

Access to Justice Commission

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Housing Court Practice Working Group

# **Final Report**

*August 7, 2012*

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*Housing Court Practice Working Group of the  
Access to Justice Commission*

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## **Access to Justice Commission**

The Massachusetts Access to Justice Commission was originally created by an order of the Supreme Judicial Court in February 2005, based on a proposal submitted by the Massachusetts State Planning Board for Civil Legal Services. The Supreme Judicial Court reconstituted the Commission at the end of the five years specified in the original order. In February 2010, the initial Commission turned over its pending business to the reconstituted Commission.

## **Mission Statement**

The goal of the Massachusetts Access to Justice Commission is to achieve equal justice for all persons in the Commonwealth. It strives to accomplish this goal by providing leadership and vision to, and coordination with, the many organizations and interested persons involved in providing and improving access to justice for those unable to afford counsel.

The Commission will pursue its mission by various means including the following:

1. Strengthening the civil legal services community in providing legal services for those unable to afford counsel.
2. Enlarging the number of attorneys trained, willing, and able to provide pro bono civil legal services through full or limited representation.
3. Improving the ability of those without counsel to identify, articulate, and present their legal claims and defenses in civil judicial and administrative proceedings.
4. Working closely with the Chief Justice for Administration and Management and the Special Advisor to the Trial Courts on Access to Justice Initiatives to broaden access to justice within the court system.
5. Coordinating the efforts of the broad network of organizations and interested persons who seek to improve access to justice by (a) sharing information regarding successful programs, approaches, and strategies in delivering civil legal services to those unable to afford counsel, (b) identifying best practices in delivering such legal services, (c) determining the changing legal needs of those unable to afford counsel, as well as enduring unaddressed and under-addressed legal needs, and (d) developing goals and strategies in meeting those legal needs.
6. Providing a neutral forum in which important issues affecting access to civil justice can be discussed among the branches of government and the civil legal services community, including a broad cross-section of providers, funders, clients, bar leaders and other interested parties.
7. Reporting annually to the Supreme Judicial Court on the status of access to justice in the Commonwealth, including recommendations for reforms and new initiatives.

The success of the Commission will be measured by the extent to which persons can more effectively present their claims and defenses in our courts and administrative agencies, regardless of income or language ability.

## **Housing Court Practice Working Group**

### **Establishment**

The Housing Court Practice Working Group is one of six working groups established by the Access to Justice Commission to help it carry out its mission.<sup>1</sup> Commission members Chief Justice Steven D. Pierce of the Housing Court Department and Attorney Joel H. Feldman of Heisler, Feldman, McCormick and Garrow, P.C. were designated as the co-chairs of the Housing Court Practice Working Group. Three of the working groups, including the Housing Court Practice Working Group, are court practice working groups. All six working groups were made responsible for the following activities:

- Identifying any access to justice issues within the charter of the particular working group;
- Developing a strategic plan to address said issues within a reasonable time frame;
- Coordinating its activities with the work of the Special Advisor to the Trial Court on Access to Justice Initiatives;
- Identifying activities which could benefit from joint work with one of the other working groups;
- Becoming aware of initiatives taken by access to justice commissions established in other states; and
- Reporting to the full Commission on matters that warrant broader input than that of the working group itself.

### **Charter**

The Commission issued a shared charter for the court practice working groups:

Recognizing the numerous ways in which the courts have increased access over the past several decades, these working groups will have responsibility for assessing whether there are ways in which individuals continue to have difficulties in obtaining access to the particular courts within the purview of each working group, including the special issues pertaining to those with limited proficiency in English. They will identify opportunities and strategies for eliminating said difficulties. These three working groups will collaborate

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<sup>1</sup> The other five working groups are Delivery of Legal Services, Technology and Website, Administrative Justice, District Court/Boston Municipal Court Practice, and Probate and Family Court Practice.

with one another when relevant, work with the Special Advisor to the Trial Court on Access to Justice Initiatives, and consider the ways in which the Commission's other working groups, or the Commission as a whole, can be helpful in addressing access issues.

### **Membership**

The co-chairs of the Housing Court Practice Working Group asked seven individuals with experience in various areas of Housing Court practice throughout the state to become members of the Working Group. All seven not only agreed to sit as members but also have given generously of their time and talents. The professional diversity of its membership afforded the Working Group with the ability to consider a variety of perspectives and interests, including those of public housing providers, private landlords, tenants, and the Court itself.

