

# **Summary Proceedings in New York's Town and Village Courts: Ideas for Improvement**

Prepared for the Task Force to Expand Civil Legal Services  
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## I. EXECUTIVE SUMMARY

The mission of the Chief Judge’s Task Force to Expand Legal Services (the “Task Force”) includes the expansion of access to civil legal services and the improvement of access to justice in the New York courts. The Task Force has been charged with the ongoing responsibility to: (a) study, analyze, and develop recommendations on all aspects of civil legal services to low-income New Yorkers; (b) issue recommendations for improvement; and (c) collaborate on access-to-justice issues. This Report is submitted to the Task Force both to address the difficulties faced by tens of thousands of litigants in summary proceedings in New York’s suburban and rural towns and villages, and to generate practical recommendations to improve access to justice.

Every year, New York’s Town and Village Courts preside over a large number of summary (i.e., eviction) proceedings, each of which can result in significant disruptions to families and the loss of a necessity of life: one’s home. These proceedings, which are governed by strict statutory guidelines, can be complex, and adherence to the applicable guidelines is not always straightforward. The fact that litigants in summary proceedings are often unrepresented by counsel only compounds these difficulties. As a result, summary proceedings present challenges to Town and Village Court justices – many of whom have received little formal training relating to summary proceedings, and are therefore sometimes ill-equipped to address the thorny, complicated legal issues that arise.

In response to these challenges, we undertook a broad analysis of summary proceedings in the justice courts. Among other things, we examined reports, training materials, and memoranda; reviewed Judicial Conduct Commission complaints; analyzed the relevant statutes; and examined reports by working groups and other relevant bodies. We also interviewed a representative sample of more than a dozen civil legal services providers and others throughout the state who regularly practice in the justice courts, as well as representatives from both the Magistrates’ Association and the Office of Court Administration (“OCA”). Additionally, a survey of Town and Village Court justices, conducted by the Fund for Modern Courts, provided input from justices from across the State.

This Report – which focuses solely on improvements that can be made under the existing justice court framework, and does not address the structural issues previously examined by the Special Commission on the Future of the New York State Courts – both sets forth our findings and identifies several potential areas for improvement.<sup>1</sup> The Report examines the most frequently cited and

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<sup>1</sup> Likewise, this Report does not address whether Town and Village Courts should or should not have jurisdiction over summary proceedings in the first instance.

serious problems that arise when summary proceedings are litigated in Town and Village Courts: decisions that ignore statutory notice requirements; the lack of access to court records; uneven treatment of litigants; inadequate knowledge of the law by some justices; and insufficient knowledge of the unique questions raised by evictions from manufactured homes. The Report also acknowledges that many of the problems faced by litigants in Town and Village Courts stem from the two issues most often mentioned by practitioners: insufficient representation of litigants in summary proceedings, and inadequate training of justices. The consequence of these failings is a serious deprivation of rights for some litigants who appear in Town and Village Courts.

The Report then makes recommendations designed to address these and other problems. The recommendations include: better and more frequent training for justices; the creation of a reference guide, in the form of a checklist or flowchart, that justices can consult in real time during summary proceedings; increasing the availability of legal services through the use of an adjournment rule; providing increased information on litigants' rights and legal service providers at clerks' offices; scheduling days for summary proceedings; and requiring reporting on the number of summary proceedings commenced within a Town or Village Court.

It is our hope that these measures, as well as the others outlined herein, will help mitigate many of the problems currently associated with summary proceedings in the Town and Village Courts.

## **II. OVERVIEW OF SUMMARY PROCEEDINGS IN TOWN AND VILLAGE COURTS**

A summary proceeding is an expedited process through which a landlord may evict a tenant. In New York, summary proceedings are governed by strict statutory guidelines that concern, among other things, notice, service, and the right to a jury trial.<sup>2</sup>

Summary proceedings are intended to protect the rights of *both* landlords and tenants. There are two types of summary proceedings: nonpayment proceedings, which concern the alleged nonpayment of rent, and holdover proceedings, which concern an alleged violation of some other aspect of a lease.<sup>3</sup> Both types of proceedings require the petitioner (i.e., the landlord) to give the respondent (i.e., the tenant) adequate notice through service of a petition and a notice of petition.<sup>4</sup> In either type of proceeding, a tenant is entitled to present

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<sup>2</sup> See generally RPAPL §§ 731 *et seq.*

<sup>3</sup> RPAPL § 711.

<sup>4</sup> RPAPL §§ 731, 733, 735, 741.

legal defenses.<sup>5</sup> If a case raises a factual dispute, each party also has the right to demand a jury trial.<sup>6</sup>

Courts presiding over summary proceedings have jurisdiction to hear and decide claims to recover real property, to remove tenants, and to enter judgments for rent due.<sup>7</sup> In cities and in areas where District Courts exist, summary proceedings generally take place in City Courts and District Courts.<sup>8</sup> In other areas, summary proceedings are usually conducted in the justice courts (although the number of summary proceedings in justice courts is unfortunately not available on a statewide basis<sup>9</sup>). County Courts have appellate jurisdiction over justice courts' decisions in summary proceedings – although appeals are rare.

While some justice courts are well resourced, many more justice courts – all of which are locally funded – are stretched thin. Approximately seventy percent of Town and Village Court justices, further, are nonlawyers, and receive little or no annual training related to summary proceedings.<sup>10</sup> Given these realities, as well as the fact that individual justices often preside over no more than a handful of summary proceedings each year, the statutory requirements

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<sup>5</sup> *Recommendations Relating to Structure and Organization*, Task Force on Town and Village Courts, THE ASSOCIATION OF THE BAR OF THE CITY OF NEW YORK (Oct. 2007). Among other defenses, a tenant may assert a warranty-of-habitability defense, pursuant to which a reduction in rent may be sought. Most often, however, tenants are unrepresented and therefore unaware of these defenses and unable to properly present them.

<sup>6</sup> RPAPL § 745(1).

<sup>7</sup> UJCA § 204; 29A Part 2 McKinney, Judiciary Law, Siegel, Practice Commentaries to UJCA § 204, at 309 (1989).

<sup>8</sup> The legislature is authorized to prescribe the jurisdiction of the Town and Village Courts. That jurisdiction cannot be more expansive than that of the District Courts and New York City Criminal and Civil Courts. The justice courts have concurrent jurisdiction over summary proceedings with County Courts, City Courts with civil jurisdiction, and District Courts where they exist. *See* N.Y. CONST. art. VI, § 17(a); N.Y. CONST. art. VI, § 16; N.Y. CONST. art. VI, § 15(a); RPAPL § 701.

<sup>9</sup> *See* New York State Office of the State of Comptroller Survey, attached hereto as Exhibit A. Notably, the data in this survey is imperfect because some justice courts do not report summary evictions separately – so the data likely represents a small fraction of the number of summary proceedings that took place in 2011.

<sup>10</sup> *Justice Most Local: The Future of Town and Village Courts in New York State*, A Report by the Special Commission on the Future of New York State Courts, at 7 (September 2008).

designed to protect litigants' interests in summary proceedings are not always enforced.<sup>11</sup>

### **III. SUMMARY PROCEEDINGS IN TOWN AND VILLAGE COURTS: AREAS FOR IMPROVEMENT**

Because practitioners' experiences with summary proceedings differ from court to court and from region to region, in putting together this Report we interviewed a representative sample of practitioners from throughout the state in order to obtain a comprehensive understanding of the issues that litigants and justices regularly confront. Additionally, we spoke with representatives from OCA and the Magistrates' Association to obtain a more complete picture of the issues that summary proceedings present. A survey of magistrates by the Fund for Modern Courts, which was forwarded by the Magistrates Association to every county in the state, was also used in putting together this Report.<sup>12</sup>

Many with whom we spoke relayed positive experiences with summary proceedings in the justice courts. They mentioned, among other things, that litigants sometimes prefer justice courts because they provide easier access, and that some justices are eager to learn and participate in training above and beyond what is required. However, nearly every interviewee also agreed that there are aspects of summary proceedings that need improvement. Tenant-respondents, for example, do not always receive adequate notice. Justices and clerks are sometimes unaware that parties have a right to access court records, and therefore do not provide those records to litigants when requested. Justices sometimes lack an understanding of the basic laws governing summary proceedings due to limited training. And legal distinctions pertaining to cases involving manufactured (i.e., mobile) homes are ignored.

Justices who responded to Modern Courts' survey identified similar issues. For example, survey responses indicated that town and village justices are concerned about the lack of attorney representation in their courts; the inadequacy of notices; the high volume of cases in some courts and the rarity of cases in others; *pro se* parties' lack of procedural knowledge; the personal nature of

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<sup>11</sup> The forms used for pleading in summary proceedings, additionally, can be difficult for a layperson to follow. For example, the form notice of petition informs the tenant-respondent to "take notice also that if you shall fail at such time to interpose and establish any defense that you may have to the allegations in the petition, you may be precluded from asserting such defenses or the claim on which it is based in any other action or procedure." Without access to representation by counsel, litigants may find it difficult to understand this instruction and, as a result, may be unaware of their rights and obligations.

<sup>12</sup> See Summary of interviews, attached hereto as Exhibit B and Summary of Magistrates Survey, attached hereto as Exhibit C.

certain disputes; and the short lead time before trial and eviction. Justices also gave feedback on the reference materials they use and the value of comprehensive training. Below is a summary discussion of the major problems identified by the individuals we interviewed and the justices who responded to the Modern Courts survey.

**A. *Insufficient Notice***

Perhaps the most serious shortcoming regularly observed in summary proceedings is the failure to provide respondents with adequate notice.<sup>13</sup> Most problematic are cases in which notice is not served at all – which several practitioners reported is not uncommon. For example, one practitioner observed a case in which a justice court issued a warrant of eviction *immediately* upon a landlord’s request, without prior notice to the tenant. Another practitioner reported, based on frequent client complaints, that notice requirements are routinely disregarded.

However, more common than cases in which notice is absent are cases in which a tenant receives informal “notice” that falls short of the statutory requirements. Under the applicable statutes, a petition and notice of petition must be personally served on the respondent (personal service) or to a person of suitable age residing at the property (substituted service) between five and twelve days before a court hearing.<sup>14</sup> Only if neither personal nor substituted service is possible can service be effected by leaving documents at the property and then mailing them to the respondent.<sup>15</sup>

According to practitioners, landlords routinely ignore these rules. In some cases, only a petition or a notice of petition, but not both, is served. In others, the only “notice” given to a tenant is oral notice from the landlord, which, not surprisingly, many tenants do not take seriously. Further, landlords fail to comply with restrictions related to service. Under New York’s Civil Practice Law Rules (“CPLR”), a party to an action may not serve notice,<sup>16</sup> yet some landlords reportedly are regularly allowed to do so. New York case law also requires

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<sup>13</sup> The statutory requirements related to notice are set out in RPAPL § 731 and RPAPL § 741, while the service requirements are set out in RPAPL § 735.

<sup>14</sup> RPAPL §§ 733, 735(1).

<sup>15</sup> RPAPL § 735(1).

<sup>16</sup> CPLR § 2103.

service on *each* respondent, even when the respondents are husband and wife<sup>17</sup> – yet practitioners report that justices sometimes require service on only one spouse.

These and other examples of defective notice would be less worrisome if practitioners were confident that justice courts were capable of readily identifying them. However, the opposite is often true. Furthermore, even in those cases where defective notice is brought to a justice court’s attention, justice courts sometimes ignore the issue altogether. Multiple practitioners noted, for example, that some justices simply take the position that if a respondent is in court at all, notice was adequate. Other practitioners have observed justices tell respondents: “Well, you’re here, so you obviously had notice.” For their part, justices remarked on problems related to the paperwork required to provide adequate notice, the lack of proper signatures or verifications on notices, service issues, and the issue of parties seeking the court’s advice on notice questions.

These shortcomings are troubling for several reasons. First and foremost, respondents who do not receive notice may have default judgments entered against them. Second, respondents who receive defective notice may be unable to adequately prepare a defense. For example, where a notice of petition, but not the petition itself, is served on a tenant, it may be difficult for the tenant to evaluate legal defenses. Finally, justice courts that accept subpar notice implicitly encourage such practices. If petitioners know that courts will condone shortcuts, that is, they are more likely to rely on those shortcuts in the future.<sup>18</sup>

## **B. *Lack of Access to Court Records***

Another problem that frequently arises in summary proceedings is that litigants, especially tenants, find obtaining copies of court records difficult. Indeed, many practitioners with whom we spoke pointed to a lack of access to court records as one of the problems most commonly encountered in the justice courts.

The barriers to access are several. First, justice courts generally convene infrequently, sometimes only for a few hours every few weeks. Because court records are available only when a court is in session, as a logistical matter it can

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<sup>17</sup> *World’s Busiest Corner Corp. v. Cine 42nd Street Theater Corp.*, 134 Misc. 2d 281 (N.Y. City Civ. Ct. 1986).

<sup>18</sup> One problem closely related to the failure to provide notice is the practice of permitting petitioners to file their petition and notice of petition *before* service. Under the applicable statute, petitioners are not allowed to file a petition or notice of petition until after service. RPAPL § 735(2). Permitting petitioners to file before service is detrimental to respondents because it means that the affidavit of service may not be available before the court hearing. This prevents respondents from raising meritorious defenses based on defective service.



be difficult for tenants to obtain court documents far enough in advance of a hearing to be helpful. Second, justice court clerks often labor under the misunderstanding that parties are not entitled to court records, or are entitled to court records only with specific approval by the court. Finally, according to some practitioners, clerks may be more responsive to attorneys' requests for records than to requests from unrepresented respondents, including tenants.

### **C. *Uneven Treatment of Litigants***

The opportunity to be heard is crucial to our justice system. Yet summary proceedings are sometimes conducted so quickly that tenants are neither invited nor prepared to offer defenses. One practitioner with whom we spoke observed a justice preside over a summary proceeding that took place on the *same day* the landlord initiated the proceeding – so that the tenant was never notified and was never given the opportunity to be heard. Another practitioner reported that justices frequently ask tenants if they have money to pay rent – not if the tenants actually owe rent or have legal defenses. Some practitioners go further, and suggest that some justices are uninterested in hearing what tenants have to say and view assertions of legal defenses as attempts to avoid paying rent.<sup>19</sup>

Additionally, justices sometimes handle summary proceedings in ways that give landlords procedural advantages. For example, some justices reportedly will delay proceedings for tardy landlords, but will not do so for tenants. Other justices will reportedly schedule summary proceedings in accordance with landlords', but not tenants', schedules, or will require tenants to deposit the rent allegedly due into escrow before any defense may be raised. As one practitioner put it, it is not uncommon for landlords to “run the show” in Town and Village Court summary proceedings.<sup>20</sup> Notably, however, the justices who responded to Modern Courts' survey recognized the inequities in the system and the impropriety of giving landlords “advice” or allowing *ex parte* communications prior to hearings.

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<sup>19</sup> In an extreme case, a practitioner reported that a justice denied a tenant's warranty-of-habitability argument despite being presented with uncontroverted evidence of a serious mold contamination.

<sup>20</sup> Because justice courts are often located in small municipalities, justices may have personal connections with the parties that can create conflicts of interest. Some justices are landlords themselves. Moreover, because justices are locally elected, they may rely on landlords and their lawyers for reelection. All of these relationships create conflicts of interest, but often there is not another court close enough for the parties to access, so a conflicted justice may not recuse himself or herself.

