeting December 5, 2016

The meetings took place at the District Court's Civil Courthouse or the Office of the Attorney General, both in Baltimore City.

In between the plenary meetings, each of the three subcommittees met separately on various occasions, working on recommendations for Judicial Policies/Practices, changes to legislation, and Local Government Programs.

At each of the meetings of the Rent Court Summer Work Group the three subcommittees reported on their "work in progress", followed by a plenary discussion.

In the end, the subcommittees proposed their legislative and non-legislative recommendations. These recommendations will be summarized in the next two sections of this Report.

6. NON LEGISLATIVE RECOMMENDATIONS:

1. Adopt Uniform Video for Opening Instructions in Rent and Rent Escrow Proceedings and Recommend Uniform Script for Instructions from the Bench.

The video instructions should inform landlords and tenants of their legal rights including the ability to seek a defensive rent escrow in rent cases and any readily available list of legal or financial resources. A recommended script for judges should be adopted, that will include additional information about local custom and practice tailored to each jurisdiction. The Work Group recommends to the Chair of the Self-Represented Litigants Committee of the Judiciary that the Administrative Office of the Courts (AOC) develop such a video to be shown at the start of every rent court docket.

2. Develop A Supplement to the Current Bench Book.

The Supplement will focus on the practical aspects of rent and rent escrow cases including any variation in local law or practice. Landlord and tenant representatives will be involved in the drafting of the Supplement with the goal of providing authority for their understanding of the law/practice while maintaining neutrality. Where differences of opinion exist, the Supplement will contain both sides of the disagreement as needed. When a draft is finished, the draft will be submitted to the Judicial College for any further feedback.

3. Institute a Series of Trainings Available to Judges.

The trainings will utilize case studies, the bench book and supplement and involve regular practitioners in rent and rent escrow cases to provide a variety of perspectives on the process and discuss best practices. Trainings will also cover the complexities of rent and rent escrow cases involving subsidized housing by discussing applicable federal, state, and local laws. Once the bench book supplement is complete, a proposal to provide such regular trainings will be made to the Judicial College.

4. Develop and Make Available a Comprehensive Resource Guide for legal and financial assistance to tenants and landlords.

There is currently no such guide available. Members of the Judicial Practices/Policies subcommittee have begun researching and compiling such a list that focuses on eviction prevention financial resources but also includes other financial and legal resources available in Baltimore City. The subcommittee will finalize the resource guide and seek funding to publish it. The subcommittee asks that the Court consider making the resource guide available to tenants and landlords who request such assistance. It is also recommending further exploring the idea of bringing together all eviction prevention service providers for a summit that explores the potential for better coordinating services. The Work Group will partner with the Pro Bono Resource Center and People's Law Library to the extent possible.

5. Adopt the MDE/Judiciary Proposal For Closer Review of Rent Complaints for Missing Licensing/MDE Information.

“The Judiciary will reinforce best practices and provide additional training, if necessary, to ensure judicial staff will alert judges regarding Failure to Pay Rent Forms where the landlord has failed to fill in information on the form to indicate that the property is in compliance with the Lead Paint Risk Reduction Inspection requirements for the property in question.” MDE report dated November 1, 2016.

6. Adopt Additional Forms For Judicial Use in Rent and Rent Escrow Cases.

A new rent court form should provide space for the Court to make findings of fact or record other relevant orders or considerations, particularly for those cases that are continued or transferred to a rent escrow docket. The Court should consider adopting a form order for escrow cases using a check-the-box approach that better allows the Court to develop a record of findings of fact and rulings made in previous escrow proceedings.

7. Conduct a Statistically Significant Pilot Project in Baltimore City Using the Postcard Notification Process currently utilized in Brooklyn, New York.

The goal of the pilot will be to determine whether the mailing of a postcard to the tenant with the initial Failure to Pay Rent filing increases tenant appearances at Summary Ejectment cases or other response rates in such matters. It is recommended that the Court support efforts to seek out partners to conduct a pilot project in which postcards are sent to tenants at the time a rent complaint is filed to determine whether such additional notice results in increased participation by tenants in the rent court process. The Judicial Practices/Policies subcommittee hopes to assist the Court in seeking funding and/or

exploring other ways in which such pilot project could be conducted in a statistically significant manner. (see attached sample postcard used in Brooklyn, New York)

8. Draft a settlement form to be used in Rent Court to memorialize any agreements reached between the tenant and landlord. The DC form was circulated as a possible model.

A settlement form allows the parties to leave with a document memorializing the agreement reached during the Rent Court proceeding. A draft of a possible settlement agreement was made by members of the Work Group. This draft will be the subject of further discussion. Any settlement form must be approved by the Judiciary Forms Committee.

9. Draft Budget questions for Delegate Rosenberg regarding the allocation of eviction prevention funds/resources in Baltimore City.

There should be better clarification and transparency as to the allocation of eviction prevention funding from various Federal, State and local resources, particularly for Baltimore City. On several occasions the local government programs subcommittee and the larger workgroup discussed the limited funding for Baltimore City and uncertainty as to the frequency of and limitations upon available funding.

10. Increase landlord and tenant education

Both landlords and tenants would benefit from increased education on Rent Court and the respective processes.

11. Create an eviction prevention resource list available for tenants in the courtroom

There should be an updated list of available eviction prevention resources. It is recommended that this list be available in the Rent courtroom similar to the eviction instruction pamphlet currently available. Funding to keep such a publication current will need to be explored.

12. Implement a pilot Navigator program

The purpose of the Navigator program is to help unrepresented tenants with limited knowledge of the Court system prepare for their court hearing, in order to “level the playing field.” The Navigators are not allowed to give any legal advice to the tenant, but rather provide information to the tenant and direct them throughout the process. A pilot Navigator program will be implemented in cooperation with the University of Baltimore. An evaluation of its effectiveness would be conducted with broader implementation statewide being the goal.

13. Implement a Pro Bono/Limited Scope representation program

In conjunction with the Navigator program recommended above, develop a pro bono attorney program that targets district court housing cases.

7. STATEWIDE LEGISLATIVE RECOMMENDATIONS AND DIVERGENT POSITIONS:

The recommendations are to be implemented statewide, and where applicable, would supersede public local law. Although the group worked diligently to reach consensus, and despite agreement on a number of key issues, there were a number of areas where agreement could not be reached. Where there was a divide in positions, it is noted below.

1. The Work Group did support the ABA's resolution that states: " that the ABA urges federal, state, and territorial governments to provide legal counsel as a matter of right at public expense to low income persons in those categories of adversarial proceedings where basic human needs are at stake, such as those involving shelter, sustenance, safety, health or child custody, as determined by each jurisdiction."
2. Add a statutory provision for in rem (i.e. those that seek only possession of rented property for failure to pay rent) proceeding only, to provide for a one-year statute of limitations for failure to pay rent complaints.
3. Delete the text of the RP Article § 8-401 (c) (2), to remove the language that the status of a lead certificate cannot be an issue at trial. Insert instead language that would explicitly allow issues related to the status of the lead certificate to be addressed at trial. Further, provide that a landlord may only file a complaint and obtain relief if the property has a valid lead certificate or meets one of the exemptions.¹⁰
4. Add affirmative language that prohibits a landlord from obtaining multiple judgments within 60 days, or from obtaining a judgment for the same rent claimed on an open warrant, including any partial rent previously claimed on an accrued balance. For example, if a landlord obtains a judgment for September's rent, the landlord cannot, before the judgment expires (60 days), file another complaint for Failure to Pay Rent including the same September rent. The same would apply if the judgment expired and there is an open warrant of restitution that contains the same September rent as the basis.
5. Add a provision to RP Article § 8-401, stating that service by mail to the tenant(s) and by notice posted on the premises, must be made at least seven (7) days before the trial date and (b) (3) (1), to state that a failure to pay rent case may be set in no earlier than seven (7) days after the filing of the complaint, and no later than the fourteenth (14th) day after the filing of the complaint, provided that there is service seven (7) days prior to the trial date. Provided the Sheriff's office timely receives the notices from the court, failure of the Sheriff's office to timely serve shall result in a refund of the Sheriff's fee for service. If the Sheriff is unable to serve the tenant by the seventh

¹⁰ The Apartment and Office Building Association of Metropolitan Washington disagrees with this provision, stating the policing of lead certificates should be done through the Maryland Department of the Environment that has the authority to impose daily fines per rental unit for those units not properly registered.

(7th) day, the Court shall set the next earliest trial date to allow the Sheriff to serve the tenant seven (7) days in advance of the new trial date.

6. Implement a two-track trial system in Rent Court procedure, Track 1 involving complaints for unpaid periodic rent (including legal late fees) and Track 2 involving complaints for additional charges classified as “additional rent”, including leases that provide for “additional rent” regardless of whether or not “additional rent” is being collected in the complaint. Tenant advocates agree to the two track system, however, they limit their agreement in Track 2 if it only includes rent and utilities as collectible in the lease, as well as a pre-filing notice, an allocation rule and limited discovery.¹¹
7. Add a statutory provision, enabling limited discovery in Rent Court proceedings, only in Track 2 cases, regardless of the size of the claim,. This would give the Court the authority to adjourn the case for a short period of time for discovery to be completed, the parties to participate in mediation, obtain a witness, or raise a defense. The scope of and the time for discovery are to be decided by the Court “in the interest of justice”; the Court shall issue a written order when a party requests discovery, and unless the objecting party shows good cause why there should not be an opportunity for discovery, the court shall determine the form of discovery as justice requires and shall issue an appropriate discovery order. It is recommended that the Rent Court Roundtable propose common uniform discovery items to be included in a model Discovery Order.
8. Add a statutory provision that a landlord who is a party to an oral lease, may only file suit for a fixed periodic rent, including late fees, and may not make claims for any “additional rent” thus mandating a Track 1 case type and no discovery.
9. Track 2 cases. Those cases governed by a written lease that provide for the collection of “additional rent”:

There is disagreement on what constitutes “additional rent.” Tenant advocates want a definition of rent limited to the fixed periodic rent, and lawful late fees, and their position is derived from their reading of the Court of Appeals definition of rent in *Lockett v. Blue Ocean Bristol*.¹² They further consider other obligations owed by a tenant to the landlord not to be rent. However, they agree that variable utility costs, notably those for water, sewer and ratio-billed services, sought in Track 2 if the written lease specifies such costs are subject to an RP 8-401 action.¹³

Landlord advocates take the position that “rent” should be defined by the lease and that “additional rent” may include other ‘charges which may be definitely ascertained, paid by the tenant, and going to his use, possession and enjoyment of rental...

¹¹ The Bristol House Tenant Association does not agree with this recommendation, in that water or other utility should not be collected in a failure to pay rent case.

¹² *Lockett v. Blue Ocean Bristol, LLC*, 446 Md. 397 (2016)

¹³ Legal Aid’s participation is limited to and for the purpose of addressing effects that recommended reforms would have on Legal Aid clients.

premises “, such items might include any utilities, environmental citations, trash fees, parking, and damages caused by the tenant, provided they are set forth in the language of the written lease as “additional rent” and set apart in bold type and initialed by the tenant separately being acknowledged. Their position is based upon the Court of Appeals explanations of “additional rent in the Garcia and Shum cases while acknowledging that there is also current case law which disallow certain items that, although they may be listed in the lease as “additional rent” have not been found to meet the Garcia and Shum tests by the Court of Appeals of Maryland, thereby maintaining current case law as it exists.¹⁴

In addition, landlord advocates take the position, as it relates to ratio utility billing, otherwise known as RUBS billing, to add a statutory provision that permits the court the authority to adjourn a Failure to Pay Rent case for a short period of time to allow time for the landlord to provide the court and the tenant (a) information as to how the charges for “additional rent” were computed, including any allocation methodology where charges are allocated among more than one tenant in a multi-unit building, (b) the invoice from the provider of any services or utilities for which the tenant is being charged, (c) a copy of the notice from the governmental authority or regulatory agency of any fines or other governmental charges for which the landlord is claiming reimbursement from the tenant, (d) the lease agreement, and (e) a statement showing charges to the tenant and payments made by the tenant.¹⁵

10. Add a statutory provision that requires a landlord to apply any money paid by or on behalf of a tenant first to any outstanding warrant of restitution where there is a pending eviction, in order to stop an eviction, any remaining open warrants, then to any open judgments, unless otherwise directed by the tenant.¹⁶
11. The above-suggested statutory provision was the compromise and consensus that landlord and tenant advocates could agree upon regarding how tenant payments are applied to open balances on a tenant’s account. There was no agreement to statutorily prescribe the method or hierarchy of applying payments to open balances on a tenant’s account where there was not an open judgment or warrant.
12. Add a statutory notice provision regarding a claim for additional rent, in that the landlord must provide the tenant with notice and documentation underlying such claim before the landlord can file suit for additional rent, unless the landlord directs such billing directly to the tenant. For example, if the landlord provides for the billing for utilities to be sent directly from the provider to the tenant, the landlord is not required to provide any additional notice of the amount due. However, if the landlord receives the water bill and subsequently forwards it to the tenant, the tenants should be given a reasonable amount of time to pay the bill before it is deemed

¹⁴ University Plaza v. Garcia, 279 Md. at 67, 367 A.2d at 961 and Shum, Id.