<b>Member</b>	<b>Organization and Location</b>
Chief Justice Steven D. Pierce (co-chair)	Housing Court Department - Boston
Attorney Joel H. Feldman (co-chair)	Heisler, Feldman, McCormick & Garrow, P.C. – Springfield
Attorney Daniel A. Bancroft	Broderick Bancroft - Newton
Attorney James F. Creed, Jr.	Creed & Formica - Marshfield
Chief Housing Specialist Suzette E. Fagan-Clarke	Southeast Housing Court - Fall River
Attorney David A. Grossman	Harvard Legal Aid Bureau - Cambridge
Attorney Helene C. Maichle	Boston Housing Authority - Boston
Attorney Faye B. Rachlin	Legal Assistance Corporation of Central Massachusetts (now Community Legal Aid) - Worcester
Attorney Paul E. Schack	Western Massachusetts Legal Services (now Community Legal Aid) - Pittsfield

Housing Court Practice Working Group Membership

### **Objectives and Work Plan**

At the May 26, 2010 meeting of the Access to Justice Commission, the Housing Court Practice Working Group's co-chairs presented a Statement of Objectives and Work Plan covering the next two or three years.

The primary objective of the Working Group will be to determine whether, in view of the Housing Court Department's past and current efforts regarding access, there remain areas in which individuals continue to experience difficulties and, if so, how such areas can be addressed either through changes in the Court's structure or operations or through the participation of external parties.

The first step to achieve this objective is to select and convene a representative and informed group of individuals who agree to participate in the work of the Group over a substantial period of time. This task has already been met by the selection of seven individuals (in addition to the co-chairs) who represent users of the Court in terms of interests and geography. The Group held its initial meeting on May 5, 2010.

It was agreed that an essential successive step is a broad-scale assessment undertaking to make the determination set forth above. A wide variety of efforts that are a fundamental and an original part of the Housing Court Department or are affiliated with it will be reviewed to assess their efficacy in meeting the primary objective. As contemplated presently, this undertaking will involve a review of previous studies and surveys that bear on this question (e.g., the report of the predecessor Commission and the access and fairness surveys performed by the Trial Court in 2008) and an assessment of current or contemplated initiatives in this area (e.g., the Lawyer for a Day program, the Tenancy Preservation Program and limited assistance representation). Focus groups of self-represented individuals and other types of outreach to gain information and perspectives will be utilized.

Additionally, outreach efforts have already begun through meetings with Housing Court personnel and with advocates who regularly work in the Housing Court. Completion of the assessment phase is hoped to be achieved by March 2011.

Parallel with the assessment should be a concerted effort to monitor the efforts of the other court department working groups as well as the activities of the Special Advisor to the Trial Court on Access to Justice Initiatives and, in particular, the task forces reporting to her. These task forces have already identified particular initiatives that may be of benefit to the Housing Court Working Group and may produce an economy of effort by working closely with them.

Finally, in light of the aforementioned activities, it will be possible to decide whether recommendations are necessary to meet the primary objective. If so, the Working Group will decide upon recommendations, rank them according to priority, and outline a plan to implement such recommendations, subject to available resources (if additional resources are necessary) and appropriate approvals within the court system. The expectation is to develop such recommendations no later than March 2012.

To the extent the Working Group finds access to justice initiatives which are already functioning in one or more of the Housing Courts across the Commonwealth, the Working Group may make interim recommendations to implement these initiatives as soon as possible, within the next year.

The Working Group would stress that the timetable is uncertain: it is possible that certain recommendations can be formulated and implemented on a piecemeal basis without waiting for a complete product; it is also obvious that recommendations that involve significant additional resources may not be feasible for a protracted period of time. In any event, a careful assessment of where we are in terms of access to justice and where we might want to be (on a conceptual basis) would seem to be a necessary predicate to a definitive timetable.

## **Course of Action**

The Working Group began meeting in May 2010 and has held a total of 12 meetings (four were held in 2010, five in 2011, and three in 2012). All of the meetings were held at the Worcester Housing Court. In addition, various sub-groups have conducted telephone conferences from time to time.