#### **D. *Inadequate Knowledge of Applicable Law***

Because summary proceedings are a relatively small part of justice courts' dockets – a point that was confirmed via the Modern Courts survey – many justices are unfamiliar with the applicable law. Indeed, according to one practitioner, without an attorney present on either side, justices would have “zero guidance whatsoever.” And one justice stated in response to the Modern Courts survey that the complicated nature of summary proceedings requires as many legal reference materials and as much training as possible. That justice also questioned the ability of many justices to fully understand the applicable statutes without a background in civil procedure or real property law.

Without adequate knowledge of the statutes governing summary proceedings, justice courts can misapply the law. For example, some interviewees suggested that justices improperly consider payments for security and utilities in nonpayment cases – even though the remedy provided in summary proceedings is limited only to the rent owed. One practitioner witnessed a justice repeatedly deny jury trials despite the existence of questions of fact.<sup>21</sup> And at the extreme end of the spectrum, a practitioner reported that a justice who was personally approached by a landlord issued a warrant of eviction without any proceeding whatsoever.<sup>22</sup>

Moreover, many practitioners regularly observed improper *ex parte* communications between justices and litigants – and particularly between justices and landlords. For example, landlords who are unsure about how to initiate a summary proceeding sometimes contact justices, who, attempting to be helpful, may aid landlords by directing them to the appropriate form or “opening a file” for them. Or, as one practitioner explained, if a landlord shows up first in court, the court may very well review the case with the landlord before the tenant has arrived, giving the landlord time to present his or her case without a possibility of a rebuttal. In these examples, the procedural and substantive unfairness of the *ex parte* communication is plain.

#### **E. *Inadequate Training Opportunities for Justices***

While the training justices receive is not insubstantial, many believe that more comprehensive and frequent trainings are necessary. Newly elected justices are required to attend a six-day training session, which includes at least two or

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<sup>21</sup> Likewise, justice courts reportedly often do not appreciate that many warranty-of-habitability issues present questions of fact that are appropriate for a jury.

<sup>22</sup> This decision was overturned on appeal in county court.

three hours on summary proceedings. Veteran justices, meanwhile, must participate in twelve hours of training annually, including six hours of “core” training and two hours of ethics training.<sup>23</sup> According to OCA, summary proceedings appear as a topic in one of the core programs roughly every other year, and one or two hours of training are typically devoted to summary proceedings when they are covered.<sup>24</sup> However, this “core” training relating to summary proceedings is not mandatory – and we received reports that some justices’ only training on summary proceedings was the training they received when newly elected.

For this reason, many practitioners believe that, particularly given the legal complexities associated with summary proceedings, more training is needed. Many of the forty-two justices who responded to the Modern Courts survey agree, particularly given the complexity of the issues that arise; as one justice stated, “any training is always helpful.”

Even so, there is less agreement regarding the utility of the reference materials relating to summary proceedings that are currently available to justices. Indeed, nearly every practitioner we interviewed noted that justices infrequently, if ever, appear consult such materials while summary proceedings are taking place – although all of the justices who responded to Modern Courts’ survey did report some use of reference materials.<sup>25</sup>

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<sup>23</sup> The core programs are disseminated at three live training programs held throughout the state, at local training sites, and through web programming. After the training, nonattorney justices are tested on the materials covered, while attorney justices are not. For attorney justices, the core programs also count as continuing legal education credits. Justices who take only six hours of core credits may satisfy their other credits through elective courses. Elective courses are conducted by various local groups, including practitioners, and must be approved beforehand by the Office of Justice Court Support before credit will be given. Documentation of a justice’s attendance at an elective course is also required. Most justices prefer to do their training locally because local electives tend to be tailored to problems that are seen in the justice’s specific court.

<sup>24</sup> According to one interviewee, justices are very eager to attend trainings, receive materials, and put any materials they take home with them to good use. The justice courts also have at their disposal treatises, statute books, and other legal reference materials.

<sup>25</sup> At the trainings, justices are given materials and are encouraged to take these materials with them. The training materials (and trainings themselves) are also preserved and available through the Internet on a website accessible only to the justices. Additionally, the Office of Justice Court Support operates a legal-help hotline that is in most instances available 24/7 for questions on pending cases. According to OCA, the hotline receives a high volume of calls. Since about 2010, the hotline has fielded about 134,000 calls, of which more than 6,000 pertained to summary proceedings. According to one practitioner, justices may call before, during, or after a proceeding.

**F. *Insufficient Knowledge of Special Issues Concerning Manufactured Homes***

Finally, according to many practitioners, justice courts are frequently unequipped to preside over manufactured (i.e., mobile) home proceedings. As a general matter, manufactured home proceedings are governed by the same statutes that apply to other homes.<sup>26</sup> However, mobile homes are subject to various additional regulations that can create problems for evicted tenants. Perhaps most notably, while it is against the law to move very old mobile homes, tenants can nevertheless be evicted from the land on which a mobile home they own sits. This creates a particular problem for manufactured home tenants – who may lose their homes if evicted from the land underneath.

As a protection against the above problem, a tenant in a summary proceeding may raise as a defense the impact that eviction would have on his or her ownership interest in an unmovable manufactured home.<sup>27</sup> However, some justices are unaware of this protection, and ignore the impact of tenants' ownership interest in their mobile homes.<sup>28</sup>

**IV. PROPOSALS FOR IMPROVEMENT**

As outlined above, summary proceedings in Town and Village Courts can be improved in several areas. We do not purport to offer a panacea. Our primary recommendation, instead, is the distribution of a plain-language, easy-to-follow reference guide for justices to use during summary proceedings. Our hope would be that justices will consult this guide while addressing the often-difficult legal issues that can arise during summary proceedings.

Aside from the reference guide, the additional proposals that follow represent further steps toward improving the accuracy and fairness of summary

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<sup>26</sup> RPL § 233.

<sup>27</sup> *Recommendations Relating to Structure and Organization*, Task Force on Town and Village Courts, THE ASSOCIATION OF THE BAR OF THE CITY OF NEW YORK, at 53 (Oct. 2007).

<sup>28</sup> Notably, the one justice who answered “yes” to the Modern Courts survey question asking whether yearly summary proceedings training would be helpful stated that “we have a great deal of evictions in my town involving trailer parks.” Additionally, one upstate practitioner explained that some parties will make informal land grant arrangements, similar to rent-to-own transactions. When a party fails to make a payment, the owner of the land brings a nonpayment proceeding, which is conducted like a regular landlord-tenant proceeding. However, when the payee is evicted from the land, he or she loses the entirety of the investment, which may be close to the value of the premises. A summary proceeding is obviously not proper for this type of arrangement.

proceedings in the Town and Village Courts. Increased training would help justices understand the statutes governing summary proceedings. Increased provision of legal services would help litigants better comprehend their rights and obligations. An adjournment rule for unrepresented litigants would afford litigants time to seek out legal services and answers to questions. And creating specially scheduled days for summary proceedings would ensure that legal services providers are more readily available to assist litigants who need help. These proposals are discussed below.

#### **A. *A Summary Proceedings Reference Guide***

In the first instance, we believe it would be helpful to create and distribute a reference guide, in the form of a checklist or flowchart, which justices could consult in real time during summary proceedings. As we envision it, this reference guide would take justices through each step of the summary proceeding process, highlighting the major issues that typically arise. It would aim to be accessible, rather than comprehensive, and would not address every conceivable scenario – only those that regularly arise.

A model guide is attached as an appendix to this Report. This guide incorporates the major substantive and procedural rules governing summary proceedings, from the initial decision to file a petition through the court appearance. We believe that it would prove helpful to Town and Village justices – and justices appear to agree. Indeed, Modern Courts’ survey of justices included the following question:

*We have been told that a reference guide or checklist, that takes the court through a summary proceeding from start to finish, could assist Justice Courts, especially those who do not frequently have eviction proceedings in their courts. Would such a guide be of use to your court? And if yes, what information would you like to see contained within it? If not, please explain.*

The responses were overwhelmingly in support of such a guide. “I never say no to information that is helpful, legally accurate and allows me to be more efficient,” wrote one justice. “I would suppose that each judge already uses a self-created flowchart, but, a template would be a good resource that the judge can alter as needed for the individual circumstances,” wrote another. And as one justice suggested,

*Reference guides and checklists are always good, in any area formulaic and repetitive practice. Such devices are best if they also are accompanied by a manual that cross-references the checklist and provides an expansion on the statutory and case law provisions governing the checklist items.*

The attached model guide addresses several areas of concern identified in this Report. A significant portion of the guide is devoted to notice issues, including service requirements. The guide also alerts justices to the importance of representation by counsel, and encourages justices to adjourn in cases where a party would prefer to retain counsel. Additionally, the guide provides an easy-to-follow road map of the summary-proceeding process for justices who may be unfamiliar with it. Finally, the guide stresses the importance of affording *both* sides the opportunity to be heard.<sup>29</sup>

**B. *Improved Training Relating to Summary Proceedings***

As discussed above, most Town and Village Court justices are not lawyers. As such, many justices lack experience dealing with the complicated legal issues that can sometimes arise during summary proceedings. And because summary proceedings take place relatively infrequently, justices often do not have the opportunity to build expertise in this area of law. Increased and improved training would help Town and Village Court justices obtain a better understanding of the rules governing summary proceedings.

With regard to the ways in which training can be improved, both training materials and trainings would be enhanced, as an initial matter, by input and review from a select group of lawyers and judges with expertise in landlord/tenant law. As such, it is recommended that the Task Force – along with experts in landlord/tenant law and individuals with expertise in training, the Office of Court Administration, and the Magistrates Association – work together to generate new training materials and resources to address the issues contained in this Report. One justice, additionally, recommended that video recordings be made of the entire training process; another noted that routine emails summarizing case law developments would be helpful; and yet another stated that “experience is always the best teacher,” as is learning from “our fellow judges’ experiences.” As one justice succinctly stated, “[t]here is no substitute for learning the applicable law and having the opportunity to apply it.”

Relatedly, our research and conversations with practitioners and justices also revealed that some justice court clerks do not always understand the rights of litigants in summary proceedings. Because court clerks are gatekeepers to the courts – and provide access to, among other things, critical court records – requiring clerks to participate in regular training would also help litigants in summary proceedings better access justice.

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<sup>29</sup> A draft reference guide is attached hereto as Exhibit D. The Town and Village Courts Resource Center would be willing to review and distribute the guide.

### C. *Increased Availability of Legal Services*

One practitioner estimated that, when a respondent appears without counsel, “ninety-five or more percent of the time, it doesn’t work out well for them.” And nearly all practitioners agreed that represented litigants obtain better outcomes than similarly situated unrepresented litigants. Justices who responded to Modern Courts’ survey similarly agreed that representation by counsel better utilizes court resources, as the “high volume of cases and *pro se* parties’ lack of procedural knowledge” creates challenges for courts. Increasing the availability of free or low-cost legal services providers, accordingly, would improve unrepresented litigants’ access to justice, for several reasons:

- *First*, because summary proceedings represent a relatively small portion of individual justice courts’ dockets, justices are often unfamiliar with the substantive and procedural law that applies – and as a result, courts rely heavily on attorneys for knowledge about the process. Many practitioners report that, in cases where one or both parties are unrepresented, the justice court is significantly more likely to proceed based on erroneous understandings of law.
- *Second*, justice courts are often more open to defenses raised by attorneys than to defenses raised by unrepresented respondents.<sup>30</sup> Unsophisticated respondents may also be unaware of legal defenses that may be asserted.
- *Third*, respondents represented by counsel are less likely to be shut out of summary proceedings.
- *Finally*, represented respondents are sometimes better able to obtain access to court records.

Short of dedicating more funding to the representation of parties in summary proceedings, there are some procedural mechanisms that may help increase unrepresented parties’ access to counsel. A list of these possible approaches includes:

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<sup>30</sup> One practitioner recalled observing two cases: in the first, a represented respondent successfully raised a defense, while, in the second, an unrepresented respondent raised the same defense to no avail.

### 1. Clarify Adjournment Rule

As discussed above, unrepresented respondents often are not prepared for trial, do not know how to access legal services, and are unsure what defenses are available. As a result, many practitioners support the idea of an adjournment rule requiring a court to adjourn if a respondent is unrepresented, in order to provide litigants with time to obtain counsel or guidance.<sup>31</sup>

Some practitioners have expressed concerns about the feasibility of such a rule. For example, an adjournment cannot be longer than ten days without the consent of both parties, and many Town and Village Courts do not meet often enough to adjourn and return within that period.<sup>32</sup> Additionally, an adjournment rule could face opposition from landlords, because it would delay summary proceedings without guaranteeing that respondents in delayed cases will actually obtain legal services. However, because an adjournment rule would address many of the problems described in this Report, we believe that it would have the support of many justice court practitioners.

### 2. Provide Unrepresented Parties with a “Bill of Rights”

Providing unrepresented litigants with a “bill of rights” or other information when they go to a clerk’s office or appear before a justice for the first time would simplify the process for the litigants and the courts. Basic information regarding process issues, litigants’ rights to court records, and the telephone number and location of local legal service providers, among other things, would assist unrepresented litigants in navigating an otherwise daunting system. Significantly, justices commented favorably on the value of “a handout to give to both parties similar to the small claims guide to familiarize them with the proper forms to fill out and procedures.”

### 3. Scheduled Days for Summary Proceedings

Finally, in order to increase access to legal services providers, courts could also consider dedicating certain days each week or month to summary proceedings. Doing so could enable local legal service organizations to have attorneys available in a particular court on a scheduled day to assist more qualified litigants in court.

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<sup>31</sup> The applicable statutes only require that the notice of petition and petition be served five days before the return date for a summary proceeding. RPAPL § 733. This is often not enough time to prepare a case.

<sup>32</sup> RPAPL § 745.



#### **D. *Require Reporting on Summary Proceedings***

For a variety of reasons, is important to know how many summary proceedings are taking place in Town and Village Courts across the state. With this information, responsible parties can better allocate the resources and training necessary to improve summary proceedings. And the scope of the problem can be assessed – as well as the impact of proposals made herein. To best assess the number and impact of summary proceedings across the state, a minor change in justice court reporting requirements is recommended.

Currently, the only means of determining the number of summary proceedings commenced in Town and Village Courts is through figures required to be collected by the Office of the New York State Comptroller.<sup>33</sup> Justices are required to report fines, fees, and surcharges to the Comptroller so that the Comptroller is able to distribute fees. However, the Comptroller does not require justices to separately report the number of summary proceedings in their courts (although many justices do anyway because a specific filing entry is affiliated with summary proceedings). Gathering this information could benefit statewide efforts geared toward understanding the scope and volume of summary proceedings. Thus, going forward, Town and Village Courts should be required to separately report the number of summary proceedings over which they presided.

### **V. CONCLUSION**

This Report presents several potential solutions to issues that frequently arise in summary proceedings in Town and Village Courts. We believe all are worthy of consideration. However, our recommended first step is distribution of the appended reference guide through avenues that will reach Town and Village Court justices.<sup>34</sup> More than anything else, we feel there is a pressing need for a clear and accessible statement of the standards governing summary proceedings in justice courts – and we believe that the appended guide addresses this need.

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<sup>33</sup> See Exhibit “A” for Comptroller’s Report, which provides ONLY the number of summary proceedings for those towns and villages that file separately; the totals, therefore, greatly understate the number of summary proceedings. Modern Courts also sought the information from the NYS Sheriff’s Association. Warrants of evictions forwarded to the Sheriff’s offices are ordered from various courts, establishing a number of summary proceedings in Town and Village courts is not obtainable using Sheriff’s data, attached hereto as Exhibit “E”.

<sup>34</sup> For example, the Magistrates Association might be willing to publish it on their website and in their magazine, and/or make it available in administrative offices in local districts.