¹⁵ Last legislative session HB 545 was discussed addressing RUBS billing.

¹⁶ The Bristol House Tenant Association does not agree with this provision for concerns that it may impact pending assistance from a third party. In addition, the landlords are not in agreement with the Tenant being able to direct the payment.

delinquent and can be sued for under a Failure to Pay Rent Complaint. The exact amount of days notice was not agreed upon. The Work Group has not been able to reach a consensus on (i) *how and when* the landlord has to give proper notice to the tenant of his claim for additional rent, (ii) whether a separate notice of default with right to cure needs to be provided by the landlord, after additional rent is due and owing and remains unpaid, or if a default notice can already be included in the initial notice. The tenant advocates want a provision that after notice to the tenant, in particular a utility bill for water, is sent, that they be given a reasonable period of time to pay such bill, regardless of the due date of such “additional rent”. The idea being that a tenant should be given no less time than the landlord to pay a bill from the utility company.

Landlord advocates take the position that they would be agreeable to send a 10 day notice, providing 5 days notice of the additional rent being due and 5 days to pay before it is deemed delinquent.

13. Appeals- currently a tenant appealing a Rent Court judgment has to post bond for the appeal, pursuant to RP Article § 8-401 (f) (2). It is recommended that language be added to the statute enabling judges to reduce bond amounts and determine that a certain amount of money be posted, or requiring the tenant to pay and the landlord to accept rent for the monthly periods after the failure to pay rent case is filed until such time as the appeal has been decided.
14. There was agreement by all parties that Baltimore City’s licensing scheme should be expanded to cover the most problematic properties and landlords. Currently the City Code Article 13, Sec. 5 requires licensing only for multiple family dwellings and rooming houses. There is a recommendation to require licensing be extended to cover all dwelling units in Baltimore City. Landlords are in agreement provided there is no delay in a landlords ability to rent a unit due to waiting on a license, suggesting looking at alternatives, including potentially adopting the model used in Baltimore County.

For more detailed discussions on each of the recommendations above as well as positions taken by various parties, please refer to the meeting minutes attached to this report.

Appendix A: Letter from Senator Pugh and Delegate Rosenberg



THE MARYLAND GENERAL ASSEMBLY
ANNAPOLIS, MARYLAND 21401

April 5, 2016

Chief Judge John Morrissey
District Court of Maryland
Maryland Judicial Center, A-3
580 Taylor Avenue
Annapolis, MD 21401

Dear Judge Morrissey:

Safe, secure, healthy, and affordable housing is a basic human need of all people. Eviction should be the legal remedy of last resort because of its destabilizing and detrimental effect on families, neighborhoods, education, and jobs.

However, with over 600,000 eviction complaints filed every year in Maryland, there is no more prevent form of litigation than the "Failure to Pay Rent" summary action for possession. About 150,000 of these eviction complaints are filed in Baltimore City, resulting in the City having the second highest rate of renters facing eviction, after Detroit, according to the 2013 American Housing Survey.

As you well know, these lawsuits weigh heavily on the district courts, which are tasked with fully and fairly adjudicating the rights and responsibilities of tenants and landlords while also enforcing health and safety standards for rental housing.

For years our courts have struggled to achieve balance between efficiency and equity in their "Rent Court" dockets. The resulting imbalance was recently illuminated by the Public Justice Center's report *Justice Diverted: How Renters Are Processed in the Baltimore City Rent Court*. Among many findings, the report revealed that:

- ❖ While nearly 60% of renters surveyed at court had notified their landlord of a serious threat to health or safety before their trial date and would have been entitled to abatement of rent in arrears or to have the rent escrowed until the landlord fixed the problems, only 8% of these renters actually succeeded in presenting their defenses to the court under current procedures.
- ❖ Although the law prohibits landlords from using the District Courts for eviction unless they are in compliance with lead risk reduction standards and local licensing or registration requirements, nearly 80% of landlords using the eviction process had either provided false information to the court or no information at all. Similarly, as to registration or licensing with Baltimore City Department of Housing and Community Development, almost 70% of landlords either listed false information or no information at all. Yet, more than 60% of these non-compliant landlords still won a judgment for possession.

- ❖ Half of all renters surveyed at court had no knowledge at all about conditions-related defenses, such as the Rent Escrow law. With that knowledge deficit, and no legal representation, nearly two-thirds of these *pro se* defendants undertook informal negotiations, often with a landlord's attorney or agent.

We introduced Senate Bill 801 and House Bill 796, which would have adopted the recommendations of the Public Justice Center's report. We withdrew our legislation because we believe that further inquiry about the fairness and effectiveness of Rent Court is needed. We write to request that you ask Judge Mark Scurti to chair and convene a work group.

The broad mission of the work group would be to consider and make recommendations as to needed changes in legislation, judicial policy, and procedures, as well as local government programs in Baltimore City, to fairly and effectively adjudicate the rights and responsibilities of both landlords and tenants. Baltimore City has a public local law governing summary ejection cases, and any changes made in Baltimore City could then be evaluated for utility and consistency statewide.

Specifically, the work group should consider reforms to:

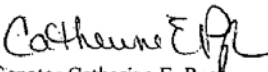
- ❖ Reduce the number of eviction cases that require involvement of the legal system.
- ❖ Fully and fairly determine both the tenant's responsibility to pay rent when lawfully due and the landlord's obligation to provide safe and habitable housing in those eviction cases that do require judicial intervention.
- ❖ Enforce and/or reform existing lead compliance and licensing/registration laws
- ❖ Encourage fair out-of-court resolutions.
- ❖ Establish a level playing field for parties in contested cases.
- ❖ Increase renters' access to information, legal advice, and representation in order to bridge the justice gap.
- ❖ Establish and adequately support the infrastructure and personnel needs of the court system to handle eviction cases fairly and efficiently.
- ❖ Address the issues and solutions set out in HB 796/SB 801.
- ❖ Address other issues identified by the work group.

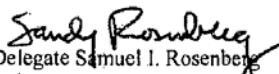
We suggest that the work group be composed of representatives from tenant advocates, community-based organizations, landlord advocates, the judiciary and court administration, the Access to Justice Commission, the Access to Justice Department, Baltimore City government, and others identified by the work group who can bring a valuable perspective.

The work group's goal should be to report its conclusions to the relevant committees of the General Assembly by December 1.

If you have any questions regarding this request, do not hesitate to contact us.

Sincerely,


Senator Catherine E. Pugh
40th District


Delegate Samuel I. Rosenberg
41st District

Appendix B: Ethics Opinion

Maryland Judicial Ethics Committee

Opinion Request Number: 2016-14

Date of Issue: May 5, 2016

Published Opinion Unpublished Opinion Unpublished Letter of Advice

Issue: Does the Maryland Code of Judicial Conduct preclude a judge from chairing, at the request of members of the General Assembly, a work group tasked with studying rent court procedures in order to assess the need for legislative reform?

Answer: No, subject to certain qualifications.

Facts: Requestor is a District Court Judge who has been active in addressing Landlord-Tenant issues as they affect the bench and bar in his jurisdiction. Recently, two members of the General Assembly familiar with Requestor's efforts wrote District Court Chief Judge John Morrissey and requested that he appoint Requestor to "chair and convene a work group" to study existing rent court structures and procedures with an eye toward possible legislative reform. Requestor asks whether ethical guidelines preclude acceptance of such an appointment.

The legislators' letter to the Chief Judge, provided by Requestor, provides the salient details. The letter indicates that in the last legislative session, rent court reform legislation was introduced in both houses but later withdrawn so that "further inquiry about the fairness and effectiveness of Rent Court" could take place. The Requestor has been asked to chair the group that will conduct this review.

As the letter explains: "The broad mission of the work group would be to consider and make recommendations as to needed changes in legislation, judicial policy, and procedures, as well as local government programs ..., to fairly and effectively adjudicate the rights and responsibilities of both landlords and tenants." The letter goes on to specify particular areas of study, including the proposed legislation from the last session.

The composition of the group as proposed includes stakeholders from all sections of the Landlord-Tenant community: "representatives from tenant advocates, community-based organizations, landlord advocates, the judiciary and court administration, the Access to Justice Commission, the Access to Justice Department, [local] government, and others identified by the work group who can bring a valuable perspective."

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There is no indication that this would be a paid position.

Analysis: In consideration of the above, Requestor's proposed undertaking is governed by Sections 3.1 and 3.4 of the Maryland Code of Judicial Conduct (Maryland Rule 16-813).

Rule 3.1 of the Code, "Extrajudicial Activities in General," states:

A judge may engage in extrajudicial activities, except as prohibited by law or this Code. When engaging in extrajudicial activities, a judge shall not:

- (a) participate in activities that will interfere with the proper performance of the judge's judicial duties;
- (b) participate in activities that will lead to frequent disqualification of the judge;
- (c) participate in activities that would appear to a reasonable person to undermine the judge's **independence**, integrity, or **impartiality**;
- (d) engage in conduct that would appear to a reasonable person to be coercive; or
- (e) make inappropriate use of court premises, staff, stationery, equipment, or other resources.

More specifically, Rule 3.4 of the Code, "Appointment to Governmental Positions," states:

A judge shall not accept appointment to a governmental committee, board, commission, or other governmental position, unless it is one that concerns the law, the legal system, or the administration of justice.

From the description provided, it is clear that the "work group" Requestor has been asked to chair is a governmental position that "concerns" the law of Landlord-Tenant, and in particular, the realm of Rent Court. As such, tempered by the considerations set forth in Rule 3.1, judicial ethics rules do not prevent the

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Requestor from serving in such a capacity. Nonetheless, Requestor is directed to Paragraph (1) of the Comments that accompany Rule 3.4 for further guidance:

Rule 3.4 implicitly acknowledges the value of judges accepting appointments to entities that concern the law, the legal system, or the administration of justice. Even in such instances, however, a judge should assess the appropriateness of accepting an appointment, paying particular attention to the subject matter of the appointment and the availability and allocation of judicial resources, including the judge's time commitments, and giving due regard to the requirements of the independence and impartiality of the judiciary.

In closing, the Committee notes that Chief Judge Morrissey is, apparently, the individual empowered to decide whether to appoint any judge to the position in question, and this opinion should not be construed as in any way impinging on his prerogatives in that regard. The Committee merely opines that such an appointment, if made, would not create an ethical conflict for the appointee so long as due regard is paid to the other considerations set forth above.

Application: The Judicial Ethics Committee cautions that this Opinion is applicable only prospectively and only to the conduct of the Requestor described herein, to the extent of the Requestor's compliance with this letter. Omission or misstatement of a material fact in the written request for opinion negates reliance on this Opinion.

Additionally, this Opinion should not be considered to be binding indefinitely. The passage of time may result in amendment to the applicable law and/or developments in the area of judicial ethics generally or in changes of facts that could affect the conclusion of the Committee. If the request for advice involves a continuing course of conduct, the Requestor should keep abreast of developments in the area of judicial ethics and, in the event of a change in that area or a change in facts, submit an updated request to the Committee.

Appendix C: Minutes of the Work Group Meetings

Rent Court Summer Work Group

Meeting 1 Minutes

June 1, 2016

The Meeting was called to order in the Law Library of the District Court of Maryland for Baltimore City, 501 E. Fayette Street, Baltimore, MD by chair, Judge Mark Scurti at approximately 3:00pm.

Present at the Meeting: Hon. Mark F. Scurti, Chair., Allan Amernick, Andrew Amernick, Andrew Tress, Ben Frederick III, Deborah Lewis Smith, Eugenia Tyson, Gregory Countess, Esq, Jason Hessler, Esq., Karen Byers, Esq., Kathy Kelly Howard, Esq., Kay N. Harding, Esq., Lt. Stanley Franklin, Mary JoWhelan, Melissa Frentz, Michele Cotton, Esq., Robert Strupp, Sal Catalfamo, Hon. Sandy Rosenberg, Sharon Shultz, Steve Sakamoto-Wengel, Esq., Syeetah Hampton-El, Esq., Tommy Tompsett, Yudine K. Brickers, Zafar Shah, Esq.

Judge Scurti opened the meeting and outlined the purpose of the work group as directed by Del. Rosenberg and Senator Pugh in their letter to Chief Judge Morrissey dated April 5, 2016. He discussed the history leading up to the creation of the summer work group and the work that has been happening in the District Court's regular monthly rent roundtable.