The assessment work has consisted of three principal activities. The first of these were visits to each of the five divisions of the Housing Court (Boston, Northeast, Southeast, Western and Worcester). Each visit involved two members of the Working Group scheduling appointments with the First Justice, the Clerk-Magistrate, and the Chief Housing Specialist at the principal location of the court division. (In order to provide a fresh perspective, each team of two members chose courts where they do not normally practice or work). The three court leaders were asked a series of questions which had been developed by the Working Group at prior meetings (e.g., what resources are available in the Housing Court to address someone who has mental health issues?). The questions were designed to elicit information and opinions from the three leaders regarding practices and procedures in their division concerning access to justice. The results of the interviews were recorded and shared thereafter with all members of the Working Group. Such information provided an insight regarding practices in each division and a possible means of determining any areas to be addressed.

The divisional visits provided substantial information to the Working Group concerning the practices and views in each division regarding: introductory speeches and other ways to impart information to litigants at the start of each session; the availability of information, in various forms, regarding services and benefits that might be available to parties outside of the Court; the impacts of providing regular local access to a court session for the four divisions which travel weekly and the challenges which that poses to court staff; the practices for negotiating, memorializing, reviewing, and approving agreements between the parties to resolve their cases; any physical impediments that litigants might encounter in accessing the Court; the means by which judges and housing specialists attempt to ensure that parties have a meaningful opportunity to present all of the information relevant to their case; and the challenges of maintaining and successfully utilizing the Court's long-term programs such as Lawyer for a Day and the Tenancy Preservation Program. The practices, while varied to some degree by local conditions and the preferences of court leadership, operate with a consistency of purpose across the five divisions. Nevertheless, the Working Group gleaned sufficient information to formulate recommendations in certain of these areas that may promote more uniformity and enhance access to justice.

A second broad area of assessment consisted of discussions at numerous meetings reflecting the experience and impressions of the various members of the Working Group. Each had his or her own perspective based upon the division (or divisions) where they have principally practiced, the types of clients they have represented (and their interactions with litigants who were self-represented), and their own views on the meaning and application of the term "access to justice." Collectively, the experiences of the nine members of

the Working Group represent many “person-years” of practice in the Housing Court so that the discussions were wide ranging, well informed, and productive.

For the final assessment exercise, the Group determined that gaining the views of the self-represented litigants themselves was important. The mechanism by which this could be done proved challenging, however. A sub-group sought various avenues for the development of a focus group exercise which would bring a number of litigants – both landlords and tenants – together for approximately a half-day to inquire at length about their experiences. One of the challenges to this method of acquiring court user feedback was that focus groups must be carefully constructed and conducted, generally by a person experienced in that form of research. The sub-group sought such expertise for some time but was unable to obtain an offer from a qualified person who would do the work pro bono.

It was noted that the Trial Court had extensively surveyed litigants and other users of the Housing Court divisions as part of its Access and Fairness Survey Project in 2008 and that the results had been very positive; the survey results were made available to the Working Group members.

Nevertheless, the Group determined that some current method to assess the experiences of self-represented litigants should be employed. As a result, it was decided that two members of the Group would again visit each of the five divisions. On this visit, each team would attempt to interview two plaintiffs (landlords) and two defendants (tenants) and ask each of them a series of questions agreed upon by the Group. Each interview would be done in two parts: before the party went to mediation or a court hearing and again after such event.

These visits were conducted in February 2012. It was not possible to complete four interviews in every location and several litigants did not return for the second portion of the interview. Nevertheless, the interviewers took careful notes and provided a written report on the interviews to the Group for discussion. The Working Group recognized that these results are anecdotal and do not have the validity of a large survey; however, the Group felt that they were helpful in elucidating some of the challenges and perspectives of self-represented litigants in the Housing Court.

The 19 randomly chosen interviewees offered their candid responses concerning their understanding of the court’s resources, their own level of preparedness, their expectations, the results of their cases, what they found helpful, and whether they would have done anything differently. Although several litigants said they had reviewed information on the Trial Court’s website or researched landlord-tenant issues on the internet or at the public library, most came to court without much knowledge about what resources were available to them. Those who heard the live introductory talk from a judge or clerk-magistrate at the start of the session thought it was helpful in giving them information about the process, what to expect at a trial or hearing, and the availability of resources such as mediation with a housing specialist and Lawyer for a Day.