# EXHIBIT “A”

Note: The Comptroller's Report on the number of summary proceedings in Town and Village Courts does not include those summary proceedings in Towns and Villages that do not report summary proceedings separately from other civil cases. The names of many Towns and Viilages, therefore, are not included in the report.

NEW YORK STATE  
OFFICE OF THE STATE COMPTROLLER  
Request of Number of Summary Proceedings reported 2011 and 2012  
FOIL 2012-306

Prepared 8/1/2012

**2011**

County	Town/Village	# of Summary Proceedings Reported 2011
ALBANY	Town of Berne	1
ALBANY	Town of Bethlehem	18
ALBANY	Town of Coeymans	26
ALBANY	Town of Colonie	234
ALBANY	Town of Green Island	19
ALBANY	Town of New Scotland	8
ALBANY	Village of Altamont	7
ALBANY	Village of Menands	1
ALBANY	Village of Ravena	72
ALBANY	Village of Voorheesville	5
	<b>ALBANY Total</b>	<b>391</b>
ALLEGANY	Town of Alma	1
ALLEGANY	Town of Amity	5
ALLEGANY	Town of Angelica	2
ALLEGANY	Town of Belfast	2
ALLEGANY	Town of Caneadea	2
ALLEGANY	Town of Cuba	12
ALLEGANY	Town of Friendship	18
ALLEGANY	Town of Scio	8
ALLEGANY	Town of Wellsville	25
ALLEGANY	Town of Willing	1
ALLEGANY	Village of Andover	1
ALLEGANY	Village of Angelica	1
ALLEGANY	Village of Belmont	5
ALLEGANY	Village of Bolivar	2
ALLEGANY	Village of Wellsville	1
	<b>ALLEGANY Total</b>	<b>86</b>
BROOME	Town of Barker	1
BROOME	Town of Chenango	38
BROOME	Town of Colesville	10
BROOME	Town of Conklin	28
BROOME	Town of Dickinson	19
BROOME	Town of Fenton	1
BROOME	Town of Kirkwood	33
BROOME	Town of Lisle	8
BROOME	Town of Maine	39
BROOME	Town of Nanticoke	26

BROOME	Town of Triangle	6
BROOME	Town of Union	813
BROOME	Town of Vestal	25
BROOME	Town of Windsor	25
BROOME	Village of Endicott	18
BROOME	Village of Johnson City	49
<b>BROOME Total</b>		<b>1139</b>
CATTARAUGUS	Town of Allegany	13
CATTARAUGUS	Town of Ellicottville	1
CATTARAUGUS	Town of Farmersville	1
CATTARAUGUS	Town of Franklinville	2
CATTARAUGUS	Town of Freedom	1
CATTARAUGUS	Town of Great Valley	1
CATTARAUGUS	Town of Little Valley	1
CATTARAUGUS	Town of Lyndon	3
CATTARAUGUS	Town of Napoli	1
CATTARAUGUS	Town of Olean	2
CATTARAUGUS	Town of Persia	2
CATTARAUGUS	Town of Portville	5
CATTARAUGUS	Town of Randolph	14
CATTARAUGUS	Village of Ellicottville	1
CATTARAUGUS	Village of Portville	3
CATTARAUGUS	Village of South Dayton	5
<b>CATTARAUGUS Total</b>		<b>56</b>
CAYUGA	Town of Aurelius	5
CAYUGA	Town of Brutus	13
CAYUGA	Town of Cato	3
CAYUGA	Town of Conquest	2
CAYUGA	Town of Genoa	1
CAYUGA	Town of Locke	3
CAYUGA	Town of Moravia	17
CAYUGA	Town of Owasco	2
CAYUGA	Town of Sennett	1
CAYUGA	Town of Summerhill	1
CAYUGA	Village of Meridian	1
CAYUGA	Village of Moravia	1
CAYUGA	Village of Weedsport	4
<b>CAYUGA Total</b>		<b>54</b>
CHAUTAUQUA	Town of Arkwright	2
CHAUTAUQUA	Town of Busti	8
CHAUTAUQUA	Town of Charlotte	3
CHAUTAUQUA	Town of Dunkirk	12
CHAUTAUQUA	Town of Ellery	6
CHAUTAUQUA	Town of Ellicott	13
CHAUTAUQUA	Town of Ellington	2
CHAUTAUQUA	Town of North Harmony	2
CHAUTAUQUA	Town of Pomfret	2

CHAUTAUQUA	Town of Ripley	3
CHAUTAUQUA	Town of Stockton	2
CHAUTAUQUA	Town of Villenova	1
CHAUTAUQUA	Town of Westfield	2
CHAUTAUQUA	Village of Westfield	3
<b>CHAUTAUQUA Total</b>		<b>61</b>
CHEMUNG	Town of Ashland	22
CHEMUNG	Town of Big Flats	4
CHEMUNG	Town of Catlin	2
CHEMUNG	Town of Chemung	2
CHEMUNG	Town of Elmira	8
CHEMUNG	Town of Erin	1
CHEMUNG	Town of Horseheads	18
CHEMUNG	Town of Southport	54
CHEMUNG	Town of Van Etten	5
CHEMUNG	Village of Elmira Heights	42
CHEMUNG	Village of Horseheads	12
<b>CHEMUNG Total</b>		<b>170</b>
CHENANGO	Town of Columbus	1
CHENANGO	Town of Greene	1
CHENANGO	Town of Guilford	2
CHENANGO	Town of New Berlin	2
CHENANGO	Town of Oxford	2
CHENANGO	Town of Pitcher	1
CHENANGO	Town of Plymouth	1
CHENANGO	Town of Sherburne	1
CHENANGO	Village of Greene	1
CHENANGO	Village of Oxford	10
CHENANGO	Village of Sherburne	2
<b>CHENANGO Total</b>		<b>24</b>
CLINTON	Town of Altona	1
CLINTON	Town of Ausable	24
CLINTON	Town of Black Brook	3
CLINTON	Town of Champlain	11
CLINTON	Town of Chazy	7
CLINTON	Town of Ellenburg	2
CLINTON	Town of Mooers	2
CLINTON	Town of Peru	11
CLINTON	Town of Plattsburgh	81
CLINTON	Town of Saranac	6
CLINTON	Village of Dannemora	1
CLINTON	Village of Rouses Point	7
<b>CLINTON Total</b>		<b>156</b>
COLUMBIA	Town of Ancram	2
COLUMBIA	Town of Austerlitz	1
COLUMBIA	Town of Canaan	2
COLUMBIA	Town of Claverack	15

COLUMBIA	Town of Copake	12
COLUMBIA	Town of Gallatin	4
COLUMBIA	Town of Germantown	4
COLUMBIA	Town of Greenport	16
COLUMBIA	Town of Kinderhook	9
COLUMBIA	Town of Livingston	4
COLUMBIA	Town of New Lebanon	6
COLUMBIA	Town of Stockport	17
COLUMBIA	Town of Stuyvesant	12
COLUMBIA	Town of Taghkanic	3
COLUMBIA	Village of Philmont	27
<b>COLUMBIA Total</b>		<b>134</b>
CORTLAND	Town of Cortlandville	79
CORTLAND	Town of Cuyler	2
CORTLAND	Town of Harford	2
CORTLAND	Town of Homer	13
CORTLAND	Town of Preble	5
CORTLAND	Town of Scott	1
CORTLAND	Town of Solon	1
CORTLAND	Town of Virgil	1
<b>CORTLAND Total</b>		<b>104</b>
DELAWARE	Town of Colchester	2
DELAWARE	Town of Davenport	12
DELAWARE	Town of Delhi	3
DELAWARE	Town of Harpersfield	1
DELAWARE	Town of Kortright	2
DELAWARE	Town of Meredith	1
DELAWARE	Town of Middletown	12
DELAWARE	Town of Sidney	3
DELAWARE	Town of Stamford	5
DELAWARE	Town of Walton	2
DELAWARE	Village of Sidney	29
DELAWARE	Village of Stamford	2
DELAWARE	Village of Walton	31
<b>DELAWARE Total</b>		<b>105</b>
DUTCHESS	Town of Amenia	18
DUTCHESS	Town of Beekman	14
DUTCHESS	Town of Clinton	3
DUTCHESS	Town of Dover	5
DUTCHESS	Town of East Fishkill	9
DUTCHESS	Town of Fishkill	30
DUTCHESS	Town of Hyde Park	158
DUTCHESS	Town of La Grange	49
DUTCHESS	Town of Milan	3
DUTCHESS	Town of North East	17
DUTCHESS	Town of Pawling	14
DUTCHESS	Town of Pine Plains	15

DUTCHESS	Town of Red Hook	1
DUTCHESS	Town of Rhinebeck	1
DUTCHESS	Town of Stanford	4
DUTCHESS	Town of Union Vale	4
DUTCHESS	Town of Washington	2
DUTCHESS	Village of Millbrook	1
DUTCHESS	Village of Pawling	4
DUTCHESS	Village of Rhinebeck	3
DUTCHESS	Village of Wappingers Falls	3
<b>DUTCHESS Total</b>		<b>358</b>
ERIE	Town of Amherst	297
ERIE	Town of Boston	12
ERIE	Town of Brant	2
ERIE	Town of Colden	1
ERIE	Town of Collins	3
ERIE	Town of Concord	3
ERIE	Town of Eden	2
ERIE	Town of Evans	17
ERIE	Town of Hamburg	207
ERIE	Town of Holland	4
ERIE	Town of Marilla	41
ERIE	Town of North Collins	1
ERIE	Town of Wales	5
ERIE	Village of Akron	1
ERIE	Village of Angola	5
ERIE	Village of Blasdell	6
ERIE	Village of Hamburg	5
ERIE	Village of Kenmore	9
ERIE	Village of Lancaster	1
ERIE	Village of Springville	11
ERIE	Village of Williamsville	4
<b>ERIE Total</b>		<b>637</b>
ESSEX	Town of Chesterfield	8
ESSEX	Town of Crown Point	6
ESSEX	Town of Essex	1
ESSEX	Town of Jay	4
ESSEX	Town of North Elba	10
ESSEX	Town of Schroon	1
ESSEX	Town of Ticonderoga	12
ESSEX	Town of Westport	1
ESSEX	Town of Willsboro	1
ESSEX	Town of Wilmington	3
ESSEX	Village of Lake Placid	13
<b>ESSEX Total</b>		<b>60</b>
FRANKLIN	Town of Bombay	2
FRANKLIN	Town of Chateaugay	1
FRANKLIN	Town of Harrietstown	12



FRANKLIN	Town of Malone	3
FRANKLIN	Town of Moira	2
FRANKLIN	Village of Saranac Lake	3
<b>FRANKLIN Total</b>		<b>23</b>
FULTON	Town of Broadalbin	7
FULTON	Town of Caroga	1
FULTON	Town of Johnstown	10
FULTON	Town of Mayfield	15
FULTON	Town of Northampton	6
FULTON	Town of Oppenheim	1
FULTON	Town of Perth	3
FULTON	Village of Broadalbin	2
<b>FULTON Total</b>		<b>45</b>
GENESEE	Town of Alabama	1
GENESEE	Town of Batavia	41
GENESEE	Town of Bergen	5
GENESEE	Town of Byron	2
GENESEE	Town of Le Roy	41
GENESEE	Town of Oakfield	12
GENESEE	Village of Corfu	1
<b>GENESEE Total</b>		<b>103</b>
GREENE	Town of Athens	11
GREENE	Town of Cairo	48
GREENE	Town of Catskill	65
GREENE	Town of Coxsackie	40
GREENE	Town of Durham	8
GREENE	Town of Halcott	1
GREENE	Town of Hunter	10
GREENE	Town of Jewett	4
GREENE	Town of New Baltimore	1
GREENE	Town of Prattsville	1
GREENE	Town of Windham	1
GREENE	Village of Catskill	71
<b>GREENE Total</b>		<b>261</b>
HAMILTON	Town of Hope	1
HAMILTON	Town of Wells	1
<b>HAMILTON Total</b>		<b>2</b>
HERKIMER	Town of Frankfort	1
HERKIMER	Town of Litchfield	1
HERKIMER	Town of Manheim	7
HERKIMER	Town of Russia	2
HERKIMER	Town of Salisbury	1
HERKIMER	Town of Schuyler	22
HERKIMER	Town of Warren	1
HERKIMER	Town of Webb	2
HERKIMER	Town of Winfield	1
HERKIMER	Village of Herkimer	16

<b>HERKIMER Total</b>		<b>54</b>
JEFFERSON	Town of Adams	17
JEFFERSON	Town of Alexandria	1
JEFFERSON	Town of Antwerp	1
JEFFERSON	Town of Brownville	11
JEFFERSON	Town of Champion	4
JEFFERSON	Town of Clayton	1
JEFFERSON	Town of Henderson	1
JEFFERSON	Town of Hounsfield	6
JEFFERSON	Town of Le Ray	38
JEFFERSON	Town of Orleans	4
JEFFERSON	Town of Pamela	4
JEFFERSON	Town of Rodman	5
JEFFERSON	Town of Rutland	1
JEFFERSON	Town of Watertown	50
JEFFERSON	Town of Wilna	8
JEFFERSON	Village of Adams	8
JEFFERSON	Village of Alexandria Bay	7
JEFFERSON	Village of Brownville	1
JEFFERSON	Village of Carthage	10
JEFFERSON	Village of Clayton	3
JEFFERSON	Village of Dexter	2
JEFFERSON	Village of Theresa	1
<b>JEFFERSON Total</b>		<b>184</b>
LEWIS	Town of Croghan	5
LEWIS	Town of Diana	2
LEWIS	Town of Leyden	1
LEWIS	Town of Lowville	1
LEWIS	Town of Martinsburg	2
LEWIS	Town of New Bremen	1
LEWIS	Town of Watson	1
LEWIS	Village of Port Leyden	3
<b>LEWIS Total</b>		<b>16</b>
LIVINGSTON	Town of Avon	16
LIVINGSTON	Town of Caledonia	7
LIVINGSTON	Town of Groveland	1
LIVINGSTON	Town of Leicester	9
LIVINGSTON	Town of Lima	19
LIVINGSTON	Town of Livonia	24
LIVINGSTON	Town of Mount Morris	1
LIVINGSTON	Town of North Dansville	1
LIVINGSTON	Town of Nunda	6
LIVINGSTON	Town of West Sparta	1
LIVINGSTON	Town of York	3
LIVINGSTON	Village of Avon	7
LIVINGSTON	Village of Caledonia	3
LIVINGSTON	Village of Dansville	28

LIVINGSTON	Village of Mount Morris	6
LIVINGSTON	Village of Nunda	5
<b>LIVINGSTON Total</b>		<b>137</b>
MADISON	Town of De Ruyter	1
MADISON	Town of Hamilton	2
MADISON	Town of Lenox	17
MADISON	Town of Madison	3
MADISON	Town of Stockbridge	2
MADISON	Town of Sullivan	8
MADISON	Village of Canastota	38
MADISON	Village of Cazenovia	2
MADISON	Village of Chittenango	8
MADISON	Village of Hamilton	1
<b>MADISON Total</b>		<b>82</b>
MONROE	Town of Brighton	108
MONROE	Town of Chili	184
MONROE	Town of East Rochester	2
MONROE	Town of Irondequoit	1
MONROE	Town of Ogden	1
MONROE	Town of Perinton	180
MONROE	Town of Pittsford	7
MONROE	Town of Riga	7
MONROE	Town of Wheatland	30
MONROE	Village of Fairport	24
MONROE	Village of Honeoye Falls	2
<b>MONROE Total</b>		<b>546</b>
MONTGOMERY	Town of Amsterdam	6
MONTGOMERY	Town of Canajoharie	3
MONTGOMERY	Town of Charleston	1
MONTGOMERY	Town of Glen	1
MONTGOMERY	Town of Minden	9
MONTGOMERY	Town of Palatine	4
MONTGOMERY	Town of Root	1
MONTGOMERY	Town of St Johnsville	1
MONTGOMERY	Village of Canajoharie	16
MONTGOMERY	Village of Fultonville	1
MONTGOMERY	Village of St. Johnsville	9
<b>MONTGOMERY Total</b>		<b>52</b>
NIAGARA	Town of Cambria	17
NIAGARA	Town of Hartland	8
NIAGARA	Town of Newfane	32
NIAGARA	Town of Niagara	143
NIAGARA	Town of Pendleton	2
NIAGARA	Town of Porter	6
NIAGARA	Town of Royalton	14
NIAGARA	Town of Somerset	3
NIAGARA	Town of Wheatfield	19