He next laid out the scope of the work that needed to be done and pointed out that the Summer Work Group's deadline to provide a report to Senator Pugh and Delegate Rosenberg is December 1, 2016.

Everyone present next introduced themselves and their organization.

Delegate Rosenberg was introduced and laid out the specific goals for the group from the legislature's perspective:

- Attempting to find an appropriate balance in public policy between competing interests of landlords and tenants.
- Reduce the number of eviction cases that require involvement of the legal system.
- Fully and fairly determine both the tenant's responsibility to pay rent when lawfully due and the landlord's obligation to provide safe and habitable housing in those eviction cases that do require judicial intervention.
- Enforce and /or reform existing lead compliance and licensing/registration laws
- Encourage fair out of court resolutions
- Establish a level playing field for parties in contested cases.
- Increase renters' access to information, legal advice, and representation in order to bridge the justice gap.
- Establish and adequately support the infrastructure and personnel needs of the court system to handle eviction cases fairly and efficiently.
- Address the issues and solutions set out in HB 796/SB 801
- Address other issues identified by the work group.

The Group was next asked to identify who is missing from the work group that should be included in future meetings. The following were identified:

- Mayor's Office
- Access to Justice Department of the Judiciary and the Access to Justice Commission
 - Shannon Baker (handles ADR and mediation)
- Foundations
 - Goldsecker Foundation
 - Weinberg Foundation
 - Associated Black Charities (ABC)
 - United Way
- Aoba
- ACLU
- Shelters
 - Right to Housing Alliance
 - Chase House
 - Bristol House
- Neighborhood Associations
- Resident Advisory Board for Housing Authority of Baltimore City

Judge Scurti asked everyone in the room to identify names of individuals who represent the above organizations to invite to the next work group meeting.

Rent court statistics:

Judge Scurti reported that he has been keeping daily statistics since August of 2015 on the number of cases filed in landlord/ tenant court to identify trends if any and to understand the volume of cases being filed.

Number of cases filed by year:

2007: 144,604

2015: 152,018

2016 (8/3/15-6/1/16): 45,095

Average numbers of cases per day:

576 cases per day on average, highest 1,100, lowest 100.

500 cases on any given day come from large property agents.

Number of evictions per year:

2007: 7,136

2015: 6,861

2016: 2303 (through April for 2016)

25% of tenants are present during eviction.

Next, the group identified and adopted the following ground rules of the work group going forward.

- Come prepared to work and provide real ideas and real solutions
- Don't interrupt
- Listen
- Start on Time
- Be prepared to do additional research
- Focus on the "bigger idea" of what's best for Baltimore City
- Willingness to compromise
- Confidentiality is important, particularly regarding the press. One can talk to their constituents or their colleagues, but:
 - The position of the committee is that there should be no statements to the press until a final answer is developed
 - Meetings of Workgroup are not subject to the Open Meetings Act, per an opinion obtained by Delegate Rosenberg.

Next, the group separated into four groups, one of each working on:

- Recommendations for changes to judicial policies
- Recommendations for changes to legislation
- Recommendations for changes to judicial procedure
- Local Government programs

Each group was asked to identify the workgroup's task

Reports from the subcommittees

Policy Subcommittee:

Judicial Policy Subcommittee presented their findings to the group:

- Identified role of the judiciary as "being impartial, following the law"
- Both parties should feel judge isn't biased
- Would like to explore and improve:
 - Further education for judges on landlord/tenant law
 - Judge shouldn't advocate for either side but advocate that both parties should use the resources available to them
 - 3 month rotation for judges in order to improve "sanity" (decrease stress) for the judge

Legislative Subcommittee:

Legislative Policy Subcommittee presented their findings to the group:

- Action item: going to study HB 796/SB 801 and each person in group will create three categories
 - What are our deal breakers?

- What can we agree on?
- What are our areas of common ground?
- Get back to quick-take process that is fair
- Look into public/local laws and their impact
- Goal: Make eviction “more human” but be fair to “housing providers”
- Suggested that there are groups not represented who should be involved in the work group:
 - Department of Housing
 - Maryland Rules Committee
 - Maryland Department of the Environment

Internal Minutes from Legislative Subcommittee:

Legislative Subcommittee

Discussion begins with Del. Rosenberg reiterating his intentions of bringing everyone together: “Our goals as legislators is to strike the appropriate public policy balance between competing sides on all issues.”

- Kathy: group may want to **consider looking at State law and public local law** (Baltimore City, Montgomery Co., Prince George's County) and harmonize those laws. For example, Prince Georges is the only fully automated system; yet, their number numbers are the same. In 2015, Baltimore Co is the largest, then Baltimore City followed very closely by Prince's George's. **Sense was that lack of automation accounts for the number of filings, but this appears not to be the case.** Judge Scurti has advised that Anne Arundel Co. has gone automated, but the clerk's are hand scanning all documents. Sheriff's offices have differences as well. **Lock and leave** is a prime example.
- Zafer: differences between City and County - rent escrow; lease related provisions for example; difference between Balt. City & Mont. Co. - rent control & landlord tenant commission. **Possibly set aside the unique differences to avoid spinning our wheels.**
- Del. Rosenberg feels that if we get a consensus, there should be no reason to fight in Annapolis; therefore, if we change a local issue, we may need to bring in representatives from those jurisdictions.
- Andrew Amernick: getting rid of the weather provision for evictions if chattel is no longer left out. Group believes that it is more for the safety of the tenants than the chattel.
- Kathy: may need to be a discussion of **stay policies**; mainly concerning **substantive issues for stays and lengths of stay**. Zafer feels that there needs to be more judicial discretion in the granting of stays, thus **"making it a more human process."** Judge Scurti feels that **stays v. eviction prevention serve two different ends. Stays seem to be conveying a false hope to those who are filing.**

- Kathy further suggested that we may need to look at the **Maryland Rules**. Judge Scurti agrees that the Maryland Rules in rent actions provide little useful guidance.
- Judge Scurti advanced some topics of discussion including the **roll of tenant advocates** in landlord tenant court and rent escrow proceedings; the **definition of rent; and whether The “Lockett” decision applies solely to retaliatory evictions or all rent cases.**
- Alan Amernick: **Need to look at the bigger issue.** Baltimore City is in decline. There are tax issues, infrastructure issues, etc. While Public Justice Center (PJC) wants safe, affordable housing for the tenants, but landlords are getting out of the system, because of the associated bureaucracy, costs, and delays that prevents safe affordable housing from happening. Legislation presented strangles the real estate business with all the fees and bureaucracy. There is nothing “summary” about summary ejection. Landlords incur major expenses for eviction and turnover.
- Michelle Cotton: wants to discuss the **process itself**. Prof. Cottons pointed out that PJC/Del. Rosenberg has already suggested potential changes to the law. Are there any changes that we can all accept or that there is simply strong objection to? Do we want to go beyond the scope of what we proposed? Prof. Cotton believes that the proposed legislation is the best starting point.
- Judge Scurti also thinks the bill is good starting point for the discussion and that the group may want to go beyond the initial bill (i.e. the **definition of rent, due process issues. Etc.**) to see if there are other areas that should be addressed. Historically, the summary ejection proceeding was meant to be a "**quick take process**", but now the statute has many components.
- **Del. Rosenberg would like to see a balance where eviction is more human, but it also fair to the housing provider.**
- Zafer: We are looking at the court not the systemic issues that underly the court. Alan Amernick pointed to the penalty provision in the bill, whereas Zafer and Del. Rosenberg pointed out that it was a fee. Alan contends that the landlords aren't truly represented by legal counsel; most are represented by legal counsel. Alan also believes that tenants can avail themselves to the services of PJC. Zafer said their study shows that people have very limited intelligence when it comes to the court system and how it works. Prof. Cotton also believes that tenants cannot fill out forms with complicated rent escrow forms. Prof. Cotton also believes that **tenant representation** may need to be equal to landlord's agent, i.e. a non-attorney representatives or agents. Prof. Cotton has pointed to **NY** which uses "**navigators**" in the court system, which appears to have been successful there. One of the architects of this system has been working with UB on this issue. Kathy pointed out that maybe we should be looking at limited scope representation that has just come about in the Maryland legal system.

Legislation Section "Homework": Each person should go through the **bill and list the following: what are deal breakers, what can we all agree on, and where is the middle ground.**

Judicial Procedure Subcommittee:

- How do we address common errors in court?
 - Try and address them before they reach the court-room
 - Common errors:
 - Errors in filing
 - Lack of lead-certification numbers
 - Staffing issues and their impact,
 - What can be done to address?
 - Cross-training
 - Need to investigate how cases are docketed
 - Education for landlords
 - Number of small landlords has dramatically increased
 - How does technology affect the court procedurally going forward?

Local Government Programs Subcommittee:

- Eviction prevention
 - Identify non-profits and government agencies that could be of assistance
 - Look for funding sources for eviction prevention
 - Try to partner with United Way and other agencies for further funding for full year for Eviction Prevention
 - Identify additional resources
 - Community action centers
 - Church groups
 - Franciscans
 - Also look into future sources of funding
 - Gather statistics from eviction prevention program
 - count how many tenants are repeatedly using Eviction Prevention,
 - how many stays of eviction there are
 -

Discussion by the group of when to schedule next meeting and whether to meet in large group or small groups. The group decided to have subcommittee meetings in between our regular larger group meetings.

The next meeting Dates are June: 29th and July: 20th

The meeting adjourned at 4:45pm

Rent Court Summer Work Group

Meeting 2 Minutes

June 29, 2016

The Meeting was called to order in the Law Library of the District Court of Maryland for Baltimore City, 501 E. Fayette Street, Baltimore, MD by chair, Judge Mark Scurti at approximately 3:00pm.

In Attendance:

Hon. Mark F. Scurti (Chair), Hon. Kent J. Boles, Allen Amernick, Andrew Amernick, Undine K. Brickers, Karen Byers, Sal Catafano, Gregory Countess, Lt. Stanley Franklin, Melissa Frentz, Zina Galvez, Todd Givens, Syeetah Hampton-El, Kay N. Harding, Jason Hessler, Kathy Kelly Howard, Mary Jo Whelan, Steve Sakamoto-Wengel, Sharon Schultz, Gary Seidel, Zafar Shah, Deborah Lewis Smith, Robert Strupp, Tommy Tompsett, Andrew Tress, Eugenia Tyson, Ronald W. Wineholt, Maureen Denihan, Brian Wojcik, Cpt. Therman Reed, Felicia Lockett, John Nethercut, Del. Sandy Rosenberg, Makya Purnell, Dan Riflein, Mark Postma, Shoshana Frankel, Ben Frederick III, Prof. Michele Cotton, John Offley, Matt Hill, Charlie Kerr.

Judge Scurti opened the meeting and asked each of the Subcommittees for their report since the last large group meeting.

Legislative Subcommittee.

I. Report from Legislative Subcommittee given by Mr. Tompsett:

- The Legislative Subcommittee met twice in the time since the previous meeting of the Work Group
- Their initial plan was to look at the new bill proposed by Senator Pugh and Del. Rosenberg, to find what they could agree on, what they couldn't, and what was negotiable ground
 - However, they were unclear on the framework of how other Sub-Committees should interact with the Legislative Subcommittee, and didn't want to usurp other groups' roles
 - Instead, they focused on looking at how to integrate the Navigator Program into the District Courts
- They looked at the New York pilot program, and how to achieve something similar here
- Prof. Cotton gave them information on how the Navigator pilot program has been working in New York
- They are unsure if they should wait for other groups to generate legislative ideas, or if they should generate legislation and then present it to the rest of the group

II. Initial Discussion Of The Navigator Program:

Prof Cotton:

- Identified the fundamental task for the group as finding a way to bring more parity to the relationship between landlord and tenant in court proceedings
- New York currently has a Navigator program
 - Navigators are not lawyers
 - They are trained laypeople
 - They are not providing legal advice
 - The role of the Navigators is to help those with limited knowledge of the system understand how to better prepare for court
 - The data shows that the Navigators helps expedite the judicial process
 - Most tenants tell narratives, Navigators can help them be more responsive to judge's questions
 - Clarified that the Navigator program is not meant to usurp legal practitioners
 - There was a working group at UB made up of College of Arts and Sciences faculty and two students in the Legal Studies program who helped develop the pilot program
 - She can share results from the working group for the pilot program with the Rent Court Work Group
 - This is only one potential way to "level the playing field," so to speak
 - In New York the pilot program wasn't legislatively put in place
 - In other states the process of putting these programs in place was similar

Mr. Countess:

- Legal Aid already has a District Court Self-Help Center in two counties
- New programs should complement what's already being done
 - A central goal should be avoiding conflict or redundancy between Legal Aid's services and potential new court services

Prof. Cotton:

- Said that the initial pilot would be just Rent-Escrow Court
- Judicial committees on relevant subjects should be included in the process of generating a pilot program
 - Court Access
 - Pro Bono

Judge Scurti:

- Suggested that there should be a pro bono component for Navigator Program with volunteer attorneys overseeing and providing legal advice to litigants.