The Lawyer for a Day Program rendered assistance to several litigants, although its lack of physical proximity to where litigants wait for mediation in one division seemed to cause hesitation about using it for fear of losing one's place in line. (Wanting to get through the process as quickly as possible was a desire of several of the litigants.) Litigants who had been to Housing Court previously or who had spent some time preparing for their court date expressed the greatest degree of confidence concerning what to expect. Others conveyed frustration concerning the ability to reach the court by telephone or by having to travel great distances or as a result of the outcome of their cases. There was consistent praise for the availability of mediation in the Housing Court and the attentiveness and courtesy of the housing specialists who provide it.

The final meetings of the Working Group were devoted to a review of its experiences, the content of its final report, and the recommendations to be contained therein.

### **Housing Court Access to Justice Resources and Initiatives**

The Housing Court Department began with the establishment of the Housing Court for the City of Boston, which came into existence in 1972. The legislature created the Boston Housing Court in order to provide landlords and tenants in the City of Boston with a court of specialized jurisdiction over housing matters, including the ability to enforce laws relating to the safety and habitability of dwellings. In addition to contributing to the improvement of the overall condition of the housing stock in the City of Boston, the newly created court also provided the citizens of Boston with a convenient forum for prompt adjudication of all landlord-tenant matters. Today, the Housing Court Department consists of five divisions and its geographic jurisdiction covers approximately 80 percent of the Commonwealth.

Because the Housing Court Department was created and expanded, in part, to improve the housing stock in densely-populated areas which contained a sizable number of older, sub-standard housing units, it has always been essential for the Housing Court Department to have the ability to effectively serve a large number of self-represented litigants, including those with limited resources, education, and English proficiency.<sup>2</sup> As such, the Housing Court Department has operated as a true "people's court" since its inception and has been at the forefront in developing resources to provide all of its litigants with equal access to quality justice. In addition to the resources and initiatives discussed in this section, the Housing Court Department also works closely with the Trial Court's Office of Interpreter Services to ensure routine availability of interpreters and employs a number of bilingual staff members. The Administrative Office of the Housing Court Department also regularly includes access to justice issues on the agendas for its biannual educational conferences and its annual meetings with the Court's divisional leadership.

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<sup>2</sup> On average, approximately 75 percent of litigants who appear in the Housing Court are self-represented.

### **Geographic Accessibility**

The Housing Court Department strives to be physically accessible to all litigants who reside in the communities it serves. The Housing Court Department is truly a traveling court; while the Housing Court Department has only five divisions, the judges and staff of the divisions sit in a total of 21 locations each week to better serve the litigants in the Court's wide geographic jurisdiction. Despite Fiscal Year 2012 being the fourth year of an ongoing fiscal crisis and the loss of a significant number of staff members, the Housing Court Department was generally able to maintain its schedule of sitting in all locations on a weekly basis.

### **Housing Specialist Department**

The Court's Housing Specialist Department has been an integral component of the Housing Court Department since its inception. The Housing Specialist Department, through its housing specialists, provides free mediation and dispute intervention services to litigants in all five divisions of the Housing Court Department as well as conducts inspections of residential properties upon court order. Housing specialists are trained to assist litigants in identifying areas of dispute and resolving differences. All housing specialists receive at least 30 hours of training pursuant to the Supreme Judicial Court's Uniform Rules on Dispute Resolution. The Court's housing specialists resolve hundreds of summary process and other landlord-tenant disputes each week.

	Boston	Northeast	Southeast	Western	Worcester	Statewide
Cases Referred	4551	3698	4215	4051	3722	20237
Cases Electing Mediation	4140	3696	4209	4011	3713	19769
Cases Settled	3042	3340	3610	3060	3102	16154
Percent of Cases Settled to Cases Referred	66.8%	90.3%	85.6%	75.5%	83.3%	79.8%

Fiscal Year 2011 Housing Specialist Department Case Dispositions

### **Lawyer for a Day Program**

Pursuant to Housing Court Department Standing Order 1-01, all five divisions of the Housing Court work in conjunction with bar and local legal services organizations to provide self-represented litigants with the opportunity to consult with a volunteer "lawyer for a day." Lawyers for a day are generally available for the Thursday summary process sessions. They offer legal assistance to both tenants and landlords and may represent parties during mediation without committing to entering an appearance. Should a case proceed, they may also enter a limited or general appearance on behalf of a litigant.

The Housing Court Department continues to make efforts to expand the availability of the Lawyer for a Day program, especially in primary locations such as Fall River and Worcester.