NIAGARA	Town of Wilson	37
<b>NIAGARA Total</b>		<b>281</b>
ONEIDA	Town of Annsville	12
ONEIDA	Town of Boonville	3
ONEIDA	Town of Bridgewater	1
ONEIDA	Town of Camden	9
ONEIDA	Town of Deerfield	1
ONEIDA	Town of Floyd	1
ONEIDA	Town of Forestport	1
ONEIDA	Town of Kirkland	1
ONEIDA	Town of Lee	12
ONEIDA	Town of New Hartford	26
ONEIDA	Town of Trenton	1
ONEIDA	Town of Vernon	11
ONEIDA	Town of Verona	1
ONEIDA	Town of Vienna	6
ONEIDA	Town of Westmoreland	6
ONEIDA	Village of New York Mills	1
ONEIDA	Village of Sylvan Beach	6
ONEIDA	Village of Waterville	3
<b>ONEIDA Total</b>		<b>102</b>
ONONDAGA	Town of Camillus	40
ONONDAGA	Town of De Witt	20
ONONDAGA	Town of Elbridge	21
ONONDAGA	Town of Geddes	7
ONONDAGA	Town of Lysander	21
ONONDAGA	Town of Manlius	29
ONONDAGA	Town of Marcellus	14
ONONDAGA	Town of Onondaga	1
ONONDAGA	Town of Otisco	2
ONONDAGA	Town of Salina	224
ONONDAGA	Town of Skaneateles	3
ONONDAGA	Town of Tully	3
ONONDAGA	Village of East Syracuse	28
ONONDAGA	Village of Fayetteville	16
ONONDAGA	Village of Liverpool	2
ONONDAGA	Village of Manlius	14
ONONDAGA	Village of Minoa	1
ONONDAGA	Village of Solvay	66
<b>ONONDAGA Total</b>		<b>512</b>
ONTARIO	Town of Canadice	3
ONTARIO	Town of Canandaigua	58
ONTARIO	Town of East Bloomfield	7
ONTARIO	Town of Farmington	81
ONTARIO	Town of Geneva	2
ONTARIO	Town of Gorham	5
ONTARIO	Town of Hopewell	26

ONTARIO	Town of Manchester	18
ONTARIO	Town of Naples	1
ONTARIO	Town of Richmond	14
ONTARIO	Town of Victor	20
ONTARIO	Town of West Bloomfield	1
<b>ONTARIO Total</b>		<b>236</b>
ORANGE	Town of Cornwall	46
ORANGE	Town of Crawford	20
ORANGE	Town of Deepark	20
ORANGE	Town of Goshen	1
ORANGE	Town of Greenville	9
ORANGE	Town of Hamptonburgh	15
ORANGE	Town of Highlands	28
ORANGE	Town of Minisink	6
ORANGE	Town of Monroe	2
ORANGE	Town of Montgomery	85
ORANGE	Town of Mount Hope	1
ORANGE	Town of Newburgh	77
ORANGE	Town of New Windsor	198
ORANGE	Town of Wallkill	62
ORANGE	Town of Warwick	12
ORANGE	Village of Goshen	53
ORANGE	Village of Greenwood Lake	20
ORANGE	Village of Maybrook	2
ORANGE	Village of Monroe	22
ORANGE	Village of Montgomery	6
ORANGE	Village of Unionville	3
ORANGE	Village of Walden	60
ORANGE	Village of Washingtonville	7
<b>ORANGE Total</b>		<b>755</b>
ORLEANS	Town of Carlton	1
ORLEANS	Town of Clarendon	9
ORLEANS	Town of Gaines	16
ORLEANS	Town of Murray	5
ORLEANS	Town of Ridgeway	48
ORLEANS	Town of Shelby	19
ORLEANS	Town of Yates	2
<b>ORLEANS Total</b>		<b>100</b>
OSWEGO	Town of Albion	2
OSWEGO	Town of Amboy	1
OSWEGO	Town of Constantia	6
OSWEGO	Town of Hannibal	39
OSWEGO	Town of Hastings	34
OSWEGO	Town of Mexico	1
OSWEGO	Town of Minetto	2
OSWEGO	Town of Oswego	5
OSWEGO	Town of Palermo	4

OSWEGO	Town of Redfield	2
OSWEGO	Town of Richland	9
OSWEGO	Town of Sandy Creek	4
OSWEGO	Town of Schroepfel	84
OSWEGO	Town of Scriba	39
OSWEGO	Town of Volney	18
OSWEGO	Town of West Monroe	4
OSWEGO	Village of Pulaski	9
	<b>OSWEGO Total</b>	<b>263</b>
OTSEGO	Town of Cherry Valley	1
OTSEGO	Town of Decatur	1
OTSEGO	Town of Exeter	2
OTSEGO	Town of Hartwick	2
OTSEGO	Town of Laurens	6
OTSEGO	Town of Middlefield	1
OTSEGO	Town of Milford	8
OTSEGO	Town of Morris	1
OTSEGO	Town of Oneonta	9
OTSEGO	Town of Otego	10
OTSEGO	Town of Otsego	1
OTSEGO	Town of Richfield	1
OTSEGO	Town of Unadilla	5
OTSEGO	Town of Worcester	6
OTSEGO	Village of Cooperstown	3
OTSEGO	Village of Richfield Springs	2
	<b>OTSEGO Total</b>	<b>59</b>
PUTNAM	Town of Carmel	8
PUTNAM	Town of Kent	15
PUTNAM	Town of Patterson	23
PUTNAM	Town of Southeast	19
PUTNAM	Village of Brewster	9
PUTNAM	Village of Cold Spring	1
	<b>PUTNAM Total</b>	<b>75</b>
RENSSELAER	Town of Brunswick	3
RENSSELAER	Town of East Greenbush	48
RENSSELAER	Town of Hoosick	5
RENSSELAER	Town of Nassau	1
RENSSELAER	Town of North Greenbush	18
RENSSELAER	Town of Pittstown	8
RENSSELAER	Town of Sand Lake	16
RENSSELAER	Town of Schaghticoke	15
RENSSELAER	Town of Schodack	11
RENSSELAER	Town of Stephentown	8
RENSSELAER	Village of Castleton-On-Hudson	13

RENSSELAER	Village of Hoosick Falls	18
RENSSELAER	Village of Nassau	1
<b>RENSSELAER Total</b>		<b>165</b>
ROCKLAND	Town of Clarkstown	271
ROCKLAND	Town of Orangetown	61
ROCKLAND	Town of Stony Point	33
ROCKLAND	Village of Chestnut Ridge	2
ROCKLAND	Village of Haverstraw	1
ROCKLAND	Village of Nyack	73
ROCKLAND	Village of Piermont	3
ROCKLAND	Village of South Nyack	13
ROCKLAND	Village of Suffern	17
ROCKLAND	Village of West Haverstraw	66
<b>ROCKLAND Total</b>		<b>540</b>
ST.LAWRENCE	Town of Clifton	1
ST.LAWRENCE	Town of Colton	1
ST.LAWRENCE	Town of Gouverneur	22
ST.LAWRENCE	Town of Hammond	1
ST.LAWRENCE	Town of Hermon	1
ST.LAWRENCE	Town of Lawrence	1
ST.LAWRENCE	Town of Lisbon	5
ST.LAWRENCE	Town of Madrid	3
ST.LAWRENCE	Town of Morristown	4
ST.LAWRENCE	Town of Norfolk	13
ST.LAWRENCE	Town of Oswegatchie	8
ST.LAWRENCE	Town of Parishville	1
ST.LAWRENCE	Town of Pierrepont	3
ST.LAWRENCE	Town of Pitcairn	1
ST.LAWRENCE	Town of Stockholm	12
ST.LAWRENCE	Town of Waddington	1
ST.LAWRENCE	Village of Potsdam	7
<b>ST.LAWRENCE Total</b>		<b>85</b>
SARATOGA	Town of Ballston	7
SARATOGA	Town of Charlton	1
SARATOGA	Town of Clifton Park	149
SARATOGA	Town of Corinth	34
SARATOGA	Town of Day	3
SARATOGA	Town of Galway	8
SARATOGA	Town of Greenfield	1
SARATOGA	Town of Hadley	6
SARATOGA	Town of Halfmoon	344
SARATOGA	Town of Malta	98
SARATOGA	Town of Milton	157
SARATOGA	Town of Moreau	87
SARATOGA	Town of Northumberland	8
SARATOGA	Town of Providence	1

SARATOGA	Town of Saratoga	18
SARATOGA	Town of Stillwater	18
SARATOGA	Town of Waterford	24
SARATOGA	Town of Wilton	115
SARATOGA	Village of Ballston Spa	34
<b>SARATOGA Total</b>		<b>1113</b>
SCHENECTADY	Town of Niskayuna	34
SCHENECTADY	Town of Princetown	2
SCHENECTADY	Town of Rotterdam	3
SCHENECTADY	Village of Scotia	37
<b>SCHENECTADY Total</b>		<b>76</b>
SCHOHARIE	Town of Esperance	11
SCHOHARIE	Town of Jefferson	4
SCHOHARIE	Town of Middleburgh	8
SCHOHARIE	Town of Schoharie	18
SCHOHARIE	Town of Sharon	1
SCHOHARIE	Village of Schoharie	1
<b>SCHOHARIE Total</b>		<b>43</b>
SCHUYLER	Town of Hector	2
SCHUYLER	Town of Reading	1
SCHUYLER	Town of Tyrone	16
SCHUYLER	Village of Watkins Glen	6
<b>SCHUYLER Total</b>		<b>25</b>
SENECA	Town of Covert	2
SENECA	Town of Fayette	1
SENECA	Town of Junius	1
SENECA	Town of Lodi	3
SENECA	Town of Ovid	3
SENECA	Town of Seneca Falls	89
SENECA	Town of Tyre	1
SENECA	Town of Varick	1
SENECA	Town of Waterloo	30
<b>SENECA Total</b>		<b>131</b>
STEUBEN	Town of Avoca	7
STEUBEN	Town of Bath	29
STEUBEN	Town of Bradford	3
STEUBEN	Town of Campbell	3
STEUBEN	Town of Caton	3
STEUBEN	Town of Corning	5
STEUBEN	Town of Erwin	21
STEUBEN	Town of Fremont	4
STEUBEN	Town of Hornby	2
STEUBEN	Town of Hornellsville	3
STEUBEN	Town of Lindley	2
STEUBEN	Town of Prattsburgh	2
STEUBEN	Town of Pulteney	1



STEUBEN	Town of Thurston	2
STEUBEN	Town of Urbana	6
STEUBEN	Town of Wheeler	2
STEUBEN	Village of Bath	70
STEUBEN	Village of Canisteo	6
STEUBEN	Village of Cohocton	1
<b>STEUBEN Total</b>		<b>172</b>
SUFFOLK	Town of East Hampton	60
SUFFOLK	Town of Shelter Island	4
SUFFOLK	Town of Southampton	273
SUFFOLK	Town of Southold	16
SUFFOLK	Village of Sag Harbor	8
SUFFOLK	Village of Westhampton Beach	4
<b>SUFFOLK Total</b>		<b>365</b>
SULLIVAN	Town of Bethel	1
SULLIVAN	Town of Callicoon	11
SULLIVAN	Town of Delaware	4
SULLIVAN	Town of Fallsburg	7
SULLIVAN	Town of Forestburgh	4
SULLIVAN	Town of Highland	6
SULLIVAN	Town of Liberty	137
SULLIVAN	Town of Lumberland	13
SULLIVAN	Town of Mamakating	2
SULLIVAN	Town of Neversink	9
SULLIVAN	Town of Tusten	6
SULLIVAN	Village of Bloomingburg	1
SULLIVAN	Village of Liberty	12
SULLIVAN	Village of Woodridge	2
<b>SULLIVAN Total</b>		<b>215</b>
TIOGA	Town of Barton	20
TIOGA	Town of Candor	8
TIOGA	Town of Nichols	7
TIOGA	Town of Owego	76
TIOGA	Town of Spencer	5
TIOGA	Town of Tioga	5
TIOGA	Village of Candor	1
TIOGA	Village of Spencer	6
TIOGA	Village of Waverly	33
<b>TIOGA Total</b>		<b>161</b>
TOMPKINS	Town of Caroline	2
TOMPKINS	Town of Dryden	107
TOMPKINS	Town of Enfield	20
TOMPKINS	Town of Groton	27
TOMPKINS	Town of Ithaca	34
TOMPKINS	Town of Lansing	38
TOMPKINS	Town of Newfield	15

TOMPKINS	Town of Ulysses	19
<b>TOMPKINS Total</b>		<b>262</b>
ULSTER	Town of Esopus	44
ULSTER	Town of Gardiner	7
ULSTER	Town of Kingston	2
ULSTER	Town of Lloyd	52
ULSTER	Town of Marbletown	20
ULSTER	Town of New Paltz	4
ULSTER	Town of Olive	7
ULSTER	Town of Plattekill	92
ULSTER	Town of Rochester	21
ULSTER	Town of Rosendale	17
ULSTER	Town of Saugerties	10
ULSTER	Town of Shandaken	2
ULSTER	Town of Shawangunk	48
ULSTER	Town of Ulster	27
ULSTER	Town of Wawarsing	33
ULSTER	Town of Woodstock	18
ULSTER	Village of Ellenville	12
<b>ULSTER Total</b>		<b>416</b>
WARREN	Town of Bolton	4
WARREN	Town of Chester	1
WARREN	Town of Johnsbury	5
WARREN	Town of Lake George	18
WARREN	Town of Queensbury	168
WARREN	Town of Thurman	1
WARREN	Town of Warrensburg	35
<b>WARREN Total</b>		<b>232</b>
WASHINGTON	Town of Argyle	9
WASHINGTON	Town of Dresden	1
WASHINGTON	Town of Easton	2
WASHINGTON	Town of Fort Ann	8
WASHINGTON	Town of Fort Edward	28
WASHINGTON	Town of Granville	11
WASHINGTON	Town of Hartford	3
WASHINGTON	Town of Hebron	1
WASHINGTON	Town of Jackson	5
WASHINGTON	Town of Kingsbury	35
WASHINGTON	Town of White Creek	5
WASHINGTON	Town of Whitehall	35
WASHINGTON	Village of Cambridge	3
WASHINGTON	Village of Fort Edward	63
WASHINGTON	Village of Granville	10
WASHINGTON	Village of Greenwich	2
WASHINGTON	Village of Hudson Falls	115
WASHINGTON	Village of Whitehall	4
<b>WASHINGTON Total</b>		<b>340</b>