Prof. Cotton:

- Costs could be cut by having University of Baltimore provide initial Navigators and supervisors (faculty, non-law students, law students)

- The pilot would not be expensive
- Obviously there would be costs for the state, but that the program would not be especially expensive for what it was providing
- New York allows people to use the program for free

Judge Scurti:

- Raised concerns to make sure that the Navigators must avoid unauthorized practice of law
 - that the New York model addressed that issue well through supervision
- However, legal advice is also needed, but cannot be provided by a Navigator who isn't a lawyer
- He would like to see a Self-Help Center in the District Court for Baltimore City
 - The newest Self-Help Center is opening in Salisbury in July.
- University of Maryland, Just Advice legal clinic is in court on Thursdays during the school semester offering legal services
 - sliding scale price for their services
 - The bulk of their cases are landlord-tenant/housing matters

There being no other subgroups having met since first meeting, Judge Scurti asked the group to determine what their next steps should be

There was a spirited discussion by many members of the work group summarized below:

A question was raised as to what is the Judicial Subcommittee realistically capable of achieving?

Another suggested we involve Pam Ortiz and other Court Operations staff and see if the court would be open to a pilot Navigator project in the city. We would need to look if an opinion from the Attorney General's office is needed, and ask the state legislature and the State Bar for their approval and working with the State Bar's Ethics Committee for direction.

Question was raised as to whether the proposed Navigator program fulfills all of the issues in front of the Work Group?

Are Maryland Civil Procedure Rule changes necessary?

- Proposed that there may be a need for rule changes on:
 - Stays of eviction
 - Motions
 - The fact that the rules don't address urgency within 10 day notice period

Another question when looking at the bill is the provisions for a "Special Fund" contained within it:

- How would that money be disbursed and collected?
- Where do people stand on how that Special Fund should be used?
- Will the funding only be available to MLSC organizations?

- Can tenants potentially access the Special Fund to avoid eviction?

A further question is what Navigators are going to do for the “flow” of Rent Court cases? It could be overwhelming for tenants and slow the process. It may also make it harder to weed out the bad tenants

Prof. Cotton said that statistics from New York show that the Navigators increased efficiency because they cut down on extraneous information from the tenant, that Navigators help the tenants focus on the legal argument and that the statistics from New York show that the Navigators are helpful and, in fact, help speed the docket up.

Judge Scurti mentioned that there is currently an 83% success rate on mediation. The rate is higher than the regular mediation success rate for settlement breach

Mr. Hill, PJC, asked the question if the Work Group is looking at allocating significant amounts of resources, and if so, should it go to Navigators or legal services? PJC is supportive of trying the Navigator program, but not supportive of allocating significant resources without considering other options.

Prof. Cotton replied that Rent-Escrow Court was chosen for the Navigator pilot because, in theory, laypeople should be able to understand it, though they often don't according to the data from New York.

The question is asked whether New York's landlord-tenant court system and rent laws similar to Baltimore's?

Prof. Cotton replied that generally other than differences in wording in the laws, Baltimore and New York are similar. Further, there are enough similarities to make New York worthwhile to look at it, and there are similar Attorney General opinions on issues relevant to the Navigator Program and landlord-tenant court

III. Discussion On Identifying The Primary Issue(s) For The Work Group:

Judge Scurti explained that the group came about as result of proposed legislation from Del. Rosenberg and Sen. Pugh and that most of the proposed legislation was drafted by Public Justice

Del. Rosenberg added that tenant rights are often not adequately protected due to their lack of counsel

The initial discussion by the members of the Work Group on this topic is summarized below:

- Not only Tenants, but also Landlords have serious financial issues due to their loss of rental income
- When services aren't provided, tenants stop paying rent, and consequently landlords file a complaint.
- There has to be education on both sides to clearly impart responsibilities of landlord and tenant to both groups.
- Work Group's main concern is the delinquent landlords who make other landlords and their counsel look bad
- There are clients who are in a bad situation and are trying to figure it out, but others where rent is owed and the tenant has no adequate defense
- We must make sure that both landlords and tenants understand their rights
- Both sides have frustrations: the mismanagement of funds and frustrations of tenants not receiving services and landlords who are frustrated because the relationship between landlord and tenant is broken
- Legal Aid has a report they've prepared, but haven't released publicly yet. The report is a databased statistical study
- The issue here isn't "financial education"
- There are fundamental issues at stake:
 - Tenants not knowing how to fill out forms or make their arguments correctly
 - Tenants not receiving service
 - Tenants missing court dates
- The reasons we are here are fundamentally access to justice issues for both landlord and tenant

Judge Scurti consecutively made some additional remarks:

- There are two additional major issues:
 - Due Process
 - Notice
- Del. Rosenberg's bill has means to verify Lead Certification numbers
- The other issue is the sheriff's (in)ability to properly serve notice
- The Rent Court Docket may need to be reformed
 - The Court shouldn't rush through the docket just because there are so many cases
 - Splitting the docket may be an option

Discussion Of Lack of Education For Tenants and Landlords and Potential Ways To Rectify That:

The meeting extensively discussed the education for both parties.

- Tenants are often too intimidated by the judicial process to adequately prepare
- There needs to be ways to reach tenants before they are in the courtroom
- Tenants need to have some level of basic knowledge
- Bristol House tenant association started creating videos to give that basic groundwork of education
- Educating tenants helps them more effectively use resources like PJC

- Tenants often don't come to court because they are so intimidated by the process
- Some landlords are giving out illegal and invalid notice and information regarding evictions
- Allowing tenants to have any level of information before coming to court empowers them
- A primary concern should be whether the proposed solutions are actually realistic
- Most landlords in court are small landlords, for whom water bills are the biggest issues
 - Landlords need education and to learn to treat landlording like a business
- Many landlords are landlords by happenstance (through inheritance, unforeseen circumstances, etc)
- Would Navigators would be available for landlords?
- Rough statistics:
 - Demographic study: 138,000 rental units of which 51,000 vacant
 - 12,000 rent cases yearly
 - 9% of occupied rental units go to rent court
 - Delinquency rate is fairly reasonable when compared to number of foreclosures in non-rental market
 - 6,800 evictions filed each year (5% of units)
 - 2,300 actual evictions of a tenant still in residence at the property (1% of units)
 - Tenants need to be made aware that they can file escrow before the landlord files their complaint
 - Educational programs could help weed out tenants who are just trying to buy time
- Ms. Hampton-El told the meeting that she provides training to tenants as part of her work and that she has been to many meetings for tenants and tenant's associations, as well as landlords and their organizations. Her view is that education for tenants needs to emphasize being be proactive. There are webinars that they've made at her organization that help facilitate education. Finally, there needs to be representation for small landlords in the same way that representation is needed for tenants
- Landlord-tenant clinics such as the one at University of Baltimore usually represent tenants, only very rarely do they represent landlords
- Many of the most troublesome landlords aren't willful violators, they are lacking education as much as most tenants are

Judge Scurti added the following remarks to the discussion:

- Self-Help Center use has skyrocketed
- Mentioned the ads for the Self-Help Center on bus stops in the city
- Some landlords, as well as tenants, have used the Self-Help Center
- There was an all-time high recently: 200 calls in one day, it is almost guaranteed that has been surpassed this month
- He sent out a request for extended hours for the Self-Help Center
 - nighttime calls have been made heavily since
- Soon, a pro bono component will be added to the Self-Help Center, which will allow attorneys to take calls or webchats from home or their offices

The discussion then continued, as stated below:

- Tenants often don't report problems with their homes because they don't know their rights are being violated
- The Baltimore Housing Code Enforcement Legal Section responds to 60,000 requests a year
- Only a very small number of calls they get are tenants calling about interior issues
- The Health Department and Green and Healthy Homes had someone come from New York and speak about mice and asthma
- Tenants often felt they didn't have a right to complain about rodents and poor conditions
 - tenants feel this way because they feel it is what they "deserve" due to their low income and struggles paying rent, as well as the aforementioned lack of awareness of their rights

Judge Scurti begs the question: how to ensure compliance with current and new regulations?

The meeting had an animated discussion about this, summarized below:

- Baltimore County has a rental licensing system and Baltimore County inspection laws only applies to 1-4 unit properties
 - The licensing procedure there provides a list of 17 specific things that are supposed to be inspected for every time a property is inspected
 - The inspection has to be done by a licensed home inspector at the landlord's expense
 - Inspector doesn't have to be a government employee, can be an inspector for a private company
 - Overall, it is a simple process
 - The County had a shortage of inspectors, so they allowed private inspectors for certain important items
- Prince George's County does the same as above, but yearly
- the cost for landlords of all of these eviction is enormous, and so it is better for the landlords to pay \$150 for an inspector and thereby cut down on costs
- Are the proposed inspection and licensing changes going to serve the aforementioned access to justice issues?
- The inspection changes would solve a piece of the problem
- In Prince George's County there are still condition issues
- PJC's report suggested licensing and inspections for landlords. Obviously, that wouldn't fix everything
- There are already burdens on tenants who don't have the time or resources to get credentials verified
- Having the city do its job is a great idea, as is pushing landlords to do theirs
- What is being done to ensure enforcement in places where these policies already exist?

Judge Boles made the following remarks:

- He has been in rent court for the past three months
- The Legislature needs to define “rent”
 - It is not the judiciary’s job to do so
- Limited time period for summary ejectments
- It needs to be known what can actually be done or not done to get a money judgment, there are no uniform answers currently
 - Maybe money judgment should be taken out of summary judgment entirely
- 90% of problems are bookkeeping related
 - Landlords don’t have their ledgers with them because there are so many default judgments in cases where tenants fail to appear
- It’s not an access to justice problem
 - It’s about personal responsibility
 - Which is to say, that tenants need to show up to court
- Every judge on this bench is fair and has heart
- People within the Work Group should maybe stop using political watchwords like access to justice
- Programs are available and are successful
- The ADR program needs ten times the amount of staff that it currently has
 - The program has merit, and should be expanded
- There needs to be rules that require landlords to provide full ledgers on request in court and tenants need to be educated that their receipts from the landlord are the most important thing they can have in court
 - The Failure To Pay Rent Forms, Rent Court Forms and DOD Forms need to be rewritten

The meeting went on to discuss the low percentage of tenants actually showing up for trial in Rent Court:

- In other jurisdictions in Maryland, tenants show up for court at a much higher rate
- Tenants don’t show up out of fear regarding the judicial process and being intimidated by it due to their lack of familiarity
- Maryland has some of the most liberal allowances for right of redemption
- Over 80% of the tenant base using the right of redemption have more than 1 redemption in a year, most have more
- The problem may be that tenants know they can pay and stay due to the right of redemption It breeds complacency
 - What would happen if everyone did show up? (how would the docket handle it)
 - Part of the issue is that all Baltimore rent court is housed at one location
 - Should the docket be split?
 - Landlords are using the courthouse to collect rent
 - There needs to be a remedy that isn’t court
 - If a given tenant always needs a delay, then why not find a way to work with that tenant outside the court instead of repeatedly going to court?

- Often, notice may come only a few days before the court date, and people can't appear in court because they have jobs and other obligations that they aren't able to reschedule
- A lot of tenants don't know their rights or what the process is
- Lots of tenants come to court, but don't go before the judge due to resolution beforehand, either through a phone call the morning of the case, or due to a settlement in the hallway of the courthouse
- Because tenants know they can use right of redemption, they skip court for other obligations like work
- Bristol House tenants association tried to identify why tenants were behind on rent payments
 - Need to pay their medical bills
 - They got laid off from work
 - Food and transportation costs
 - It can be hard to find help for people without children who aren't seniors

Ms. Brickers told the meeting that Eviction Prevention got funding for the current year.

The question was asked how many people can the Eviction Prevention help with this funding?

Ms. Brickers isn't sure about the above question, it's outside of her department. They are funded through Health And Human Services

Tenants can go to Eviction Prevention every two year. Budget counseling was previously part of their services, but got defunded.

IV. Closing Remarks:

At the end of the meeting, the participants made closing remarks on what had been discussed before.