### **Limited Assistance Representation**

Limited Assistance Representation (LAR) allows an attorney to represent or assist a litigant with part of a legal action without engaging in full representation of the litigant. LAR benefits litigants who cannot afford full representation by giving them the opportunity to retain an attorney who can provide them with legal assistance in at least one portion of a case. LAR also enables legal services organizations to provide assistance to a greater number of eligible litigants.

Pursuant to the Supreme Judicial Court's Order In Re: Limited Assistance Representation, effective May 1, 2009, LAR may now be implemented in every Trial Court department. In August 2010, Chief Justice Pierce issued Housing Court Department Standing Order 1-10, which served to implement LAR in all Housing Court divisions effective November 1, 2010. In conjunction with the adoption of LAR in the Housing Court Department, staff from its Administrative Office developed two sets of frequently asked questions – one set for litigants and one set for judges, court personnel, and attorneys.

### **Tenancy Preservation Program**

The Tenancy Preservation Program (TPP) has been an adjunct of the Housing Court Department on a limited basis since the late 1990s. TPP, which is funded independently of the Trial Court, works to preserve the tenancies of those facing eviction due to disability-related lease violations by identifying service needs and arranging for the provision of appropriate services. TPP staff members are clinically trained to determine if alleged lease violations are due to symptoms of disability and assess whether there is an appropriate remedy. TPP now operates statewide in all five geographic regions served by the Housing Court. The Program was found to be highly effective in preventing homelessness and cost-effective for the Commonwealth in a March 2010 report issued by The University of Massachusetts Donahue Institute. First Justice Dina E. Fein of the Western Housing Court chairs TPP's statewide steering committee.

### **Website and Self-Help Materials**

Litigants can access information about the Housing Court and self-help materials through its website. In addition to information concerning hours of operation, contact information, and directions, the Housing Court's website also provides information on mediation in both English and Spanish, access to various forms, and answers to frequently asked questions. The Housing Court Department and the Trial Court Website Committee are currently in the process of revising and updating all website content.

Litigants can obtain additional information and self-help materials from the clerk's office and housing specialist department of each Housing Court division.

The Housing Court Department has been working with the Self-Help Materials Task Force of the Trial Court's Access to Justice Initiative to develop a core set of self-help materials that will be made available in each division and via the internet.

### **Trial Court Access to Justice Initiative**

In June 2009, former Supreme Judicial Court Chief Justice Margaret H. Marshall and Chief Justice for Administration and Management Robert A. Mulligan appointed First Justice Dina E. Fein of the Western Housing Court as Special Advisor for Access to Justice Initiatives. In this role, Justice Fein guides and coordinates resources within the Trial Court to broaden access to civil justice for litigants. In coordination with Chief Justice Mulligan and the Chief Justices of the Trial Court, Justice Fein works to develop strategies and practices to increase access to justice throughout the Trial Court. She works closely with judges, court personnel, the Access to Justice Commission, bar associations, legal services organizations, law firms, law schools, and others to implement access to justice initiatives and protocols.

Justice Fein's work is being assisted by an Advisory Committee and several task forces on which a number of Housing Court individuals serve or have served, including First Justice Diana H. Horan, who sits on the Advisory Committee and co-chairs the Courthouse Information Centers Task Force, Director of Court Operations Paul J. Burke, who sits on the Advisory Committee, Administrative Attorney Allison R. Cole, who sits on the Advisory Committee and co-chairs the LAR Task Force, Field Coordinator John P. Umile, who sits on both the Courthouse Information Centers Task Force and the Forms Task Force, and Housing Specialist Rosemary Rosario, who sat on the Self-Help Materials Task Force.

### **Educational Outreach**

For the Housing Court Department, community partnership and outreach has always been a priority. Judges, clerks, and housing specialists from the Court's five divisions as well as members of the Housing Court's Administrative Office often meet with various groups, including legal services providers, landlord and tenant organizations, code enforcement agencies, local bar associations, and public housing authorities to provide them with information about the Housing Court Department's jurisdiction and the services it offers as well as practical guidance and direction concerning practices and procedures in each of the Housing Court's five divisions.