WAYNE	Town of Arcadia	17
WAYNE	Town of Galen	23
WAYNE	Town of Macedon	101
WAYNE	Town of Marion	13
WAYNE	Town of Ontario	21
WAYNE	Town of Palmyra	39
WAYNE	Town of Rose	1
WAYNE	Town of Savannah	3
WAYNE	Town of Sodus	42
WAYNE	Town of Walworth	1
WAYNE	Town of Williamson	33
WAYNE	Town of Wolcott	8
WAYNE	Village of Macedon	4
WAYNE	Village of Palmyra	33
WAYNE	Village of Wolcott	10
<b>WAYNE Total</b>		<b>349</b>
WESTCHESTER	Town of Bedford	16
WESTCHESTER	Town of Eastchester	50
WESTCHESTER	Town of Greenburgh	14
WESTCHESTER	Town of Harrison	63
WESTCHESTER	Town of Lewisboro	12
WESTCHESTER	Town of Mamaroneck	44
WESTCHESTER	Town of Mount Kisco	57
WESTCHESTER	Town of New Castle	8
WESTCHESTER	Town of North Castle	15
WESTCHESTER	Town of Ossining	328
WESTCHESTER	Town of Pelham	71
WESTCHESTER	Town of Pound Ridge	2
WESTCHESTER	Town of Yorktown	57
WESTCHESTER	Village of Ardsley	6
WESTCHESTER	Village of Briarcliff Manor	5
WESTCHESTER	Village of Bronxville	3
WESTCHESTER	Village of Croton-On-Hudson	26
WESTCHESTER	Village of Elmsford	32
WESTCHESTER	Village of Irvington	12
WESTCHESTER	Village of Mamaroneck	85
WESTCHESTER	Village of Ossining	12
WESTCHESTER	Village of Pleasantville	14
WESTCHESTER	Village of Port Chester	43
WESTCHESTER	Village of Scarsdale	9
WESTCHESTER	Village of Tuckahoe	9
<b>WESTCHESTER Total</b>		<b>993</b>
WYOMING	Town of Arcade	1
WYOMING	Town of Castile	4
WYOMING	Town of Middlebury	1
WYOMING	Village of Arcade	5

WYOMING	Village of Silver Springs	1
WYOMING	Village of Warsaw	6
<b>WYOMING Total</b>		<b>18</b>
YATES	Town of Jerusalem	1
YATES	Town of Potter	1
YATES	Village of Dundee	23
YATES	Village of Penn Yan	34
<b>YATES Total</b>		<b>59</b>
<b>2011 Grand Total</b>		<b>13183</b>

Source: JCAPPS Production Oracle database

# EXHIBIT “B”

**SUMMARY OF INTERVIEWS WITH ATTORNEYS  
WHO PRACTICE IN JUSTICE COURTS**

**Areas of Concerns and Recommendations**

**Areas of Concern**

[Attorney] mentioned many problems that plague the town and village court system. The first issue she mentioned was that the procedure of the court made it so that communication with the clerk was difficult. An example of this was that the clerk sits in the court room with the justice and so cannot receive faxes during proceedings. Further, some clerks will hold personal grudges which can result in a lack of access to civil dockets.

[Attorney] also mentioned that judges do not always know the law. For example, even though you are only allowed to look to rent payment in a nonpayment case, the judges will allow the landlord to look for security and utilities.

[Attorney] explained that dismissals aren't always in the best interest of her clients due to their living situation. Thus, even if the tenant has a valid case yet needs time to gather evidence, the client will be reluctant to take the time because they may or may not have a place to stay. Due to this, many of her cases end up settling.

[Attorney] believes that the biggest problems are the tenants' lack of knowledge as to their rights and obligations and the lack of expertise on the bench.

Finally, [Attorney] noted that despite the fact that all judges in the east end are attorneys, they aren't experts in landlord tenant law because they see a wide variety of cases every year, and landlord tenant cases are the minority. This leads to deficiencies in how the cases are handled.

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**Areas of Concern**

[Attorney] mentioned many problems that plague the town and village court system. The first issue he mentioned was that judges simply do not care about the law. In one case, a judge openly said of the respondent, "these people are bums." While the introduction of recordings helped judges to feel more accountable, it has not ended the problem.

On the issue of representation, [Attorney] noted that clerks do sometimes refer respondents to legal services.

[Attorney] also mentioned that many of the issues he sees in summary eviction procedures deal with service. Judges do not know the requirements of proper service and therefore do not enforce them. In many instances, petitioners are permitted to appear in court

and file all the papers on the same day, though this is not supposed to happen. In addition, [Attorney] pointed out that the confusion of landlords often leads to ex parte communications. He specifically discussed a case in which the landlord did not give proper notice of petition and he pointed this out to the judge who said, "we always do it this way." The judge ended up advising the landlord on how to give proper notice, and when [Attorney] looked shocked, the judge remarked, "do you have a problem with this?"

[Attorney] explained that many court clerks still insist that litigants and their attorneys have no right to the court papers. If they are willing to give access to the papers, it is still difficult because the courts are not open very long and are often far away. [Attorney] mentioned a court that is only open from 11:30AM-1:00PM and is a few hours drive from him.

Finally, [Attorney] noted that since these are summary proceedings, very few go to trial. Often times, the parties simply settle because the tenant also wants to get out of the lease but does not want to pay, and the landlord just wants the tenant out.

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**Areas of Concern**

[Attorney] notes that tenants are often confused by the three-day notice, which they mistake for a warrant of eviction.

[Attorney] observes that many courts treat landlords more leniently than tenants. For example, if a landlord is late to court, the judge will often wait. However, the judge will not wait if a tenant is late. Furthermore, the court will often speak with an opposing party's attorney ex parte.

[Attorney] believes docket access is an issue. Many court clerks apparently do not believe that it is their responsibility to provide parties with copies of the record. Some clerks believe that judicial approval is required in order to release the record.

[Attorney] disputes the contention that newer judges are more conscientious than older judges.

According to [Attorney], many judges also erroneously believe that landlords are entitled to attorneys fees.

[Attorney] is not particularly confident in the hotline that many judges use. According to him, even after consulting the hotline, judges get issues of law wrong about fifty percent of the time. He is unsure whether this is a result of bad advice from the hotline or judicial misinterpretation of good advice.

[Attorney] stresses the importance of counsel in summary proceedings. He witnessed two proceedings: one at which an attorney raised a defense, which was successful, and a second at which a pro se respondent raised the same defense with no success.

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**Areas of Special Concern**

[Attorney] believes the primary difficulty is that there is a tension between the purpose of the town and village courts, which is to provide an informal forum for the airing of grievances between fairly unsophisticated parties, and the rigid, statute-dictated procedure required in summary evictions. This tension is often resolved by a judge ignoring the law.

- Case. The petitioner submitted a deed showing that the property was in fact owned by petitioner’s mother. This meant the petitioner had no standing to bring a summary eviction. The judge ignored this argument and was overturned on appeal.
- Case. A petitioner came in seeking to initiate a summary eviction proceeding. The judge heard him the same day and granted a warrant of eviction the same day. The respondent was never notified nor given any opportunity to be heard.
- Case. In a case handled by [Attorney] colleague, a judge implicitly condoned threats made by the petitioner against the respondent. A judicial conduct complaint was filed and that judge has been removed.
- Case. In another case handled by [Attorney] colleague, the petitioner raised many baseless allegations. When the respondent’s attorney requested a hearing, the judge denied the request and summarily issued a warrant of eviction.
- Case. In a nonpayment case, the respondent paid the rent determined by the court to have been due, but the court still wanted to evict the respondent.

In [Attorney] experience, it is very difficult to obtain access to court records. Town and village courts meet only sporadically and there is often no reliable clerk to handle records requests.

[Attorney] notes that because traffic tickets are a large source of revenue for municipalities, the criminal docket of town and village courts often takes priority over landlord-tenant cases.

[Attorney] notes that justices and their clerks often have special solicitude for landlords. A landlord who comes in early to the courtroom will be told by the clerk how things work in the courtroom. Justices will schedule court sessions around a landlord’s schedule. In one instance, [Attorney] had to attend a court session on Martin Luther King’s holiday because the court scheduled that time for the landlord’s convenience.

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**Areas of Concern**

[Attorney] emphasized a number of concerns relating to summary proceedings.



First, he explained that, even though OCA provides training on summary proceedings, these proceedings are difficult for the judges to handle because they do not see them very often, unlike the traffic violations that fill the docket. Summary evictions are therefore foreign to these judges, and if attorneys are not present, the judges seem to have zero guidance whatsoever.

[Attorney] then outlined how the structure of town and village courts does not fit well with summary proceedings. More specifically, summary proceedings tend to be done very quickly, which does not afford litigants the time for a proper hearing. The judges end up doing a hearing on the spot, and the tenant is not prepared. This “hearing” is not really a trial; the judge usually asks the tenant, “Do you have the money to pay today?” The judge does not ask if the tenant even owes the money or if he/she has any defenses. Judges will also issue warrants without a judgment. In addition, tenants often only have five days to respond because the RPAPL requires that notice and petition be served five days before the proceeding, which is not enough time to prepare a case.

Because of this structure, tenants are rarely served properly. For example, [Attorney] mentioned a case in which the notice was issued by the petitioner himself and it was only served on one spouse. When the tenant brought this issue to the judge’s attention, the court, which should not have had jurisdiction anyway because this was a tenant who bought the land, recessed so the judge could phone either OCA or the magistrates’ association. Upon return, the judge continued with the proceeding concluding that service was proper enough. [Attorney] noted that it is not rare for a judge to be given incorrect information from OCA.

Finally, [Attorney] explained that the courts are only open one day per week for an hour or two, which adds to the issue of proper service because landlords do not have access to proper documents or to clerks to sign the petitions. Judges rarely even have clerks and simply handle it themselves. Some attorneys are still using precepts, which were used before petitions.

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**Areas of Concern**

[Attorney] believes that a majority of judges are well-meaning and aim to follow the law. A minority of judges, however, “do not know what the law is and do not care to know what the law is.” Furthermore, [Attorney] has encountered some judges who “want to spend as little time as possible on landlord-tenant matters.” “Their goal is to get through the things as quickly as possible.”

[Attorney] has observed judges who will defer to landlords’ attorneys on issues of law about which the judges are unsure. This may be because landlords’ attorneys appear in front of these judges more frequently than tenants’ attorneys do. In [Attorney] experience, the legal help hotline that the judges use is not very helpful since it is not always available and many judges fail to use it.

[Attorney] believes lack of legal knowledge by judges is a major problem. On several occasions, he has observed the judge deny a jury trial when there is a dispute as to an issue of fact. Judges also frequently fail to appreciate that warranty of habitability issues are issues of fact that may require jury trials. More generally, [Attorney] “[doesn’t] think that [the judges] know the ins and outs of the procedure.”

[Attorney] thinks that representation by counsel is crucially important. Of tenants who are unrepresented, [Attorney] estimates that "95 percent of the time or more, it doesn't work out well for them." Tenants' chances are much improved when they have counsel present. In [Attorney] experience, many judges are willing to grant tenants adjournments to retain attorneys.

[Attorney] believes that court access and access to records is a serious problem. In his experience, "courts are open so infrequently that it's hard to get in touch." Given court hours, [Attorney] finds that it is often difficult to get records in time for them to be helpful.

In [Attorney] experience, improper service of notice is a common problem. It is not uncommon for the petitioner to serve the notice of petition, but not the petition. It is also not uncommon for petitioners to file the notice of petition and petition before either has been served. This practice is problematic because it prevents the affidavit of service from being part of the filings.

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**Areas of Special Concern**

[Attorney] identified a number of areas of special concern.

First, [Attorney] noted that many of the town justices are unfamiliar with the summary proceeding process because they handle only a few each year. By far the most common cases the justice hear are traffic violations or minor criminal cases; accordingly, most are not comfortable with even the basics of such proceedings. Additionally, justices lack guidance on the first appearance from the RPAPL, which only advises that justices have the right to adjourn for up to ten days.

Because of this lack of familiarity, mistakes get made; [Attorney] recalls a case where a town justice issued a warrant of eviction without any sort of proceeding whatsoever. The landlord approached the justice and the justice simply issued the warrant. The case was overturned on appeal by the county court, and the county court issued a decision which highlighted the basics of summary proceeding procedure. That opinion has since been heavily circulated among the town justices.

Second, [Attorney] noted that, sometimes, after a notice of petition is filed, a petition is never filed or served. In general, [Attorney] believes, justices need to be reminded of the need of procedure.

Third, [Attorney] noted that many of the problems arise because landlords initially contact the court because they themselves need guidance about what to do. In an effort to be helpful, town justices then help landlords find the necessary forms, etc to prepare a petition; as . . . puts it, the justices "open a file" for the landlords. This problem is compounded by possible conflicts of interest, since justices may rely on landlords (and their lawyers) for reelection.

Fourth, [Attorney] recounted some more serious abuses by town justices that were the subject of complaints to the Judicial Conduct Commission. In one case, the justice, who was a

landlord himself, implicitly endorsed the petitioner's threats of self-help. In the other, the justice made an anti-Semitic remark.

Fifth, [Attorney] notes that in cases where the petitioner is represented and by the respondent appears pro se, some town and village justices will allow the petitioner's attorney to dominate the proceeding. That is, it is often very difficult for a pro se respondent to present his side of the story.

Sixth, on the topic of affirmative defenses, [Attorney] thinks that most justices believe it is not their job to consider all the possible arguments that might be made by the respondent; if the respondent does not know to make the argument, that is too bad. This is usually not a problem where legal services is involved, since legal services will know to request an adjournment, obtain a building inspector, and argue breach of the warrant of habitability.

Seventh, [Attorney] noted that, at least in his practice, there are issues with adequate access to dockets.

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**Areas of Special Concern**

First, [Attorney] notes that landlords are often represented by counsel, while tenants are often not. Even in those cases where tenants are represented by counsel, however, justices are not necessarily receptive to arguments that tenant's counsel may make.

Second, some of the service requirements do not make sense in light of the fact that town and village courts may convene only a few times each month.

Third, judges do not really treat summary proceedings as true hearings; the proceedings are usually very informal. Sometimes, landlord-tenant cases are pushed to the end of the court day, so that the court may hear other cases first.

Fourth, it is difficult for judges to determine whether a particular housing unit falls under some special housing regulatory or subsidization program. In cases where some special program applies, the substantive rights of tenants are different: however, in many circumstances, the only party with access to this information is the landlord. [Attorney] thinks landlords should be required to plead this information in their petitions.

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**Areas of Special Concern**

[Attorney] identified a number of areas of special concern.

[Attorney] first noted that the problems he has encountered are much more serious when the respondent is unrepresented. Where a party is represented by counsel, the judge is much more likely to follow the law. This is less likely when the parties are unrepresented. As [Attorney] put it, "[the judges] are not going to enforce a statute just because they know about it." When both sides are unrepresented, courts often dispose of the case through a very quick

hearing. [Attorney] also noted that courts often fail to inform respondent that they have a right to ask for an adjournment if they need to obtain an attorney.

[Attorney] concedes that, despite the importance of obtaining counsel, the legal services in his area are not equipped to handle all the cases that require assistance. [Attorney] notes that some of his clients are referrals from the clerk at the town and village courts.

[Attorney] noted that he believes that the place procedure breaks down is during default proceedings. When tenants come to Justice Court for default proceedings, they aren't told to seek legal representation (such as Legal Aid) so that they can request a default audit. Courts also erroneously inform respondents that it is impossible to attack a default judgment, when in fact default judgments can be attacked through an order to show cause.

[Attorney] also believes that the system breaks down during service of notice. Many of Frank's clients claim that they never received service.