- Both sides need to lay out clearly what it is they want
- The Work Group needs to get to the point of what both sides want instead of just continuously diagnosing the problem
 - Education for both sides is a shared desire
 - There needs to be education on the court process for both sides
 - The desire for financial management/budget training for tenants to help prevent "frequent flyers" is shared by both sides
 - The proposed definition for rent in the House bill is different than current Court of Appeals decision, but it is a place to start from
 - There is a lot already on the table for the subgroups to talk about

Judge Scurti pointed out that each subgroup needs someone to take the lead

- Legislative: Mr. Tompsett
- Maryland Resources: Mr. Hill
- Judicial Policies and Procedures: Ms. Byers

The Work Group's goal is to have concrete proposals by July 20th, the date of The Work Group's next meeting

People should contact him (Judge Scurti) with any proposed changes

A survey will be sent out through email in order to find a meeting date for the meeting after July 20

The meeting ended at 5:00pm.

Rent Court Summer Work Group

Meeting 3 Minutes

July 21, 2016

The Meeting was called to order in the Law Library of the District Court of Maryland for Baltimore City, 501 E. Fayette Street, Baltimore, MD by chair, Judge Mark Scurti at approximately 3:00pm.

In attendance (based upon the sign-in sheet):

Hon. Mark F. Scurti (Chair), Hon. Kent J. Boles, Hon. Nathan Braverman, Hon. James H. Green, Hon. William M. Dunn, Allen Amernick, Shannon Baker, Undine K. Brickers, Sal Catafano, Tracy Grisez for Prof. Michele Cotton, Gregory Countess, Windy Deese, Shoshana Frankel, Melissa Frentz, Rick Grams, Syeetah Hampton-El, Lt. James Harris, Jason Hessler, Matt Hill, Kathy Howard, Bobbie Lockett, Felicia Lockett, John Offley, Mark Postma, Makya Purnell, Steve Sakamoto-Wengel, Sharon Schultz, Zafar Shah, Deborah Lewis-Smith, Lonni Summers, Tommy Tompsett, Andrew Tress, Eugenia Tyson, Jo Whelan, Brian Wojcik.

Opening

Judge Scurti opened the meeting and requested that all sub-committee chairs notify the entire work group of all meeting dates/times, so that all can come and participate in any sub-committee.

Judge Scurti reported that he was approached by a Baltimore Sun reporter who requested to sit in and observe the Rent Court Summer Work Group. This request was to assist him with an article he is writing on rent court in general. Judge Scurti declined the request based on the agreement and ground rules the group adopted at its initial meeting. He stated that the reporter has been sitting in on rent court hearings in Baltimore City and other jurisdictions and that he was personally interviewed generally

about the charge of the workgroup and our process. Some from the group may be contacted by him and are reminded of the rules adopted by the group. The Reporter is interested in recommendations to Delegate Rosenberg and Senator Pugh and was given information released by the Delegate and Senator. The group agreed with the decision not to allow the reporter to observe.

Next, Judge Scurti contacted one of the initial stakeholders identified, United Way's CEO, Mark First regarding housing and homelessness issues, and invited him or someone from his organization to attend our next meeting. Windy Deese from United Way identified herself as being in attendance at today's meeting.

The District Court Self-Help Resource Center (DCSHRC) advertising – buses stop – numbers have spiked on landlord/tenant issues, all time high on calls and web chats. Landlords are also calling. From District Court perspective, hoping the DCSHRC will help people 8:30 – 8:00 p.m. There has been a spike in calls between 6-8 pm. The number of hits on downloading the court's app are significant. The Salisbury self help center just opened. Chief Judge Morrissey is hoping to open up a center in Baltimore City in the future.

Sub Committee Reports

Judicial Policy/Practices Subcommittee:

There was a discussion on whether certain aspects fall under legislative subcommittee or judicial policy subcommittee.

Primary focuses regarding judicial policy/practices are defined:

Landlord education

In the regular monthly rent court workgroup roundtable meeting there was discussion about starting a landlord education program that has not taken root as of yet. The subcommittee will try to pick up it back up and launch the program again or adapt it. There was a suggestion to offer it monthly or quarterly dependent upon need.

There was a suggestion that the landlord education component should not be limited to just rent court/rent collection procedures, rather a much broader approach. The course should be designed as an education program on how to be a good landlord. Using a business model, educate on how to screen properly for a "good tenant", how to collect rent, how to do proper move outs, and handle security deposits. The course should be designed to be an education program for potential landlords and as diversionary program for housing court.

The Curriculum has been fully written, reviewed by Judge Scurti on the court's role regarding procedures, and it has been sent to Code Enforcement to review for possible conflicts. It still needs to

be sent it to Public Justice and other programs to see if there are any additional comments before finalizing it.

There was a suggestion that Judges could order landlords to take the course as diversionary and part of a probation condition.

This would be applicable to property managers as well as landlords, and could have a sliding scale fee for participants based on income qualification, similar to the debtor education courses offered pre bankruptcy filing. There was a suggestion that perhaps Code Enforcement could make it part of the enforcement action as an alternative or in addition to imposition of a penalty.

Judicial education

- Bench book. Advising judiciary policies.
- Revising judicial policies and practices for consistency and fairness

For judicial education – there was a sense that the subcommittee wanted consistency from the judges in areas such as when a tenant requested escrow, what a judge should be doing before consolidating a case with a rent escrow case. Handling of missing information on a petition such as rental license, lead paint certification, – how these should be addressed before a rent court hearing, at the hearing/trial, what proof should be required at the time of the rent court case.

Judge Braverman pointed out during the report of the subcommittee that in terms of consistency, this may become a legislative issue. There is no “one size fits all” response when the judges are not given specific policies and procedures through rules, legislation or case law. Must look at the statute and see what it says. Does it need to be modified or is the vagueness good in that it gives a Judge discretion in handling different situations, thus consistency would not be achieved based on a case by case basis.

It was noted that Clerks are not allowed to reject petitions filed except under very specific situations. If clerks are unsure, they bring it to the Judge for determination (i.e., proper service).

Tenant education

Due to a restriction of time, this was the last item the subcommittee discussed and is being worked on by Ms. Lockett.

Further, this subcommittee is focusing on non-legislative items and is looking at existing resources available to tenants. It is review whether to offer a standardized opening statement to be used in our jurisdiction as well as other jurisdictions across the state.

The Maryland Legal Aid Bureau staffs and runs the District Court Self-help centers across the state. They initiated a series of webinars and a suggestion was to add a regular webinar for landlords and tenants as part of their curriculum. This is just getting started and will be rolling out in the next couple of months.

An issue was raised about the existing failure to pay rent court form as it does not have enough space for a judge to make any notations about an escrow action that may be initiated. When rent and escrow cases are consolidated, this would allow the escrow judge to note status or result of the FTP rent action. Judge Dunn has requested a stamp that reflects "Escrow Established" with case number, hearing date, and instructions.

Update to rent escrow forms preliminarily approved reviewed by forms committee. Should be rolled out soon.

As part of the new forms request, it was suggested to add a box for a litigant to check if they had interest in ADR. Judge Green is working on trying to match up parties between landlord and tenants who are both interested in ADR and getting them into mediation early in the process.

Ms. Baker (ADR) reported how the current pilot program is working in Baltimore City regarding the use of ADR during rent court proceedings. The practitioner makes announcement that ADR services are available and what mediation looks like. They explain that mediation attempts to cover all bases, is neutral, confidential, no information is shared with a judge unless an agreement is reached and it is voluntary. If a party expresses interest in ADR, a special form is completed and attached to the petition for the judge to identify. If both agree, the case is sent to an ADR practitioner.

Courtroom practices and procedures that are typical on day of hearings: Clerks check everyone in to organize the docket according to those present. If a tenant is not present and only an agent or landlord is present, the judge asks the landlord or representative whether or not rent is due, typically makes a finding for the amount of rent due and owing and enters a judgment for possession. Judges should be reviewing the defaults to make sure each meets all of the technical requirements before entering a default judgment for the amounts claimed. The Judge does not sign every copy, rather it is stamped with the signature of Judge.

A concern was raised in the Legal Aid study that they could not determine the disposition of the cases due to use of stamps. There was some discussion on whether the bulk filings by agents were being reviewed for any missing information by a clerk or a judge. Study found practices in 2012 (state wide study) looking at default judgments, 30 % of judgments for possession awarded to a landlord were a result of error. Errors included complaints not being signed by landlord, incomplete information required, and service not being proper. The study reviewed the audio record to determine whether each individual complaint was examined for accuracy. There remains a question of whether current practice ensures the complaints are all examined prior to issuing of a default judgment. Questions raised as to obligations of a judge, and/or obligations of a clerk in verifying accuracy of the filings prior to issuing default judgment.

Legislative subcommittee:

The Subcommittee met on July 15, 2016. There was a discussion of the navigator system and will be followed up with the AOC to see if it can be integrated with current programs and the self-help system already in place. There is a pilot system that mimics New York but may be rent escrow only. Scope would have to be broadened to go in that direction.

A discussion took place about implementing a statute of limitations that may be appropriate. The group discussed 3, 6, 9 and 12 months for the maximum amount of rent that would be allowed in filing a Failure To Pay Rent petition. Tenants can access eviction prevention funds once within a 1 year period, thus 12 months would allow them to access funds for the whole year.

There was some discussion that if a landlord worked with tenants trying to help them pay and work it out, shortening the SOL would encourage filing rather than working with tenants to pay. Some policy issues on why shorter would be more effective – although longer there are some functionality issues. They looked at the length of time it takes from filing to actual eviction, which can be up to 3 months. There was an agreement that there should be some type of statute of limitation as to an in rem action. If the tenant owes more than a year (or whatever SOL is determined), the landlord can collect through a regular civil action. A discussion took place regarding subsidized housing and if they should be separated from unsubsidized cases as a longer SOL would make it worth a landlord filing for rent due who pay lower monthly amounts such as \$50 as an example, as it would help the person get a one-time eviction prevention money grant of up to \$600 for example. No consensus was reached. A suggestion was made that perhaps a sliding scale SOL be implemented based on amount of rent due.

A number of questions were raised regarding various SOL, for example, would a three month SOL interfere with the right of redemption? Does a three month SOL take into account the time for completing the eviction action? There was agreement that a SOL was needed because the longer the amount of time passes the more complex the fact finding becomes in determining what is actually due and owing. The subcommittee went back to the foundation question, “What is the purpose of summary ejection?”

If a landlord files a case in the 4th month for the prior three months, they would still be able to file additional cases for subsequent months, they just could not request the prior 3 months previously requested. There was a discussion of dismissed cases costing a landlord money if a tenant provides a check that is returned NSF and they have to refile. An offered solution that the landlord could always request the case be dismissed as settled under 3-506(b), thus allowing the case to be re-opened if the check bounces.

The subcommittee next looked at the petition filing requirements- what should be attached to filing? Receipts? Rent log? Electronic receipts? Administrative burden, more expense – should the ledger be filed? Could it become detached from the filing? There was a discussion of the e-filing system and when that comes into play. Legislative changes are required pertaining to attachments to petitions and will have to consult with court to lay groundwork to make sure that attachments will be allowed with e-filing under MDEC. Discussion about what information attorneys or agents must bring to court to prove their case? Some documents are related to burden of proof to support filing vs. landlords’ duties. Educational issue as to how a landlord needs to present their case in court and what documents are required.

It was noted that there currently is a 24 hour postponement rule within a 7 day window that is underused and could be a safeguard. The court should be allowing postponements to get additional

information, witnesses, get attorney, receipts, etc. The law is written to allow postponement in cases needing additional information for legitimate reasons. Requiring all documents to be attached ahead of time or at time of filing or required on the day may result in preventing summary judgments in some cases that just need the postponement. Failures to prove case due to proof may remedy themselves as people keep better records. Discussion of requirement of filing ledgers, etc., being burdensome on larger landlords due to amount of paper.

In all of the changes discussed, Judge Scurti suggested that the subcommittees look at how that change and recommendation would impact other areas of the law and process. Will it require a rule change, a statute change or a policy change? We need to also consider federal law as part of the equation as it relates to federal housing.

Baltimore City will be the last jurisdiction to see MDEC implemented. The electronic filing system will eliminate the paper issue – perhaps the rules can be modified to allow judges to view electronic evidence. Do we need to make recommendations for change to the rules to accommodate technology changes? This encourages consideration of longer term planning particularly with rule changes and legislative recommendations.

Next meeting of Legislative subcommittee – as not all parties were there: key issues - issue of rent, what is being considered – need a “true definition of rent.” Additional points – attachments to complaint will explain better to tenants what the issues are. Ledgers attached will perhaps show tenants that they do need to come to court to defend their case. Tenants may not know - fairness issue to tenant. Defenses are raised based on information on the complaint. Tenants may not be able to prepare a defense due to lack of background information. Certification of representation and documentation. Is there a serious concern that HB796 does not propose attaching leases, etc., to complaint proposed attaching them to notice? Question of whether simplifying the process can include adding requirement for attachments. Suggested that the FTPR complaint be amended to allow for summary ejectment but still accommodating the explanation of the amount of rent owed so tenant knows whether or not they need to appear in court to defend. Proposed that the ultimate issue is encouraging the tenant to go to court at all cost if there is any question regarding the amount or validity of the suit. There was a comment that there is a heightened power imbalance because the tenant lacks information from the landlord and there is no discovery permitted under the rules. Educational piece is to find ways to encourage tenants to come to court and to bring documents they have to defend their cases. Must bring documents – for some situations it may not help the tenant to understand the amount due, but rather to have access to the attachments, and bringing their proof to court is paramount.