### **Recommendations**

The work of the Housing Court Practice Working Group has been informed by the experience and expertise of its members; the Group's interactions with the Court's stakeholders including judges, staff, and litigants; reference materials

exploring access to justice issues in the Commonwealth's court system;<sup>3</sup> and the mission and goal of the Access to Justice Commission. The Commission's goal, as set out in the Commission's mission statement, is "to achieve equal justice for all persons in the Commonwealth." Among the means through which the Commission pursues that goal is "[i]mproving the ability of those without counsel to identify, articulate, and present their legal claims and defenses in civil, judicial and administrative proceedings." With that goal and objective as its framework, the Housing Court Practice Working Group has been united in its deep commitment to ensuring that all self-represented litigants appearing in any Housing Court in the Commonwealth are treated fairly, understand what happens at every step in their case, and have their legal rights vindicated. The Group's guiding principle has been that all litigants in the Housing Court Department should be able to obtain justice, whether they have a lawyer or not.

The members of the Working Group came to the table with various perspectives and experiences and they found that while they had some fundamentally different visions of what the term "access to justice" means, based in part on divergent beliefs concerning the role of the court and court neutrality and impartiality, they also shared some common ground. The common theme running through the Group's conclusions is that the well-informed litigant is a critical part of affording access to justice. However, the degree to which litigants have the responsibility for presenting their claims was the subject of differing opinions. For example, some members of the Group feel strongly that it is the responsibility of litigants to obtain the information necessary to present their substantive claims. Those Group members believe that court staff, from front-line clerks through mediators and judges, should not ask a self-represented litigant questions designed to elicit information about claims the litigant might have but has not presented to the court through court pleadings or otherwise. Those Group members feel that such questioning by the court would fundamentally change the nature of the adversarial system. In contrast, several other Group members feel equally strongly that unless court staff, especially mediators and judges, ask such questions, self-represented litigants will be deprived of access to justice. These members feel that the adversarial system would not be fundamentally altered if the court took a more active role.

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<sup>3</sup> Reports that were reviewed by the Working Group included the following: *Serving the Self-Represented Litigant: A Guide by and for MA Court Staff* ([www.mass.gov/courts/serving-self-rep-guide.pdf](http://www.mass.gov/courts/serving-self-rep-guide.pdf)); *Report on the Access and Fairness Survey Project* ([www.mass.gov/courts/cmab/accessandfairnessreport2009.pdf](http://www.mass.gov/courts/cmab/accessandfairnessreport2009.pdf)); *Interim Report on Access to Justice Issues in the Trial Court* ([www.mass.gov/courts/atjreport.pdf](http://www.mass.gov/courts/atjreport.pdf)); *Judicial Guidelines for Civil Hearings Involving Self-Represented Litigants* ([www.mass.gov/courts/judguidelinescivhearingstoc.html](http://www.mass.gov/courts/judguidelinescivhearingstoc.html)); *Third Annual Report of the MA Access to Justice Commission* ([www.massaccessstojustice.org/third-annual-report.php](http://www.massaccessstojustice.org/third-annual-report.php)); and *Addressing the Needs of Self-Represented Litigants in our Courts* ([www.mass.gov/courts/sjc/docs/self-rep-final-report.pdf](http://www.mass.gov/courts/sjc/docs/self-rep-final-report.pdf)).

The Working Group's recommendations represent the Group's effort to design recommendations that would further the goal of ensuring justice for all while taking into account the philosophical differences among the Group's members. We hope that the following recommendations will contribute to making the Housing Court experience as fair and accessible as possible for its users.

1. Under current law (see G.L. c. 239, § 2 and G.L. c. 185C, §§ 2 and 3), summary process plaintiffs generally may choose to file their cases in one of several Court departments. Because the Housing Court Department has specialized expertise in housing law and has housing specialists who perform inspections of residential property and engage in mediation, the Working Group recommends that the Housing Court Department handle a larger percentage of all summary process cases. This could be accomplished through cooperation between the Housing Court Department and the other Court departments with summary process jurisdiction so that summary process plaintiffs are referred to the Housing Court when they wish to file their cases. Of course, an alternative would be mandating exclusive jurisdiction over summary process in the Housing Court, which would require statutory changes.
2. Under G.L. c. 185C, § 1, the Housing Court has geographic jurisdiction in some, but not all, parts of the Commonwealth.<sup>4</sup> For the reasons articulated in Recommendation 1 above, the Working Group recommends that the jurisdiction of the Housing Court be expanded to cover the Commonwealth in its entirety.<sup>5</sup> Implementation of this recommendation will require statutory changes and significant additional resources.
3. Determine whether there would be a benefit to requiring those self-represented defendants in summary process cases who have not timely filed an answer to fill out answer forms while they are waiting for their cases to be called to mediation or trial. It should be noted that

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<sup>4</sup> The Housing Court Department currently does not cover the following areas: Barnstable County, Dukes County, Nantucket County, Norfolk County, except the Town of Bellingham, and southern and eastern Middlesex County, including, among others, the municipalities of Cambridge, Everett, Framingham, Malden, Medford, Natick, Newton, Somerville, Waltham, and Woburn.