[Attorney] notes that there is a too-cozy relationship between some courts and petitioners. In some instances, a judge or clerk will help a pro se petitioner fill out the necessary forms to institute a proceeding. Respondents are not afforded the same assistance.

[Attorney] asserted that the civil dockets are made available to litigants in [Attorney] County, where he practices.

[Attorney] appeals his cases to County Court. He noted that appeals for summer eviction cases are not afforded the same amount of respect and attention in the County Courts as criminal appeals. Furthermore, the appeals process is often lengthy.

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**Experiences with Summary Eviction Process**

In [Attorney] experience, town and village justices are not very familiar with the substantive law of the summary eviction process. They are also unfamiliar with the rules of evidence and hence try very hard to avoid jury trials. The justices are, however, more familiar with the notice requirements for such proceedings. That said, justices are not always very sympathetic to arguments alleging defective notice. Their view is often "Well, you're here, so you know about this proceeding." Clients of [Attorney] often claim that they never received notice. In [Attorney] experience, affidavits of notices are generally available to attorneys.

[Attorney] notes that justices routinely ignore warranty of habitability arguments.

[Attorney] notes that town and village justices will routinely defer to attorneys, regardless of whether they represent the petitioner or the respondent. However, justices tend to be more sympathetic to attorneys representing petitioners than to attorneys representing respondents.

[Attorney] notes that justices often require tenants to pay security deposits equal to their rent. [This may be well within the law, but it is an issue worth following up on.]

[Attorney] notes that justices often engage in ex parte communications with the parties.

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**Areas of Concern**

[Attorney] outlined a number areas of concern with regards to summary eviction proceedings in town and village courts.

First, [Attorney] explained that there is great variety in different town and village courts throughout the state of New York. All of these courts, however, do share one characteristic: informality. [Attorney] referred to the proceedings as “glorified negotiations.”

In addition, [Attorney] noted the difference in treatment of tenants and landlords in these proceedings. Tenants often do not show up or, if they do, they are unrepresented. Tenants are not aware of any help they can receive online or through legal services organizations. Because the courts are only open at very specific times, it is difficult for tenants to reach them to obtain court documents. On the other hand, landlords are represented much more often, and the justices are more accommodating to landlords.

[Attorney] explained that many of these justices do not know the law, specifically the RPL and RPAPL. He mentioned a specific case where a justice simply did not follow RPAPL 751 regarding a stay of eviction, either because he did not know it or did not care. Justices often reject notice arguments because they do not understand them. This is compounded by the fact that evictions are only held one or two days per month in town and village courts, so the justices are not familiar with the proceedings.

Finally, [Attorney] noted that many judges seem openly unsympathetic to certain types of arguments. Both notice arguments and defenses based on a breach of the warranty of habitability are routinely ignored by judges.

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**Areas of Concern**

[Attorney] mentioned many problems that plague the town and village court system. The first issue he mentioned was that Town and Village Court Justices simply don't respect the tenant litigants. Even if the tenant litigant is represented by a lawyer such as [Attorney], the justice will often rule from his or her gut rather than following proper procedure such as allowing a jury trial.

[Attorney] indicated that judges often don't view defenses, such as the warrant of habitability, with legitimacy. They often view a litigant asserting this defense as a tenant that is trying to avoid paying rent.

[Attorney] commented that a common problem that arises in warranty of habitability cases is that while questions of fact raised should theoretically preclude summary eviction, judges often grant the summary eviction.

[Attorney] believes that County Judges get questions of law correct more frequently than Town and Village Justices.

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**Areas of Concern**

[Attorney] mentioned many problems that plague the town and village court system. The first issue she mentioned was that tenants often don't learn about the availability of legal representation through Legal Services until after the trial. This limits their ability to assert their various legal rights.

[Attorney] also stated that the trial and proceedings are very informal.

[Attorney] noted that even when tenants have legitimate legal defenses, such as a warranty of habitability claim, there are problems in asserting these legal defenses. One issue is that defendants don't realize their obligations in preparing such a defense (such as financial undertakings in relation to the defenses). Further, even if the defense is properly asserted, the Town and Village justices are often ignorant of the law. For example, in one case, a court denied a warranty of habitability defense even though two rooms were filled with mold. Many judges also refuse to give tenants an opportunity to speak and make it clear that they are not interested in what the tenants have to say.

[Attorney] also explained access to the civil dockets of the courts through the Clerks is very difficult. Many Town and Village Court Clerks just don't understand that litigants have the right to access the file on their case. Further, there is the practical problem of very limited court office hours, making it even more difficult to access the dockets. out of the lease but does not want to pay, and the landlord just wants the tenant out.

[Attorney] also noted that clerks are not aware of how to handle orders to show cause. Judges also lack access to basic legal materials, like the CPLR and RPAPL.

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**Areas of Concern**

[Attorney] started out by stating that the law is never followed in Town and Village courts. He always knows when a judge is an attorney because he/she will understand the law when it is presented to them. . . In order to get a judge's attention, [Attorney] has to bring in books on the law and be extremely forward and pointed.

[Attorney] explained that tenants are not respected in the courtroom. Often, they are not even allowed to speak, and when they do raise issues, they are ignored. In cases where tenants bring up warranty of habitability issues, the judge is automatically skeptical and has a "you and everybody else" attitude. Tenants are not given hearings when they are deserved, and in nonpayment proceedings, judges ask the tenants to put up the money owed now, which the tenant often cannot afford. In [Attorney] opinion, the "landlord runs the show."

[Attorney] mentioned that many cases should be dismissed on procedural errors alone, and yet, the court reviews the substance of the case. When service issues are brought to the judges attention, the judge often has the attitude of, "well, you showed up, so you obviously had notice." Additionally, tenants often receive notices of petition that do not state the claim. [Attorney] specifically mentioned a case in which the landlord orally informed the tenant of the court date, but the tenant thought he was just "blowing smoke." When the tenant did not show up, the judge issued a warrant of eviction without a judgment.

In one instance, only a notice of petition (but not the petition itself) was served, but the judge did not care.

In another case, neither the petition nor the notice of petition was served, but the landlord orally told the tenant to show up. When the tenant failed to show up, the judge issued a warrant of eviction albeit without a judgment.

[Attorney] noted that the courts are only open when court is in session, which is usually twice per month. Tenants are not informed that they can access court documents, and even if they did know, tenants probably could not access them anyway due to the court hours and clerks' lack of knowledge. Attorneys, however, are able to get court documents.

[Attorney] also noted that courts will often hold a respondent's criminal history against the respondent in a summary proceeding.

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**Areas of Special Concern**

[Attorney] identified a number of areas of special concern.

[Attorney] believes that the Justice Court system is run in an unacceptably informal fashion. He indicated that Town and Village Court justices frequently engage in ex parte discussions with litigants, and that these ex parte discussions tend to benefit the landlord litigants. Further, [Attorney] noted that individual litigants' character and reputation in the community often play an overwhelming role during proceedings.

[Attorney] also believes that one of the larger problems plaguing the Justice Court system is that fewer than 200 of the Town and Village Court justices are attorneys. He thinks that the majority of Town and Village justices do not have the legal expertise and training to adequately inform pro se litigants of their legal rights and obligations, or to hold formal hearings on issues of law rather than making decisions based on informal proceedings.

Another complicating factor is that many of the evicted tenants in rural New York live in mobile homes. Mobile homes are subject to various regulations in New York State which creates problems for evicted tenants. Specifically, it is against the law to move very old mobile homes. Yet sometimes, tenants will be evicted from the land on which the home sits. This creates a problem for the tenants, who will lose the mobile home.

[Attorney] raised the issue of land grants as a unique legal relationship in the housing context. He said that many tenants have land grant contracts and Justice Courts are not well equipped to handle these cases.

**Recommendations**

**Suggestions and Recommendations**

[Attorney] explained that many courts do actually refer litigants to legal aids, but thinks that a mandatory adjournment rule could be helpful. She expressed doubt that a checklist would be helpful because she doesn't think that most judges have the time to go through a checklist. He thinks that having an attorney really makes a huge difference.

### **Suggestions and Recommendations**

[Attorney] explained that many courts do actually refer litigants to legal aids, but this could be done more. Because he noted that judges do not seem to care what the law is, Mr. [Attorney] was skeptical of the idea that judges would use anything we could produce. He suggested that our product be part of the existing training materials for judges.

### **Suggestions and Recommendations**

[[Attorney] believes many of Davis Polk's ideas are helpful. For example, [Attorney] is enthusiastic about the prospect of an easy checklist for the judges to use. [Attorney] is also enthusiastic about a mandatory adjournment rule. Ultimately, [Attorney] would like town and village courts to lose their jurisdiction over summary evictions.

[Attorney] feels very strongly that there should be more oversight of town and village courts. He believes some type of auditing would be effective. Under this system, the oversight body would randomly select summary proceedings heard by town and village courts to determine whether they were correctly decided.

### **Recommendations**

[Attorney] believes that town and village justices respect directives that come from the supervising judge of each judicial district. In other words, the source of training/resources matters a great deal: justices may be skeptical of training that come from Legal Aid attorneys.

[Attorney] is a bit skeptical about how effective an additional resource would be: he recommends that whatever measure is adopted be such that a justice couldn't simply ignore it.

### **Suggestions and Recommendations**

[Attorney] main recommendation was to condense the town and village courts as allowed by the 2007 amendments to the Justice Court Act. By condensing the courts, summary proceedings could then be handled by the larger, more sophisticated courts instead of the lackadaisical judges handling them now.

[Attorney] also supports the mandatory adjournment rule for the reasons outlined above related to tenants not having time to prepare for trial and not being afforded a legitimate hearing. Because the judges also want to do a good job but just do not have the expertise, [Attorney] also supports the idea of a brief, simple checklist.

### **Suggestions and Recommendations**



[Attorney] suggested changing the court rules to require that a notice of petition be accompanied with contact information for legal services.

[Attorney] thinks it would be a good idea to have a script for judges, requiring them to ask tenants specific questions about affirmative defenses, service of process, and other common issues.

In [Attorney] experience, appellate opinions have some weight with the town and village courts, though some judges still try to skirt around appellate decisions. [Attorney] mentioned two appellate decisions that he thought might be helpful to us: Ocean Rock Associates v. Cruz, 66 A.D.2d 878, 411 N.Y.S.2d 663 (1978) aff'd, 51 N.Y.2d 1001, 417 N.E.2d 93 (1980); 664 W. 161 St. Tenants Ass'n v. Leal, 154 A.D.2d 238, 545 N.Y.S.2d 925 (1989).

[Attorney] believes it is important for our project to address, to some degree, mobile homes.

### **Recommendations**

A. [Attorney] thinks it would be helpful if the relevant rule were amended to provide guidance to the town justice about what to do at the initial appearance. Ideally, judges would always inform the respondent of his right to seek a legal services attorney and then adjourn so that the respondent is able to retain that attorney. To this end, it may be helpful for all justices to be provided with lists of the relevant legal services providers. . . . acknowledges that automatic adjournment might be difficult to implement in those courts that meet very infrequently.

B. [Attorney] thinks that there should be some way to prevent improper ex parte communication between the town justice and the landlord at the outset of the petition. Wattenberg emphasized that judges should inform the litigants that all the forms are accessible online. Perhaps, the clerks should handle all communications with petitioners.

C. [Attorney] thinks education efforts might be most effective if directed toward the Town and Village Resource Center ("Center") rather than the justices themselves. The justices rely heavily on the Center, but the Center itself sometimes dispenses bad advice. In one case, for example, the justice claimed that the Center told him that property damage could be sought in a nonpayment case. That is false.

D. [Attorney] thinks that any resource should be limited to about ten pages or so, with an Appendix. Otherwise, the justices will be very unlikely to use it.

### **Recommendations**

[Attorney] believes that town and village judges may be reasonably receptive to training and that they would use sources such as bench books.

[Attorney] thinks there is a group in the . . . (contact: [Attorney]) who may have done some work with online resources for pro se litigants.

[Attorney] is unsure how feasible it will be to institute an automatic adjournment rule. First, under the RPAPL, there is a ten-day cap on the length of an adjournment in summary proceedings. However, this is routinely ignored by the city courts. Second, allowing lengthy

adjournments would detract from the summary nature of the proceedings. Third, such a rule would meet with massive opposition from the landlord lobby. Fourth, there is no guarantee that even if an adjournment is granted, respondents will be able to obtain legal services.

#### Recommendations

[Attorney] believes that a checklist would be helpful, especially for service issues. [Attorney] also stresses the important of clerk training.

#### Recommendations

[Attorney] recommends paying some attention to the support center that the justices often use for legal advice. In [Attorney] view, the support center generally gives good legal advice to justices.

[Attorney] suggests that petitioners somehow be given pro se materials (i.e. resources to fill out forms) before the date of the hearing itself. Perhaps, the pro se materials could be served along with the notice of petition and petition. Currently, landlords are able to get their hands on pro se materials before the hearing since the materials are provided when they approach the court to file a petition.

#### **Suggestions and Recommendations**

[Attorney] main recommendation was to require judges to learn the law, specifically the RPL and RPAPL. However, these justices often do not want to be told what to do. [Attorney] explained that even this attitude varies by court, though, depending on the justice's amount of time on the bench and whether or not he/she is a lawyer.

#### **Suggestions and Recommendations**

[Attorney] recommended that all judges be attorneys. He believes that attorney judges are generally more competent and rule correctly more frequently than lay judges. [Attorney] also advocated for additional and more comprehensive training.

#### **Suggestions and Recommendations**

[Attorney] recommended that copies of the RPAPL and the Red Book should be placed in every Town and Village Court. She also advocated for additional Justice and Clerk training. She expressed doubt over the utility of judicial conduct complaints because of the fact that lawyers will appear in front of the same justices on numerous occasions.

#### **Suggestions and Recommendations**

[Attorney] urged the importance of informing the tenant of their rights by delivering to them the resources that already exist. Because the first time the judge sees the tenant is at court, it's too late to lead the tenant to the resources. To address this problem, [Attorney] suggested that the clerk send the tenant's forms along with the notice of petition. She was also enthusiastic about a mandatory or encouraged adjournment if the tenant is pro se, in order to provide the tenant with time to obtain counsel or guidance. Because these low income tenants often do not have internet access, directing them to websites might not be helpful.

[Attorney] also encouraged mandatory training for these judges as an equivalent to attorneys' CLE training. Her main suggestion was to consolidate the court system so that all of the judges could be attorneys.

**Recommendations**

A. [Attorney] thinks that Town and Village Court Justices would respect recommendations if they were handed down by the County Court Judges.

B. Ideally, [Attorney] would push for having more of the Town and Village Court Justices be attorneys.

# EXHIBIT “C”

## **SURVEY OF MAGISTRATES**

The Fund for Modern Courts, a statewide nonpartisan organization, seeks your input on ways to assist in providing clearer legal information and accessible resource materials for Justice Courts when deciding summary eviction (landlord/tenant) proceedings.

Please respond to the questions below, inform us of how landlord/tenant proceedings provide challenges in your court and offer any suggestions you may have so that Justice Courts can best provide for resolving these disputes.