It appears, based on presentations in court, that differences in agent accounting practices make it difficult to explain precisely the amounts due in the summary ejectment proceeding. One agent mentioned there was a period of time when precise information as to balance due was given on the complaint. He was told that was too much information for some judges and for the forms. There are difficulties in tracking amounts due because of carrying forward a balance. More information up front makes it easier on the Court to determine what is actually due and owing.

Rent escrow – tenant must be specific as to their demand and must give notice to the landlord of allegations and remedies requested. An amendment must be filed if additional conditions are complained of by the tenant. Make it fair- make the landlord give notice to tenant of what amounts are demanded.

8-208.3 Real Property Article - Landlord's record system

Issues were raised as to record keeping by landlords. Sometimes when rent is paid, it is applied against the utilities or maintenance fees before being applied towards current rent due. There should be a request that landlord bring proof of how the monies paid by the tenant were applied, since the tenant thinks they are paying the rent, but it is being applied to other expenses provided for under the lease. Tenants are at a disadvantage due to not understanding that money paid might not have been applied to base rent; they think they paid the rent. Even if payment arrangements are made, sometimes the landlords still bring tenants to court.

Concerns were raised about tenants not being able to attend court due to conflicts with work or that they cannot read the notice as it may be unclear, confusing or blurry. Some situations happen that notices are being taken down in general common areas of large tenant buildings so tenants are not receiving them.

Final remarks:

For our next general meeting the subcommittees are asked to narrow the issues- identify what is impacted, statues, rules, local law – we are seeking sound recommendations. What is non-legislative and can be achieved through rules and procedures? What impact will this have on various government and non government agencies involved? Should there be rules changes that address the filing of motions in rent court? Do our rules support the process in areas such as motions to stay eviction. Should the rules be modified?

The next meeting of the Rent Court Summer Work Group will be on Wednesday, September 7th, 2016 from 3 -5 p.m. in the Law Library of the District Court Building at 501 East Fayette Street, 2nd floor, Baltimore City.

Rent Court Summer Work Group

Meeting 4 Minutes

September 7, 2016

The meeting was called to order in the Law Library of the District Court of Maryland for Baltimore City, 501 E. Fayette Street, Baltimore City, by chair Judge Mark F. Scurti at approximately 3:00pm.

In attendance:

Hon. Mark F. Scurti (chair), Hon. James H. Green, Mary Abrams, Allen Amernick, Andrew Amernick, Shannon Baker, Karen Byers, Prof. Michele Cotton, Gregory Countess, Shoshana Frankel, Melissa Frentz, Rick Grams, Syeeta Hampton-El, Lt. James Harris, Matt Hill, Kathy Howard, Felicia Lockett, John Nethercut, John Offley, Mark Postma, Lakya Purnell, Capt. Therman Reed, Dan Rifkin, Del. Sandy Rosenberg, Sharon Schultz, Zafar Shah, Lonny Summers, Tommy Tompsett, Andrew Tress, Eugenia Tyson, Maj. Donald Walters, Mary Jo Whelan, Ronald W. Wineholt.

Opening

Judge Scurti opened the meeting. He underlined the importance of the current moment in time, in that the Rent Court Summer Work Group soon will have to come with clear recommendations about what issues there is an agreement on, what issues there is no agreement on and what issues are still open for further discussion.

Mr. Countess, Maryland Legal Aid, handed out copies of the statistical Study prepared by Maryland Legal Aid's Human Rights Project called "Human Rights in Maryland's Rent Courts". This statewide study will be officially released to the press on September 8, 2016.

Maj. Donald Walters introduced himself; he is working with the Evictions Department of the Sheriff's Office in Baltimore City.

Next, Judge Scurti asked the subcommittees to report.

Sub Committee Reports

Judicial Policy/Practices Sub Committee:

The last meeting of this subcommittee took place on September 6, 2016. The following matters were discussed:

1. A consistent opening statement for Failure To Pay Rent and Rent Escrow Procedures.
2. Making a resource list available to tenants in the courtroom, regarding subjects such as financial assistance and eviction prevention.
3. Bench book: a supplement to the current Bench Book, describing general issues/practices in Rent Court procedures.
4. Need for a new Failure To Pay Rent Form. A new form should give the Judge room to make notes.
5. New disposition form for Rent Escrow Procedure.
6. Landlord Education Classes (participation on a voluntary basis or by order of the Court)
7. Tenant Education
8. Review of Failure To Pay Rent complaints by the Court for missing (critical) information or misinformation, without the need for a legislative fix.

As to the Tenant Education, some ideas are: hand-outs to be issued at the time a lease agreement is entered into, a notice of default and You-tube videos. Further, a better dialogue between Landlords and Tenants should be established. The stakeholders for Tenant Education have not yet been identified. The primary focus so far was identifying ways of communication with tenants.

Judge Scurti underlined the importance of cooperation with AOC and the Judicial Institute. In Tenant Education United Way may be a partner to cooperate with.

Further, Judge Scurti mentioned that the new Rent Escrow Forms have been approved. They include an ADR component.

The District Court (Judge Scurti, Judge Green and Law Clerk Mark Postma) is currently working on a Case Management Plan for Civil. The draft of the Plan is open for recommendations from external parties. For that goal, there will be a meeting on Thursday September 22nd, 2016, from 12:00 – 1.30 pm in the Law Library of the District Court's Civil Courthouse, 2nd floor, 501 E. Fayette Street, Baltimore City.

Finally, Judge Scurti reported that the Self Help Center has recently seen a large increase in landlord-tenant related calls. In August 2016 there were approximately 5300 calls to the Self Help Center.

Local Government Programs subcommittee:

They had a meeting on August 2, 2016. The main issue being discussed then was actual eviction prevention. The following ideas came up:

- Resource list available for tenants in the courtroom
- Advocating for funding and understanding which financial sources are available, e.g. Department of Human Resources of the State of Maryland (DHR) and the Maryland Legislative Services Company (MLSC)
- Tenant Education
- Increasing the funding for legal services for tenants; that may be a legislative issue
- Settlements in Rent Court procedure when both parties are present. Currently a lot of cases are unilaterally dismissed by the Landlord/Property Owner, after having reached a settlement with a tenant before the case is heard. Instead of that, the settlement should be put on the court record before a judge; this has the benefit that the settlement gets materialized before the case is dismissed. If the tenant later breaches the settlement, the landlord can demand a judgment against the tenant pursuant to Md. Rule 3-506 (b).

The subcommittee will send its questions regarding State budget (allocation) to Del. Rosenberg, who will forward the questions to the DHR.

Judge Scurti reported that the number of evictions this year is more or less the same as in 2015. The number of Failure To Pay Rent Cases has decreased, compared with prior years.

Ms. Abrams reported that on the website of the District Court, data regarding Rent Court filings are available, including the number of evictions.

Legislative subcommittee:

Four main issues have been identified by this committee:

- I. The Navigator System
- II. Statute of Limitations (hereinafter: SOL)

- III. Statutory notice provision; notifying tenant when he/she is in default paying rent
- IV. Definition of “rent”

I. Navigator System

Prof. Cotton drafted a navigator system that she would like to present to the Legislative subcommittee and/or the Rent Court Summer Work Group. She will send her draft to District Court Administrative Judge Waxman.

II. Statute Of Limitations

The subcommittee recommends to add to the statute a one year SOL for the summary ejectment procedure regarding residential leases. Public Justice expressed a minority opinion in the subcommittee. They are in favor of a three months SOL.

The SOL starts to run when the Failure To Pay Rent arises. From that moment on, the Landlord has one year to file a complaint for the rent due and owing. A question is when is the rent actually late? Residential leases usually contain the provision that the rent is due on the first day of the month, but late on the fifth day of the month.

Public Justice mentioned that a one year SOL is not helpful, as in 90% of the cases FTPR claims are filed by the month. For Public Justice it is important which number of months for the SOL will have the biggest impact. A case regarding 6-12 months’ rent can be quite complicated for both parties and the Court. A three months SOL would keep FTPR cases simpler.

III. Notice provision

The subcommittee did not reach consensus on this issue. “Notice” is meant as a notice of default which has to be sent to a tenant before a landlord can file a complaint for failure to pay rent. Such notice enables the landlord to provide a tenant with information – such as a recent rent ledger – before filing a complaint. The goal of a notice provision should be clarity about the claim before it goes to Court and time to resolve the dispute without litigation. A number of States already have a statutory (14 day) notice provision. However, a notice provision may confront a landlord with additional costs.

The members of some landlord agencies represented in the Rent Court Summer Work Group are opposed to a statutory notice provision. They see it as complication of the Failure To Pay Rent procedure. It will create disputes in Court about whether the tenant received the notice. What if the tenant denies having received the notice? Further, it is their opinion that a statutory notice provision will elongate what they perceive to be an already slow process. Their expectation is that not a lot of cases will get resolved in the proposed 14 day notice period. Finally, a notice from the Court regarding a hearing date for a FTPR complaint will force tenants to actually do something. It should also be noted that an elongation of the process with 14 days can cause financial problems for landlords, who also need to pay their bills. And where the majority of cases in rent court

only involves one month of rent, what purpose does a statutory notice provision serve for these cases?

IV. Definition of rent

The subcommittee reported that it has not been able to reach consensus on a recommendation about the definition of rent and it will be revisited at its next meeting.

The group discussed whether the definition of rent should be defined by the legislator or by future case law from the appellate courts in Maryland.

Judge Scurti asked the subcommittee to perform some additional research on how rent is defined in other States throughout the country for guidance.

Final remarks:

The group further discussed the issue of lead certification. The veracity/validity of such a certificate cannot be an issue at trial. In future it may be possible to check such matters online with MDCE.

The date for the next meeting of the Rent Court Summer Work Group will be **Thursday October 13th, 2016**, from 3:00-5:00 pm in the Law Library of the District Court's Civil Courthouse, 501 E. Fayette Street, Baltimore City, Maryland.

Rent Court Summer Work Group

Meeting 5 Minutes

October 13, 2016

In attendance: Hon. Mark. F. Scurti (Chair), Hon. James H. Green, Allan Amernick, Shannon Baker, Prof. Michele Cotton, Gregory Countess, Ben Frederick, Rick Grams, Syeetah Hampton-El, Kay Harding, Matt Hill, Kathy Howard, Debora Lewis-Smith, Felicia Lockett, John Nethercut, Pam Ortiz, Mark Postma, Lakya Purnell, Del. Sandy Rosenberg, Steve Sakamoto-Wengel, Sharon Schultz, Zafar Shah, Andrew Tress, Eugenia Tyson, Mary Jo Whelan, Brian Wojcik.

Opening

Judge Scurti opened the meeting. He thanked Mr. Sakamoto-Wengel (Office of the Attorney General) for hosting this meeting at short notice.

Judge Scurti underlined that time is of the essence. The deadline for the (final) report from the Rent Court Summer Work Group is December 1, 2016. Therefore, the Work Group will have to deliver its

recommendations within four weeks from now, ultimately mid-November 2016. The two weeks after that will be used to draft a report, which will be presented to Del. Rosenberg, Senator Pugh, and Chief Judge Morrissey.

Housing Court New York City Visit

Judge Scurti reported about his recent visit to NYC's Housing Court with Chief Judge Morrissey, Pam Ortiz, Lani Summers, and Andrew Tress. There are approximately 15-20 judges that are sitting in Housing Court daily, each preside over approximately 30 cases per docket. The proceedings in Housing Court start with the filing of a Failure To Pay Rent Complaint, similar to Maryland. The Landlord is required to provide the Court a preprinted postcard with prepaid postage, that the Court mails out to the tenant providing them with notice of the date and time that the tenant has to appear in Court.

When a tenant comes to Court, they go to the Clerk's office where they meet with a court clerk. Tenants are provided with a preprinted Answer or Notice of Intention to Defend form to complete. The Court developed this form with many of the defenses that are common in these types of cases. Court Navigators along with volunteering attorneys are present to meet with the tenant and assist them with their case and finding the appropriate resources where necessary. It is a very holistic approach. Depending on their needs, they are directed to the Legal Aid office on premises, the Self Help Center, the Do It Yourself kiosk, or to one of the many social service non profit organizations there to assist tenants.