<sup>5</sup> The Third Annual Report of the Massachusetts Access to Justice Commission (June 2008) noted: "The Commission has observed that other Trial Court departments dealing [sic] which have concurrent subject matter jurisdiction with the Housing Court lack certain resources that are present in the Housing Court (such as housing specialists) and, given their heavy caseloads in other areas, are not in a position to provide the level of attention to housing cases that the Housing Court can. The Commission's view is that it would be more efficient, fiscally and otherwise, to expand the Housing Court's jurisdiction rather than try to duplicate the Housing Court's services and procedures in these other courts."

implementation of this recommendation may conflict with existing summary process rules and may negatively impact court operations.

4. Encourage a policy across the Housing Court Department that a judge or clerk-magistrate review all agreements for judgment in which at least one party is self-represented to determine whether the terms of the agreement were entered into knowingly and voluntarily. This recommendation is consistent with the positions set forth in both the Uniform Rules on Dispute Resolution (Supreme Judicial Court Rule 1:18) and the Judicial Guidelines for Civil Hearings Involving Self-Represented Litigants.<sup>6</sup>
5. Ensure that all parties to mediation understand their alternatives and are able to reach a fair, fully informed settlement by continuing to provide training to housing specialists on the Uniform Rules on Dispute Resolution, particularly as the Rules relate to self-represented litigants.

Rule 6(i) (“Duties of Courts with Respect to Court-Connected Dispute Resolution Services—Inappropriate Pressure to Settle”) and Rule 9(c)(vii) (“Ethical Standards—Informed Consent”) provide: “In dispute intervention, in cases in which one or more of the parties is not represented by counsel, a neutral has a responsibility, while maintaining impartiality, to raise questions for the parties to consider as to whether they have the information needed to reach a fair and fully informed settlement of the case.”

6. Encourage all Housing Court judges to remain familiar with the Judicial Guidelines for Civil Hearings Involving Self-Represented Litigants, particularly Guideline 3.2 (“Evidence”) of the Guidelines for Conducting Hearings, which says: “Judges shall adhere to the applicable rules of evidence, but may use their discretion, when permissible, to provide self-represented litigants the opportunity to meaningfully present their cases. Judges may ask questions to elicit general information and to obtain clarification. Judges should explain why the questions are being asked and that they should not be taken as any indication of the judge's opinion of the case.”

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<sup>6</sup> Rule 6(i) of the Uniform Rules on Dispute Resolution states, “The Court shall give particular attention to the issues presented by unrepresented parties, such as the need for the neutral to memorialize the agreement and the danger of coerced settlement in cases involving an imbalance of power between the parties.” Rule 3.4 of the *Judicial Guidelines for Civil Hearings Involving Self-Represented Litigants* states, “Judges should review the terms of settlement agreements, even those resulting from ADR, with the parties. Judges should determine whether the agreement was entered into voluntarily. If there are specific provisions through which a self-represented litigant waives substantive rights, judges should determine, to the extent possible, whether the waiver is knowing and voluntary.”