**Q1. Please tell us how landlord/tenant proceedings provide challenges in your court:**

1	When no attorney is involved the proceedings feel as though you are stumbling through trying to get all information you need and explaining all steps to both parties.	Oct 2, 2012 5:51 PM
2	Time consuming	Oct 2, 2012 5:40 PM
3	in explaining the nature of thee proceedings to pro se litigants, who are usually the tenants	Sep 23, 2012 2:12 PM
4	Landlords don't always have the paperwork filled out correctly and we are not able to inform them of the correct procedure. Landlord does not make necessary repairs to residence - can tenant legally not pay rent until repairs are made?	Sep 21, 2012 4:27 PM
5	When ther is a conflict with both judges, getting another judge to sit in our court in a timely manner is problematic	Sep 12, 2012 10:40 AM
6	Landlord/tenant proceedings provide challenges with evidence.	Sep 11, 2012 5:55 PM
7	short lead time- landlord comes in a day or two before they want to evict	Sep 9, 2012 11:29 AM
8	Petitioner often represented while Respondent often not represented. Would like to have a tenant advocate, as is available in Schenectady City Court.	Sep 7, 2012 11:31 AM
9	Basically I have proceedings that involve trailer parks and the RPL wherein they are given 90 days rather than the 60.	Sep 6, 2012 9:31 AM
10	No particular challenges other than the infrequency to which we have such proceedings.	Sep 5, 2012 9:25 AM
11	It is difficult when a landlord is not represented by an attorney because, usually, the paperwork filed is deficient. In the same vein, tenants are almost never represented by an attorney and do not have any idea about the proceedings.	Sep 5, 2012 7:22 AM
12	1) reluctance of losing party to accept the facts of their own actions and responsibilities 2) handling of personal property abandoned at time of eviction	Sep 2, 2012 3:47 PM
13	The biggest challenge is usually the behavior of one party or another after a decision is reached, but our court officer is good about making sure that parties leave the building separately and do not have confrontations in the parking lot.	Sep 1, 2012 4:02 PM
14	The challenge is substituted service and the issuance of a money judgment. Another challenge is when pro se landlords want advice on how to proceed.	Aug 31, 2012 7:28 PM
15	Have no problems to date	Aug 31, 2012 12:25 PM
16	Neither party knows how to proceed. Both seek 'advice' from judges and/or clerks. Landlords try to initiate exparte communications prior to the hearing; tenants call or appear and ask what they should do after they receive the notice of petition. Also court clerks (and landlords) do not always understand the rules regarding scheduling the hearings and timely service of petiton and notice of petition.	Aug 30, 2012 12:04 PM
17	More often than not neither party is represented by counsel. Neither party can understand that in summary proceedings, everything within the statute has to be	Aug 30, 2012 11:36 AM

**Q1. Please tell us how landlord/tenant proceedings provide challenges in your court:**

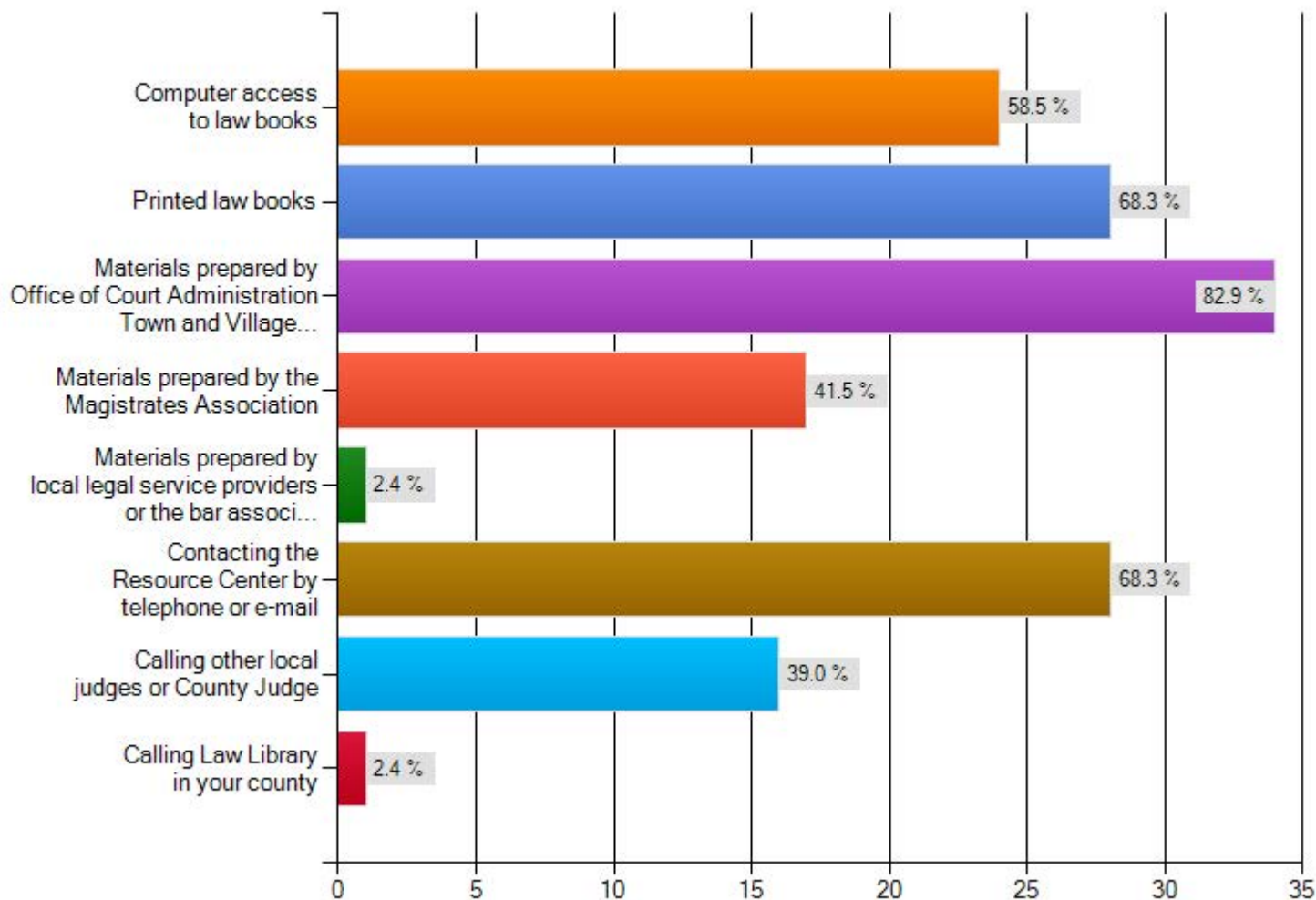
	followed to the letter. There are no materials that can be given to both parties similar to the small claims booklet that can explain the process better.	
18	The nature of the proceedings make them difficult. Usually some one is being evicted from their living space. Many will be homeless.	Aug 29, 2012 9:55 AM
19	Th tenant does not always know what they need or should have. Most of the ones I deal with aqre pretty cut and dry anyway.	Aug 28, 2012 1:56 PM
20	No real challenges. Biggest issues have been ensuring that Notices are properly signed by attorney/judge/clerk and petitions are properly verified by landlord or corporate officer where required. Some difficulty encountered in a few matters where the lld./ten. proceeding was simultaneously accompanied by an ongoing Village Code Enforcement Action against the landlord for the same premises and the tenant was claiming constructive eviction. One matter was particularly difficult b/c issues of who was in possession and who could have access had to be negotiated while the summary eviction, constructive eviction, and code enforcement matters were all pending and the parties had difficult and uncooperative counsel.	Aug 28, 2012 11:00 AM
21	frequently tenants are unrepresented; paperwork is often messy and incomplete; very few attorneys actually get papers to court within the 3 day period before it is heard. papers are mostly for nonpayment when really they should be holdovers	Aug 28, 2012 10:05 AM
22	We do not have adaaquate facilities or enough space to conduct these hearings in a proper manner. Not handicap accessable.	Aug 28, 2012 10:01 AM
23	Our court has no security presence. We have a video camera in the courtroom and one in the justice office; panic buttons. I have had a tenant threaten a landlord with harm after ruling from the bench in the past. Not sure how to prevent this, but the town will not pay for any more security. What we do have was obtained by me through a JCAP grant two years ago and the board was VERY against it but finally relented. This would be, in my view, the #1 issue for our court in these matters.	Aug 28, 2012 7:22 AM
24	High volume of cases, pro se parties' lack of procedural knowledge, personal nature of certain disputes	Aug 27, 2012 2:13 PM
25	pro se litigants can not properly represent themselves, tenants tend to be serial evictees	Aug 27, 2012 9:19 AM
26	We handle 40 or so a month so we do not have "challenges" in our court unless a specific issue of law occurs with which we are unfamiliar, but generally not.	Aug 26, 2012 5:02 PM
27	When landlords proceed with out attorney wanting court to advise them on how to serve. Tenant..	Aug 26, 2012 4:01 PM
28	None	Aug 26, 2012 12:33 PM
29	In trying to balance the rights of landlords to earn money with those of tenents to have a decent place to live	Aug 26, 2012 12:16 PM
30	we rarely handle these matters, civil or small claims	Aug 26, 2012 11:02 AM

**Q1. Please tell us how landlord/tenant proceedings provide challenges in your court:**

31	The lack of knowlege of how to proceed from the plaitiff or the respondent when they are not represented by council can be challenging.	Aug 26, 2012 9:13 AM
32	Trying to find a reasonable solution and have the parties involvedremember the finanical state of the area is a factor in the problem	Aug 26, 2012 7:42 AM
33	there are no challenges....	Aug 26, 2012 7:28 AM
34	Landlords who are too cheap to hire an attorney and, therefore, their paperwork is defective and they usually don't give the tennant proper notice. They expect my clerks to do the paperwork for them.	Aug 24, 2012 7:46 PM
35	Many time the proceedings are not filed properly, served properly or if they are a section 8 premise, the monitoring agency is not served. Often there is not a lease agreement and proper accounting procedures are not followed.	Aug 24, 2012 5:09 PM
36	Most summary proceedings are for non payment of rent, after a few months have past with no rent paid.	Aug 24, 2012 11:48 AM
37	Being sure that all paperwork is properly filled out.	Aug 24, 2012 9:53 AM



**What, if any, legal resources do you use when deciding an eviction proceedings? (Please mark all that apply)**



**Q1. When faced with an unfamiliar legal issue in a summary proceeding, what resources do you use to find the answer to the legal question?**

1	resource center and judges with more experience with the issues at hand	Oct 2, 2012 5:51 PM
2	computer based legal research, the resource center and my colleagues	Sep 23, 2012 2:12 PM
3	Resource Center	Sep 21, 2012 4:27 PM
4	Research it myself	Sep 12, 2012 10:40 AM
5	Call the Resource Center.	Sep 11, 2012 5:55 PM
6	resource center	Sep 9, 2012 11:29 AM
7	Resource center, Westlaw.	Sep 7, 2012 11:31 AM
8	I utilize the Town and Village Resource Center, the RPL and the materials from training	Sep 6, 2012 9:31 AM
9	Resource Center and town and village courts website	Sep 5, 2012 6:04 PM
10	Those checked above	Sep 5, 2012 9:25 AM
11	I will email the other Judges in the County.	Sep 5, 2012 7:22 AM
12	Resource Center after having delved into research myself	Sep 2, 2012 3:47 PM
13	I can usually find the answer in printed law books (McKinney's RPAPL or treatises) or through Lexis or through CJE Materials from OCA on Summary Proceedings that I have in chambers.	Sep 1, 2012 4:02 PM
14	All of the above.	Aug 31, 2012 7:28 PM
15	resource center	Aug 31, 2012 5:37 PM
16	Never had a problem	Aug 31, 2012 12:25 PM
17	Resource Center	Aug 30, 2012 12:04 PM
18	As an attorney, I research my own law books or call the resource center.	Aug 30, 2012 11:36 AM
19	printed legal research	Aug 29, 2012 9:55 AM
20	Resource Center	Aug 28, 2012 6:51 PM
21	Resource Center	Aug 28, 2012 1:56 PM
22	See answer to No. 3.	Aug 28, 2012 11:00 AM
23	West's Residential Landlord/Tenant Law in NY	Aug 28, 2012 10:05 AM
24	Resource Center and/or materials obtained from OCA training	Aug 28, 2012 10:01 AM
25	Resource center.	Aug 28, 2012 7:22 AM

**Q1. When faced with an unfamiliar legal issue in a summary proceeding, what resources do you use to find the answer to the legal question?**

26	Lexis or OCA Educational Materials	Aug 27, 2012 2:13 PM
27	legal research using available resources	Aug 27, 2012 9:19 AM
28	Thompson/West practice guide Village, Town and District Courts in New York @ Chapter 12	Aug 26, 2012 5:02 PM
29	Resource. Vented and Internet.	Aug 26, 2012 4:01 PM
30	There are no landlord and tenant issues that are unfamiliar to me	Aug 26, 2012 12:33 PM
31	my law books	Aug 26, 2012 12:16 PM
32	use materials printed by NYS Magistrates and distributed at the classes	Aug 26, 2012 11:02 AM
33	I call the resource center and research all the training materials I have saved over the years.	Aug 26, 2012 9:13 AM
34	resource center and the internet	Aug 26, 2012 7:42 AM
35	Resource Center.	Aug 26, 2012 7:28 AM
36	Law Book or Resource Center	Aug 24, 2012 8:17 PM
37	See # 3 above.	Aug 24, 2012 7:46 PM
38	RESOURCE CENTER	Aug 24, 2012 5:09 PM
39	I contact the resource center	Aug 24, 2012 11:48 AM
40	David Dellehunt- Special Counsel, Third District Resource Center	Aug 24, 2012 9:53 AM

**Q1. We have been told that a reference guide or checklist, that takes the court through a summary proceeding from start to finish, could assist Justice Courts, especially those who do not frequently have eviction proceedings in their courts. Would such a guide be of use to your court? And if yes, w...**

1	yes, we already use one. It keeps you on track so that no steps are left out or forgotten.	Oct 2, 2012 5:51 PM
2	Yes, step-by-step would be helpful!!	Oct 2, 2012 5:40 PM
3	yes, step by step guides as to what steps to follow especially in residential matters	Sep 23, 2012 2:12 PM
4	Yes. If you find on behalf of the landlord, what paperwork is needed. If you find on behalf of the tenant, what, if any, paperwork is needed.	Sep 21, 2012 4:27 PM
5	Yes, general breakdown of the process for both Holdover and Non-Payment proceedings	Sep 12, 2012 10:40 AM
6	Yes. The proper paperwork and procedures.	Sep 11, 2012 5:55 PM
7	yes, information regarding rent to own leases	Sep 9, 2012 11:29 AM
8	It would be of some use. A checklist covering the various methods of service and the awarding of default judgments would be particularly helpful to some judges, I think.	Sep 7, 2012 11:31 AM
9	Yes it would be helpful. Checklist from start to finish and information should the parties reach an agreement.	Sep 6, 2012 9:31 AM
10	Yes	Sep 5, 2012 6:04 PM
11	A thorough guide that is comprehensive detailing the process from start to finish	Sep 5, 2012 9:25 AM
12	No, because I am familiar with summary proceedings as I have handled them as an attorney.	Sep 5, 2012 7:22 AM
13	I would suppose that each judge already uses a self-created flowchart, but, a template would be a good resource that the judge can alter as needed for the individual circumstances.	Sep 2, 2012 3:47 PM
14	I never say no to information that is helpful, legally accurate and allows me to be more efficient.	Sep 1, 2012 4:02 PM
15	Yes. Adequacy of filings, forms for typical filings, timeline for jurisdiction, type of notice given, steps to follow with varying types of service, generic form for judgment and writ (even tho they should be provided by party)... . A pamphlet similar to the Small Claims booklet would be helpful to give Petitioners since we don't give legal advice.	Aug 31, 2012 7:28 PM
16	we have developed one and yes we use it.	Aug 31, 2012 5:37 PM
17	Maybe	Aug 31, 2012 12:25 PM
18	Checklist would help. Also examples of properly completed and filed petitions and notices of petition. Checklist for court clerks to use when receiving filings and scheduling hearings would be helpful.	Aug 30, 2012 12:04 PM