At the next court appearance, landlords and tenants will see either a resolution judge in the Housing Court, who will try to resolve the case together with them or go before a trial judge in the Housing Court.

NYC's Housing Court has a Court Navigator Program. The Navigators help litigants resolve their case by providing information to them. The Navigators are not allowed to give legal advice to the litigants.

Pam Ortiz and Andrew Tress contributed to Judge Scurti's report and spoke about the informal notice procedure ("the postcard" the Court sends to tenants) and how it seems to be quite helpful in getting more tenants to show up in Court for their rent case. A copy of the postcard is attached to these minutes.

Sub Committee Reports:

Judicial Policy/Practices Subcommittee

The latest meeting of this subcommittee took place on October 6, 2016. The following matters were discussed:

1. Uniform opening statement: the subcommittee has not yet received a model of an opening statement used in Rent Court. The subcommittee discussed drafting a model statement for the judiciary to review. Judge Everngam sent an e-mail to Matt Hill, the subcommittee's chair, informing him that there is a statewide committee working on a model opening statement. In response, Andrew Tress informed the Work Group that Chief Judge Morrissey will be happy to take a look at whatever opening statement this Work Group comes up with.
2. Resource List: Ms. Lockett and Ms. Hampton-El are working on this. Ms. Lockett called several organizations that provide financial assistance to tenants and it appears there is more financial

assistance available than tenants are being told when they call an assistance organization. The subcommittee recommends inviting organizations which can provide financial assistance to tenant to meet in Court on an annual basis. In such a meeting, these organizations can tell what financial assistance they can provide to tenants and what policies they have.

3. Misinformation and missing information on FTPR forms. Misinformation is an issue that needs a legislative fix. The Court is not obliged to check the veracity of information provided on the FTPR forms. However, when there is missing information on FTPR forms, the Court may be able to play a role, in that the Clerks of the Court can pre-screen FTPR forms for missing information, “flagging” issues for the judge presiding in Rent Court.
4. Ms. Hampton-El and Ms. Howard are still working on a supplement to the Bench Book.

Local Government Programs subcommittee:

They had a meeting on September 27, 2016. The following matters were discussed:

- I. Settlement form that can be used in Rent Court: they took a look at a settlement form in use in Washington DC, which can serve as an example.
- II. Budget questions will be submitted to Del. Rosenberg.
- III. On the website of the District Court actual data regarding Rent Court procedure are available.

Judge Scurti added that a “Dashboard” with statistical information on all courts including Rent Court data should be available after the first of the year.

Legislative subcommittee:

This subcommittee met today, before the meeting of the Rent Court Summer Work Group.

Definition of rent

They did research on how rent is defined in other States throughout the country and distributed a list of results at the meeting. **(attached to these minutes)**

The subcommittee has not been able to reach consensus on a recommendation about the definition of rent. This issue has two components: (i) Should there be a uniform definition of rent at all? (ii) If so, what should that definition exactly be?

Notice Provision

There is also no consensus on the issue whether a landlord should send a notice of default to the tenant before a landlord can file a complaint for FTPR. There is disagreement as to (1) the requirement of such notice and (2) the exact notice period.

Judge Scurti gave some statistical information on evictions. Through the month of August 2016, approximately 93,000 FTPR cases were filed, 44,000 warrants of restitution were issued by the Court, approximately 37,500 evictions were scheduled by the sheriff, and the actual number of evictions so far is approximately 5,100.

Navigator System

There is consensus that starting a Navigator Program in Rent Court is a good idea. A question is whether it requires an administrative order from Chief Judge Barbera of the Maryland Court of Appeals to start a Navigator Program. Another question is whether a Navigator Program requires a change of the Md. Code Businesses & Associations Article. Further, it is wise to reach out to the Bar Association of Baltimore City to hear their ideas about the implementation of a Navigator Program in Rent Court.

Prof. Cotton recommended that a Navigator Program should start at a small scale. The University of Baltimore can be supportive in providing Navigators and in providing an evaluation of a Navigator Program.

Ms. Ortiz thinks an administrative order as mentioned before is not necessary, as long as there is no courtroom advocacy by the Navigators.

Final remarks:

The next meeting of the Rent Court Summer Work Group will take place on Wednesday October 26th, 2016, from 3:00 – 5:00 pm at the Office of the Attorney General, 200 St. Paul Place, Baltimore City.

Judge Scurti requested the subcommittees to send their future information/reports to the full Work Group from here on out.

Rent Court Summer Work Group

Meeting 6 Minutes

October 26, 2016

In attendance: Hon. Mark F. Scurti (chair), Hon. James H. Green, Allen Amernick, Molly Amster, Shannon Baker, Karen Byers, Sal Catalano, Andrew Fontanella, Ben Frederick, Melissa L. Frentz, Rick Grams, Syeetah Hampton-El, Kay Harding, Matt Hill, Kathy Howard, Deborah Lewis Smith, Felicia A. Lockett, John Nethercut, Pamela Ortiz, Mark Postma, Makya Purnell, Steve Sakamoto-Wengel, Sharon Schultz, Zafar Shah, Andrew Tress, Tommy Tompsett, Emanuel Turnbull, Mary Jo Whelan, Ron Wineholt.

Judge Scurti called the meeting to order at 3:00 pm.

Subcommittees Report

Judicial Policies/Practices subcommittee:

This subcommittee has not met since the previous meeting of the Rent Court Summer Work Group. The next meeting of the subcommittee will be on Thursday November 3rd from 12:00 – 1.15 pm in the Law Library of the District Court’s Civil Courthouse, 501 E. Fayette Street, Baltimore City.

Local Government Programs subcommittee:

They have not met since the previous meeting of the Rent Court Summer Work Group.

Judge Scurti requested the subcommittees to forward specific recommendations for the Final Report of the Rent Court Summer Work Group. The deadline for filing this information is November 15, 2016.

Legislative subcommittee:

This subcommittee met twice since the previous meeting of the Rent Court Summer Work Group, on October 18 and October 25, 2016. The minutes of their meetings will be forwarded to the Group.

They are in the process of developing a two track trial system for summary ejectment procedure in Rent Court. Track 1 will involve the standard Failure to Pay Rent cases (unpaid periodic rent) and Track 2 will involve the more complicated rent cases. Details of a possible two track system can be found in the attached document. This is a working document, which is still “under construction”. Public Justice Center envisions another second track than the landlord representatives in the subcommittee. They will come with their own proposal for the second track. A two track trial system means that the Failure to Pay Rent form will have to be changed. New boxes will have to be added in order to determine which track a certain case will go.

There is unanimity in the subcommittee that there needs to be a statutory billing component for failure to pay (additional) rent cases. The landlord will have to provide the tenant with documentation underlying a claim for (additional) rent. The subcommittee envisions a pre-filing billing notice, which enables a tenant to study it and discuss it with his landlord, before a landlord files a complaint for failure to pay (additional) rent. A pre-filing billing notice can be sent by first-class mail or be made available in digital tenant portals.

They agree that if landlords want to collect additional rent in Rent Court, they should have a written lease agreement with their tenants, in which the additional rent is defined.

They envision limited discovery in FTPR procedure. The Rent Court judge can adjourn a case for parties to engage in discovery for utility charges. It is within the judges’ discretion to determine how much discovery there will be in an individual rent case and how much time parties will get for this discovery before the case is before the Court again. A postponement for discovery is not exceed a (to be defined) certain amount of time.

They still need to draft the language for a Statute of Limitations article. However, there is consensus that there should be a Statute of Limitations for FTPR complaints.

They support the Navigator Program. The Board of Governors of the Maryland State Bar Association can be asked to give their opinion on a Navigator Program.

The issue of landlord licensing requirements (only when a landlord is licensed, he can file a FTPR complaint) is still under discussion. It may be an issue for the Baltimore City Code though.

Plenary discussion:

Ben Frederick reached out to the City's Water Department about the new billing system (monthly instead of quarterly). In future, water bills can be placed in the tenant's name and tenants will have (password protected) access to the water account for the property they rent. The City will organize a meeting on the new water billing system; the date of the meeting has not been published yet.

The rules on water billing in Baltimore City should not be different from the rules elsewhere in Maryland.

The Group discussed the New York Housing Court's "postcard notification" to the tenant of the trial date and the possible application of such notification in Baltimore City, in order to make more people appear in Rent Court. Some participants of the Group are concerned about the extra costs related to a postcard notification of the tenant. The idea of a temporary "postcard notification program", followed by an evaluation of such a program, enjoys broad support in the Rent Court Summer Work Group.

The next and expected final meeting of the Rent Court Summer Work Group will be on Tuesday November 15, 2016, from 3:00 – 5:00 pm at the Office of the Attorney General, 200 St. Paul Place, Baltimore City.

It is important that the subcommittees share their ideas/recommendations for the Final Report ahead of the final Group meeting, by sending them to the rest of the Group by e-mail. This will be helpful for the discussion on November 15, 2016.

Judge Scurti concluded the meeting at 5:00 pm.

Rent Court Summer Work Group

Minutes meeting 7

November 15, 2016

In attendance: Hon. Mark F. Scurti (chair), Hon. James H. Green, Mary J. Abrams, Allan Amernick, Molly Amster, Karen Byers, Sal Catafano, Michele Cotton, Greg Countess, Ben Frederick III, Rick Grams,

Syeetah Hampton-El, Kay Harding, Matt Hill, Kathy Howard, Tracey Matthews, John Nethercut, Jon Offley, Pam Ortiz, Mark Postma, Makya Purnell, Steve Sakamoto-Wengel, Sharon Schultz, LeihAnn Smith-Rosenberg, Tommy Tompsett, Andrew Tress, Ron Wineholt.

Introduction:

Judge Scurti called the meeting to order at approx. 3:00 pm at the office of the Attorney-General, 200 St Paul Place, Baltimore City.

He recognized Mark Postma, Law Clerk at the District Court, for his assistance to the Work Group.

Judge Scurti reminded the Work Group that the deadline for the Report is approaching and that today's meeting is scheduled as the final meeting of the Work Group.

Judge Scurti told the Work Group that a draft of the Report of the Rent Court Summer Work Group, to be produced by Judge Scurti and Mark Postma, will be sent to the members of the Work Group in advance. They will then be able to give their comments on the draft Report. The time for comments will however be short, in light of the nearing deadline.

Reports from the Judicial Policies/Practices and Local Government Programs subcommittees:

Next, the Judicial Policies/Practices subcommittee and the Local Government Programs subcommittee reported. Both subcommittees already sent their recommendations to the members of the Work Group. Matt Hill and Syeetah Hampton-El gave a brief explanation on behalf of these subcommittees. Ms. Hampton-El specifically referred to the settlement form developed by the Local Government Programs subcommittee. This is a draft form, which is open for future discussion and amendments.

If there are any comments about the recommendations of both subcommittees, please send these comments to Judge Scurti and Mark Postma.

Many of the recommendations of these subcommittees will be the subject of discussion in future District Court Rent Court roundtable monthly meetings.

Plenary discussion on possible legislative recommendations:

The legislative subcommittee has not yet put their final recommendations/ideas on paper. The Work Group used the rest of the meeting for an animated discussion of some legislative issues.

Mr. Tompsett mentioned that the legislative subcommittee reached an agreement that recommendations be made to the Legislature about:

1. The operation of a Navigator system in Rent Court (+ evaluation)
2. Possibilities for limited scope representation by pro-bono providers of legal assistance
3. A specific statute of limitations for Failure to Pay Rent complaints

There is no agreement reached in the legislative subcommittee on:

- a. A statutory definition of "rent"

- b. Additional notification of the trial date to the tenant by a postcard provided by the landlord, and sent to them by the Court (the system currently in operation in New York City Housing Court)
- c. How to deal with the issue of water bills. There is unanimity in the subcommittee that water bills should be transparent for a tenant. But, to what extent? What does “transparency” exactly mean here?
- d. Operating a two track trial system for FTPR cases in Rent Court. Which cases will go into track 1 and which case into track 2?

Track 1 is meant for standard unpaid periodic rent, the simple cases. Track 2 is meant for more complicated cases. Practically, it will not always be easy to make that distinction for a particular case.

The subcommittee suggests that in track 1 there will be no discovery and that the Court can adjourn pending FTPR cases, for good cause shown, for no more than one week.

The subcommittee suggests that in track 2 there will be limited discovery, as determined by the Court in a particular case. Further, the Court can adjourn pending FTPR cases (also beyond one week) for good cause shown.

The general idea is that the concept of a two track trial system is conceptually a good idea, but that the implementation of such a system in daily practice is an entirely different matter.

The Work Group also discussed the allocation of rent paid to the landlord. Public Justice proposed a statutory allocation provision, in that payments be allocated to specific debts. Allocation is a concern for them. In the State of Oregon they already work with a statutory allocation provision.