7. Continue to monitor courthouse accessibility throughout the Department. This includes ramps, other structural modifications, and Braille in elevators and on signs. The Working Group specifically noted access issues in Lowell and Springfield, but also noted that most of the main locations of each Housing Court division are in relatively new buildings constructed in compliance with applicable law.
8. Have information or staff relating to social services and other agency programs available in all Housing Court divisions on summary process day(s) to ensure that information about funding to cure rent arrears and information about resources generally are available to the court and all affected parties. This includes the Tenancy Preservation Program as well as housing counseling, welfare, and housing subsidy programs.
9. Work to increase Lawyer for a Day (LFD) programs that comply with Housing Court Standing Order 1-01 in all divisions and, ideally, in all sessions of each division. While Boston and Springfield have significant LFD resources in their courts (including, in Boston, attorneys from the Boston Bar Association, Volunteer Lawyers Project, and law students; in Springfield, attorneys recruited by the Women's Bar Foundation and the Hampden County Bar Association and trainings provided by a local firm), other divisions, notably Worcester and Fall River, are in great need of a strong, sustainable program.
  - a. This will require working with the local bar associations, legal aid programs, and other entities such as the Women's Bar Foundation.
  - b. The physical location of LFD volunteers can affect a party's access to assistance. In Boston, for example, LFD volunteers are stationed at a table outside the main courtroom, but after the list is called and the parties move to a different floor of the courthouse for mediation, few volunteers venture there to ask if anyone needs assistance. Litigants are hesitant to leave the floor to find a volunteer attorney for fear they will miss the call of their case.

#### 10. Forms

- a. In collaboration with the Forms Task Force of the Access to Justice Initiative, continue to review the forms currently available on the Housing Court Department's website to ensure that they are clear and user-friendly.
- b. Re-examine the feasibility and desirability of creating uniformity among some of the forms available in each Housing Court division.
- c. Work with the Administrative Office of the Trial Court to have forms translated into Spanish and other languages as needed.

11. Each Housing Court division should provide a live introductory speech at the start of every summary process session to inform litigants about what to expect as they go through the day. The presentation should include an explanation of what the various steps may be (mediation, motion hearings, defaults, and trials); who will be involved in the various steps (mediators and judges); how much time the litigants should expect to be in the courthouse; and what resources are available (e.g., Tenancy Preservation Program and Lawyer for a Day).
  - a. As a supplement for latecomers or members of the public who come to court seeking general information about the process, the Housing Court Department should explore the feasibility of producing a DVD similar to the introductory video currently shown to prospective jurors in the Commonwealth's trial courts. The DVD could be made available for viewing on the Department's website and in the offices of the Housing Court clerks or other appropriate space. It could run continuously during the day and would reinforce the introductory speech while providing general information about the Housing Court and summary process. It could also be supplemented with information unique to each Housing Court division.
  - b. The initial cost of a brief, well-produced DVD would be a necessary expense. The DVD itself, however, would not need to be updated frequently because the general information would not likely change.
12. Publicize the existence of the Housing Court's website ([www.mass.gov/courts/courtsandjudges/courts/housingcourt](http://www.mass.gov/courts/courtsandjudges/courts/housingcourt)), such as by adding signage containing the website address in each clerk's office, and ensure that the materials on the site are up to date.
13. Explore the utility of Limited Assistance Representation (LAR) as a tool to increase the pool of attorneys willing to take cases or parts of them. If LAR is a useful model for the Housing Court, explore how to publicize its effectiveness, including having members of the Housing Court's Administrative Office and private attorneys train the bar.

## **Going Forward**

The implementation of the preceding recommendations will be primarily undertaken by the Housing Court Department's Administrative Office and its several divisions. Cooperation and assistance in some of the recommendations may be needed from the Trial Court's Access to Justice Initiative, the Office of Court Management (formerly the Administrative Office of the Trial Court), and the Access to Justice Commission. Moreover, the implementation of some of the recommendations may be dependent on the availability of financial resources, legislative enactment, or cooperation with other Trial Court departments.

It bears noting that the backdrop of the efforts reflected in this Report is the most severe and prolonged budget stringency faced by the Trial Court in decades. The Housing Court Department, along with the rest of the Trial Court, has endured an approximately 15 percent reduction in both appropriations and staffing since 2008. During this time, the Trial Court nevertheless continued to operate almost all of its sessions in some 100 court facilities throughout Massachusetts and dispensed justice to tens of thousands of litigants on a daily basis. While, as this report is issued, the Trial Court has begun to fill, for the first time since 2008, a small number of vacant positions, the recently completed budget for Fiscal Year 2013 still leaves the Trial Court with an appropriation over \$40 million less than it originally had in Fiscal Year 2009. In short, the Housing Court and its personnel, along with the rest of the Trial Court, are likely to face continuing financial constraints for the foreseeable future. Many of the recommendations contained herein are not dependent on financial resources, but others, as they may require new or improved facilities, equipment, or personnel, may be impacted until the budgetary conditions for the Trial Court improve.