Judge Scurti noticed that the operation of a two track trial system for FTPR cases in Rent Court may mainly be an administrative issue for the Court, rather than a legislative issue. In addition to that, Ms. Abrams mentioned that a possible two track trial system should have a simple outline. The person filing a complaint should indicate (by checking the appropriate box) which track the case should go. The Clerk's Office is not a decider of fact for issues regarding which track a case should go. That is the Judge's prerogative. Judge Scurti then added that a two track trial system will have to be in compliance with the statute as to the date a case is set in for trial in Rent Court. Currently, the statute determines that a case be set in for no later than the fifth day after the complaint was filed. In daily practice, FTPR cases in Baltimore City Rent Court are set in for trial 10-14 days after the complaint has been filed.

Mr. Countess voiced his concern for due process for tenants in Rent Court procedure. It is important that the law is being complied with equally in every jurisdiction. In some jurisdictions, judges even allow landlords to repair defective complaints. He also noted that the more difficult Rent Court procedure becomes, the larger the need for legal assistance to tenants will be. As to water bills, he added that tenants should be charged no more than their actual use of water. Mr. Wineholt responded to that remark by saying that the construction of some buildings can make it impossible to bill each tenant separately for their actual use of water.

The Work Group then discussed the idea of a pre-filing notice. Three possible pre-filing notice systems are identified:

1. A notice before the date the rent is due, stating which amount is owed and specifying the different components of the amount due;

2. The notice as mentioned under 1, followed by a separate default notice when the rent is not timely paid;
3. The notice as mentioned under 1, already incorporating a notice of default, for the (future, possible) situation that the rent due is not timely paid.

Mr. Hill mentioned, as to water bills, that a tenant should be given the same amount of time (30 days) as the landlord to pay such bills.

Mr. Offley asked the question what information a pre-filing notice should include.

The Group further discussed how a tenant should get a pre-filing notice? By mail, by e-mail, by text message, via digital tenant portals? There is consensus that a pre-filing notice will contribute to due process for the tenant. Judge Scurti mentioned that right now there is now mandatory pre-filing notice at all.

Final remarks:

Given the position of the various parties and areas of disagreement, there will be an extra meeting of the Work Group on Saturday November 19, 2016 from 10:00 am to 1:00 pm in the Law Library of the Civil Courthouse, 501 E. Fayette Street, Baltimore City to try and see if a consensus can be reached on some of these additional items. For security reasons, those who want to attend this meeting are kindly requested to confirm their attendance ultimately on Friday November 18, 2016, 12:00 pm.

Judge Scurti concluded the meeting at 5:00 pm.

Rent Court Summer Work Group

Meeting 8 minutes

November 19, 2016

In attendance: Hon. Mark Scurti (chair), Monica Bates, Karen Byers, Domenic Catalfamo, Sal Catalfamo, Greg Countess, Ben Frederick III, Rick Grams, Syeeta Hampton-El, Matt Hill, Kathy Howard, Kevin James, Felicia Lockett, Tracey Matthews, Jon Offley, Mark Postma, Del. Sandy Rosenberg, Zafir Shah, Tony Simmons, Tommy Tompsett, Mary Jo Whelan, Brian Wojcik.

Judge Scurti called the meeting to order at approximately 10:00 am and thanked everyone for showing up on this Saturday.

Judge Scurti outlined that the purpose of the meeting is to see which further recommendations can be made to Senator Pugh and Del. Rosenberg in the report of the Work Group. Judge Scurti reminded the

Work Group that a lot of progress has already been made since the start of the Work Group. He reported that the report of the Rent Court Summer Work Group will be on the agenda of the Maryland Judicial Conference in June 2017 and relayed to the judges in attendance. At that conference, Judge Scurti will lead a work group on Rent Court and Rent Court reform. Further, Judge Scurti reported that the Judicial College courses for 2018 are being proposed at this time and any input for courses from the participants of this Work Group is welcome and can be sent to Judge Scurti directly. Finally, Judge Scurti reported that in the training school for new judges will take place the first week of December 2016 and attention will be paid to landlord-tenant related issues.

Judge Scurti's introduction was followed by a lively group discussion on many Rent Court related issues.

- *Navigator program*

The District Court for Baltimore City is planning to implement a Navigator program in its Rent Court next year, as discussed in the previous meetings of the Work Group. The purpose of the Navigator program is to help unrepresented tenants with limited knowledge of the system how to prepare for court, in order to "level the playing field". The Navigators are not allowed to give any legal advice to tenants. Prof. Cotton of the University of Baltimore is currently working on a plan for the implementation of a Navigator Program.

- *Time schedule to set cases in for a hearing in Rent Court*

Currently, the statute – RP Article, § 8-401 (b) (3) (i) - determines that FTPR complaints be set in for a hearing at the fifth day after the filing of the complaint. Given the number of FTPR cases in the District Court for Baltimore City, the Court is unable to meet this deadline. Usually, new FTPR cases are set in for a hearing between 10 – 14 days after the complaint was filed.

The Work Group decided to recommend that the text of the aforementioned statutory provision be changed, in that the case be set in at least five days after the filing of the complaint, but no later than the 14th day after the filing of the complaint.

Closely related to the issue of the time schedule to set cases in for a hearing, is the issue of service of the complaint. The Work Group agreed that a complaint should be served to the tenant timely, enabling the tenant to prepare their defense for trial. Regarding this issue, the cooperation of the Sheriff's Office is crucial as to their staffing and ability to execute the service timely. The issue of timely service of FTPR complaints needs to be discussed first, preferably at short notice, with the Sheriff's Office.

After some discussion, the Work Group decided to recommend a statutory provision that a tenant should at least have notice of the trial date one week before, meaning that the FTPR complaint needs to be served at least seven days prior to the trial date. If the tenant is not timely served, then the trial date will be continued until there has been compliance with the requirement of having notice of the trial date at least one week before the trial date.

- *Warrant of restitution*

If the landlord orders a warrant of restitution but takes no action on the warrant within 60 days, the warrant shall expire and the judgment for possession shall be stricken (RP Article, § 8-401 (d) (1) (iii) (1).

At evictions sometimes the problem arises with older balances due for which there already is a judgment for possession and a warrant of restitution. There is a question as to which warrant should the sheriff then base the desired eviction? The Work Group decided to recommend that affirmative language be added to the complaint, the landlord having to confirm that they have not obtained a judgment for possession in the past 60 days for the amount being sought in the current complaint.

- *Application of payments made by the tenant*

In the current statute, there is no language as to how payments made by the tenant be applied to the balance. The Work Group decided to recommend that such language be added to the statute.

- *Two-track trial system in Rent Court / definition of rent*

The Work Group has not been able to reach an agreement on a recommendation for a statutory definition of “rent”.

The Work Group decided to recommend the implementation of a two-track trial system in Rent Court. Track 1 will involve the standard failure to pay rent cases (unpaid periodic rent, late fees) and Track 2 will involve the more complicated rent cases, such as utilities, where the amount due and owing can vary every month.

If the lease agreement determines that utilities are also deemed as “rent”, the landlord will be in Track 2, *unless* he proves to the satisfaction of the Court that he only sues for unpaid periodic rent, the underlying balance not involving any application of payments to monies owed for utilities.

The Work Group further decided to recommend that the Court be authorized to transfer a case from one Track to the other, when the complaint is filed in the wrong track, instead of dismissal of the case.

- *Discovery in Rent Court procedure*

The Work Group decided to recommend limited discovery in Rent Court procedure. Discovery is only possible in **Track 2 cases**. The Court can adjourn a Track 2 case for parties to engage in discovery as to what is being requested for additional rent. It is within the judge’s discretion (determined by “the interest of justice”) what discovery there will be in an individual rent case and how much time parties will be granted for such discovery. Judge Scurti reminded the Work Group that discovery in District Court is now already limited, to a maximum of 15 questions. It is advisable that the Court issues a written discovery order to define the scope of and the time for discovery in an individual case. To that end, a standard discovery order needs to be developed.

- *Settlements in Rent Court*

The Work Group decided to recommend that both landlord and tenant have to come back to the courtroom once they reached a settlement, either in the hallway or through ADR. Further, the Work Group recommends that such settlement be materialized in writing. Ms. Hampton-El drafted an example of a settlement form for future use in Rent Court.

- *Lead certificate issues at trial*

Currently, the statute (RP Article § 8-401 (c) (2) determines that the status of lead certificate cannot be an issue at trial. The Work Group decided to recommend to the legislator that the aforementioned

provision be removed and that the issue of the status of a lead certificate can be an issue at trial. However, it was discussed that a copy of the lead certificate be required to be attached to the Writ for Warrant of Restitution.

- *Statutory notice provision*

The Work Group decided to recommend a statutory billing component for failure to pay (additional) rent cases, in that the landlord will be obliged to provide the tenant with documentation underlying a claim for additional rent, before he can file a claim for this additional rent in Rent Court. Accrued balances need to be explained in this notice.

There was a discussion about how to determine whether the landlord has given proper notice to the tenant before filing his complaint? Ben Frederick suggested that notice be given “by verifiable means”, in order to include technological developments, such as tenant portals, e-mail correspondence and text messages. The landlord has the burden of proof that the tenant received proper notice. It is up to the Court to determine whether this notice requirement has been met by the landlord.

The Work Group however did not agree to what kind of notice should exactly be given to the tenant. Public Justice suggested that the tenant should receive a payment notice first from the landlord, followed by a notice of default when the tenant fails to pay. They suggested that this requirement should not apply to the Housing Authority of Baltimore City as they have other guidelines that provide notice to a tenant. Conversely, the landlord advocates envisioned a single notice, mentioning the amount due and already including a notice of default for the situation that the amount due is not timely paid.

- *Water bills*

Baltimore City’s change in billing policy, issuing monthly water bills instead of issuing quarterly bills, will also influence the way landlords will charge their tenants for water bills. The Work Group agrees that suit for a water bill should not be filed until there is a default situation on the tenant’s side after having received the water bill from the landlord, and the tenant having been put on notice of the consequences of such default.

In practice, the landlord will probably send a water bill regarding a certain month to a tenant after that month has already passed. As a consequence of that, a landlord will typically not file suit for the October water bill until December of that same year.

- *Appeal bonds*

Mr. Countess asked the Group’s attention for the issue of appeal bonds. Right now, a tenant appealing a Rent Court judgment has to post bond for his appeal, pursuant to RP Article § 8-401 (f) (2). Mr. Countess suggested that language be added to the statute, enabling judges to reduce bond amounts and determine that a certain amount of money be posted.

Judge Scurti concluded the meeting at approx. 2:30 pm. Judge Scurti and Law Clerk Mark Postma will write a draft Report, which will be sent to the members of the Work Group for comments. There will however be limited time for making comments, in light of the December 1, 2016 deadline.

Appendix D: Post Card mailer from Brooklyn, New York

CIVIL COURT – HOUSING PART
CORTE CIVIL - PARTE DE VIVIENDA

INDEX (LIBRO) NO.
K 087380/16

DISPOSSESS OR EVICTION PROCEEDING -
PROCEDIMIENTO DE DESAHUCIO

Papers have been sent to you and filed in court asking this court to evict you from your residence. You must appear in court on 10.07.16 at 9:30 AM, in Room: 502, Part: 7 you may file an answer at that time. If you have not received the papers, you still must appear in court on the date indicated above and bring this card with you. If you do not appear in court, you may be evicted. You also may wish to contact an attorney.

Documentos han sido enviados a ud. y registrados en la corte para desalojarlo de su residencia. Ud. tiene que comparecer en la corte el _____ a las ____ M.,
_____ Y

En el Salon _____, Parte _____ puede registrar su respuesta en ese momento. Si ud. no ha recibido los documentos, de todas maneras tiene que comparecer en la corte en la fecha indicada arriba, y traer esta tarjeta consigo. Si ud. No comparece en la corte, puede ser desalojado. Si quiere puede ponerse en contacto con un abogado.



CIVIL COURT OF THE CITY OF NEW YORK,
HOUSING COURT CLERK

141 Livingston Street
Brooklyn, NY 11201

~~100-100-100-100~~
~~100-100-100-100~~
~~100-100-100-100~~
apartment #
Brooklyn, NY 11208

Insert one of the following return addresses above:
• Ground FL., 1116 Grand Concourse, Bronx, NY 10456
• Room 203, 141 Livingston St., Brooklyn, NY 11201
• Room 225, 133 Centre St., New York, NY 10013
• 170 East 121 St., New York, NY 10035
• 2nd Floor, 89-17 Sutphin Blvd., Jamaica, NY 11435
• Basement, 927 Castleton Ave., Staten Island, NY 10310
Blumberg Executive Inc., NYC
www.blumberg.com