**Q1. We have been told that a reference guide or checklist, that takes the court through a summary proceeding from start to finish, could assist Justice Courts, especially those who do not frequently have eviction proceedings in their courts. Would such a guide be of use to your court? And if yes, w...**

19	Yes. A step by step approach (especially with the statute requirements, i.e., service, 5/12 day rule, etc). Possibly, excerpts on common topics. For example, Yellowstone Injunction in Commercial Evictions versus no such relief in non-payment in residential, etc. This way, non-attorney judges can better explain these topics to lay people.	Aug 30, 2012 11:36 AM
20	Yes.	Aug 29, 2012 9:55 AM
21	No	Aug 28, 2012 6:51 PM
22	Check list would be helpful.	Aug 28, 2012 1:56 PM
23	Reference guides and checklists are always good, in any area of formulaic and repetitive practice. Such devices are best if they also are accompanied by a manual that cross-references the checklist and provides an expansion on the statutory and caselaw provisions governing the checklist items.	Aug 28, 2012 11:00 AM
24	Yes. Especially for the clerks who often are very confused by what papers should be filed when and what to do if they are wrong	Aug 28, 2012 10:05 AM
25	Yes, step by step flow chart with references to possible unusual issues that may arise and where to find the answers. I just had someone request a jury trial for a Summary Proceeding. 1st time in 26 years.	Aug 28, 2012 10:01 AM
26	Yes. Information needed: Details as to procedure regarding Orders to Show Cause purporting to halt execution of a warrant of eviction.	Aug 27, 2012 2:13 PM
27	perhaps, the issues presented vary from LL to LL based upon the classification of the LL	Aug 27, 2012 9:19 AM
28	We have created such a guide which we give to the litigants and we have distributed to all Town Courts in Niagara County. We likewise have create for each court a summary proceeding work sheet for jurisdiction/service requirements/testimony/decision.	Aug 26, 2012 5:02 PM
29	No I do many summary proceedings and I find usually they are straight forward.	Aug 26, 2012 4:01 PM
30	It would be of no use to me	Aug 26, 2012 12:33 PM
31	No	Aug 26, 2012 12:16 PM
32	yes this would be helpful. The material should be a step-by-step guide	Aug 26, 2012 11:02 AM
33	I do think that any material that is developed to assist the court in doing a better, more thorough job is always welcome.	Aug 26, 2012 9:13 AM
34	yes	Aug 26, 2012 7:42 AM
35	A guide would be useful. It should contain procedures for the Judge and all interested parties as far as a step by step guide throughout the process up to how to appeal the ruling.	Aug 26, 2012 7:28 AM

**Q1. We have been told that a reference guide or checklist, that takes the court through a summary proceeding from start to finish, could assist Justice Courts, especially those who do not frequently have eviction proceedings in their courts. Would such a guide be of use to your court? And if yes, w...**

36	It may be a good guide	Aug 24, 2012 8:17 PM
37	Yes, YES! A checklist of the proper notices, what the petition should contain, etc.	Aug 24, 2012 7:46 PM
38	What action to take when circumstances are out of the norm... eg section 8 housing, proper service procedures, rent with an option to purchase said premise, hold over proceedings.....	Aug 24, 2012 5:09 PM
39	Yes, to make sure all the required paperwork is there prior to hearing the case.	Aug 24, 2012 11:48 AM
40	Yes. Steps needed from start to finish and forms needed.	Aug 24, 2012 9:53 AM

**Q1. Would a yearly updated training program on summary proceedings be helpful to your court?**

1	yes, any training is always helpful.	Oct 2, 2012 5:51 PM
2	Yes	Oct 2, 2012 5:40 PM
3	possibly	Sep 23, 2012 2:12 PM
4	Yes - if the laws change.	Sep 21, 2012 4:27 PM
5	yes	Sep 12, 2012 10:40 AM
6	Yes.	Sep 11, 2012 5:55 PM
7	no, maybe every second year	Sep 9, 2012 11:29 AM
8	Possibly.	Sep 7, 2012 11:31 AM
9	Yes, as we have a great deal of evictions in my town involving trailer parks.	Sep 6, 2012 9:31 AM
10	Yes	Sep 5, 2012 6:04 PM
11	not if we had a reference guide	Sep 5, 2012 9:25 AM
12	No	Sep 5, 2012 7:22 AM
13	annual updates should always be available in a compiled format, online, as a resource. Periodically, or if there are substantial changes, training format should be updated & available as an elective.	Sep 2, 2012 3:47 PM
14	I believe that OCA Part I and Part II (now known as Core A and Core B) programs cover Summary Proceedings often enough, at least that has been my experience.	Sep 1, 2012 4:02 PM
15	Certainly.	Aug 31, 2012 7:28 PM
16	No yearly, only when there are major changes	Aug 31, 2012 5:37 PM
17	Doubtful	Aug 31, 2012 12:25 PM
18	Yes.	Aug 30, 2012 12:04 PM
19	Yes.	Aug 30, 2012 11:36 AM
20	doesn't need to be yearly, but refresher courses would be helpful.	Aug 29, 2012 9:55 AM
21	No	Aug 28, 2012 6:51 PM
22	maybe-	Aug 28, 2012 1:56 PM
23	I think biannually is about all I could take without my head exploding.	Aug 28, 2012 11:00 AM
24	no, biannual would be good	Aug 28, 2012 10:05 AM
25	Yes	Aug 28, 2012 10:01 AM

**Q1. Would a yearly updated training program on summary proceedings be helpful to your court?**

26	Yes	Aug 27, 2012 2:13 PM
27	yes	Aug 27, 2012 9:19 AM
28	yes	Aug 26, 2012 5:02 PM
29	Maybe if it addressed unhealed situations.	Aug 26, 2012 4:01 PM
30	No	Aug 26, 2012 12:33 PM
31	Yes	Aug 26, 2012 12:16 PM
32	yes	Aug 26, 2012 11:02 AM
33	Knowledge is always good.	Aug 26, 2012 9:13 AM
34	yes	Aug 26, 2012 7:42 AM
35	yes.	Aug 26, 2012 7:28 AM
36	Yes	Aug 24, 2012 8:17 PM
37	Yes, absolutely!	Aug 24, 2012 7:46 PM
38	yes	Aug 24, 2012 5:09 PM
39	yes	Aug 24, 2012 11:48 AM
40	All training is helpful.	Aug 24, 2012 9:53 AM



**Q1. Please provide us with any other suggestions you may have so that Town and Village Justice Courts can best provide for deciding landlord/tenants disputes:**

1	I have always found great support and help whenever I have needed any. Between the resource center and our local magistrates meetings.	Oct 2, 2012 5:51 PM
2	Routine emails of development in case law	Sep 12, 2012 10:40 AM
3	Call the Resource Center	Sep 11, 2012 5:55 PM
4	Standardized judgment and warrant forms would be helpful. When neither party is represented, the Court is typically left to prepare these.	Sep 7, 2012 11:31 AM
5	Both landlords and tenants having attorneys would be helpful. It would save the clerk, the court and the parties the time of refiling, or raising defenses.	Sep 5, 2012 7:22 AM
6	none at this time	Sep 2, 2012 3:47 PM
7	N/A	Sep 1, 2012 4:02 PM
8	Get the legislature to conform the relevant statutes.	Aug 31, 2012 7:28 PM
9	I have none	Aug 31, 2012 12:25 PM
10	I'd like to see a video done of the entire process, from the time the landlord comes in to file (without forms, without knowing how to file) up to the conclusion of the hearing, covering various possible case issues (failure to pay, objectionable tenant, a verbal lease agreement with conflicting testimony on what that lease agreement contained, rent-to-own issues, repairs made or work done in lieu of rent, failure of landlord to make repairs, code or habitability issues) that make these kinds of cases complicated and difficult to decide.	Aug 30, 2012 12:04 PM
11	More legal reference and as much training as possible. I have no idea how non-attorney Judges can possibly serve in a capacity to provide justice when most do not even have a clue as to the very statutes themselves. CPLR and RPL issues are never really emphasized.	Aug 30, 2012 11:36 AM
12	??	Aug 29, 2012 9:55 AM
13	Incorporate Code Enforcement proceeding issues with summary eviction classes - the two are often intertwined.	Aug 28, 2012 11:00 AM
14	A checklist with citations for attorneys who constantly try to file improper paperwork and then apologize at appearance and work things out with unknowing tenants. resources for tenants	Aug 28, 2012 10:05 AM
15	A handout to give to both parties similar to the small claims guide to familiarize them with the proper forms to fill out and procedures.	Aug 28, 2012 10:01 AM
16	Every dispute is different but it seems every tenant has a gripe with the landlord and uses that for an excuse for non payment of rent .... How far do we take warrant of habitability would be a good topic for examples and defenses.	Aug 26, 2012 5:02 PM
17	There is no substitute for learning the applicable law and having the opportunity to apply it.	Aug 26, 2012 12:33 PM

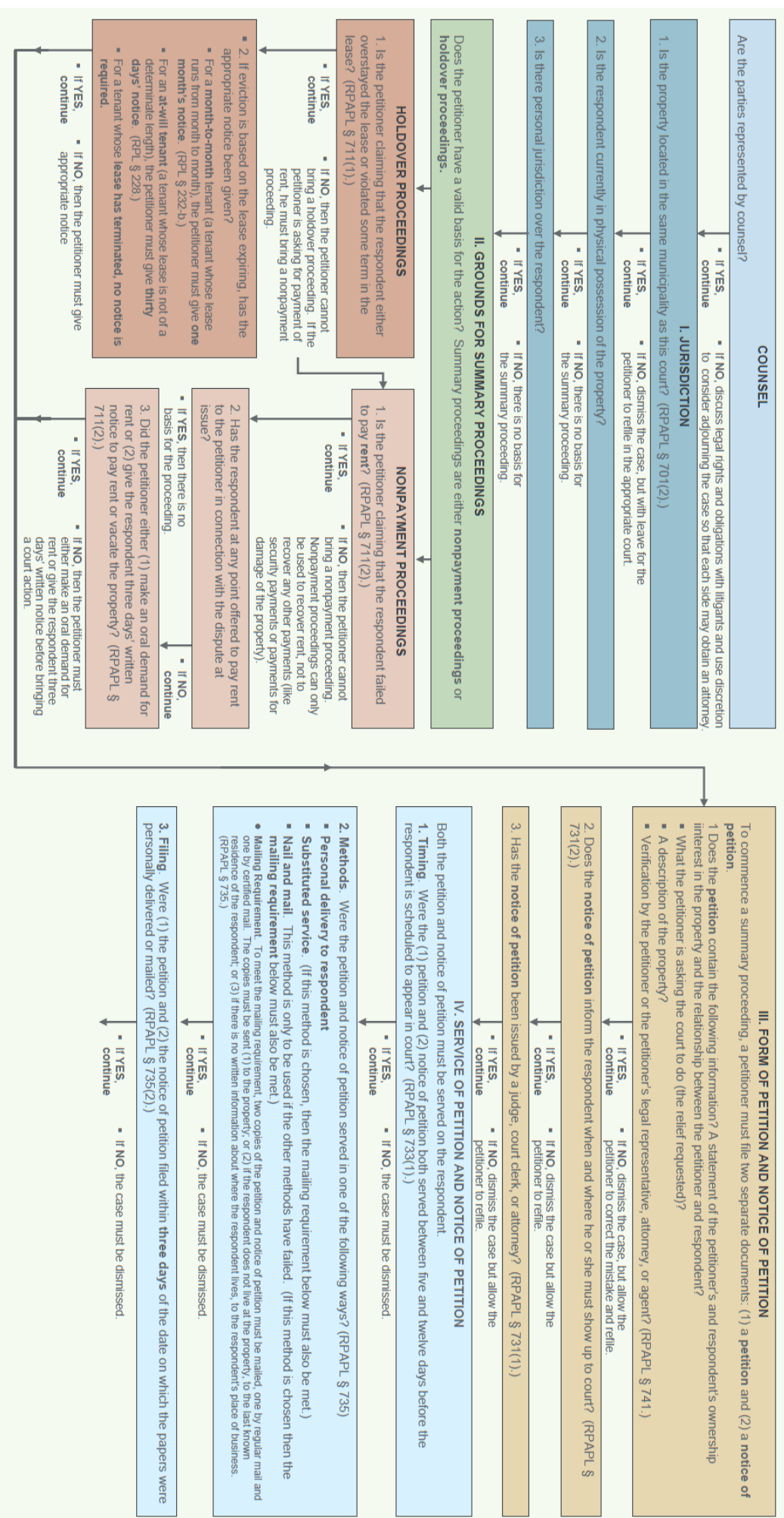
**Q1. Please provide us with any other suggestions you may have so that Town and Village Justice Courts can best provide for deciding landlord/tenants disputes:**

18	Experience is always a good teacher. The more we can learn from actually presiding over case's the better we become. I also believe we can learn from our fellow judges experence's. We often discuss our differant case's at our training sessions and magistrates meatings. There should be more training available to court clerks,	Aug 26, 2012 9:13 AM
19	a script for the Judge to follow.	Aug 26, 2012 7:28 AM
20	So far it has been a learning process, the RESOURCE CENTER is very helpful	Aug 24, 2012 5:09 PM
21	All decisions are made by the Judge/Justice and today there are more resources available to help with these decisions. As stated above,periodotic training is always helpful.	Aug 24, 2012 9:53 AM

# EXHIBIT “D”

# Summary Proceeding Checklist

## PROCESS ISSUES



This Reference Guide is reprinted from original as a reduced size to fit the page and is subject to review. It was prepared by Davis Polk and The Fund for Modern Courts. The content is based upon legal research as well as information gathered in interviews with practitioners, the Town and Village Resource Center and the Magistrates' Association.

# Summary Proceeding Checklist

## SUBSTANTIVE ISSUES

- 1. Adjournment.** Consider **adjourning for ten days** if (RPAPL § 745(1)):
  - One of the parties does not have an attorney and would like to get one; or
  - One of the parties needs to gather more evidence or witnesses; or
  - Both parties consent.
- 2. Factual dispute.** If there is a dispute about a factual issue and one of the parties demands a jury trial, the request **must be granted.** (RPAPL § 745(1).)
- 3. Burden of proof.** The burden is on the petitioner to prove his or her case. That means the petitioner must submit evidence proving each of the facts that he or she claims is true. If the petitioner fails to prove his or her case, the case must be dismissed. Both sides, however, must be allowed to speak and present their cases.
- 4. Warranty of habitability.** Is the respondent arguing that some aspect of the property makes it unlivable (dangerous, hazardous, detrimental to life, health or safety of tenants)? If so, the respondent is entitled not to pay rent under the warranty of habitability defense. (RPL § 235-b.)
  - If an average, middle-class tenant would find a condition dangerous or uninhabitable, the landlord has breached his duty to keep the housing habitable.
  - A tenant can establish that the premises are dangerous and deteriorated by describing them or by showing pictures.
  - The warranty of habitability may not be waived. A tenant and landlord cannot sign a contract giving away the right to safe housing.
- 5. Refusal of rent.** Has the respondent paid rent, or was rent refused by the petitioner? If so, then the nonpayment proceeding must be dismissed and the respondent cannot be evicted.
- 6. Access to Records.** Both sides must have access to the to the court documents (including notice of petition) prior to hearing.
- 7. Unique Circumstances.** If dispute involves mobile homes, manufactured home, or land grant, special rules for proceeding may apply.

# EXHIBIT “E”

NEW YORK STATE SHERIFFS' ASSOCIATION  
EVICTION SURVEY

Name of County	For the year 2011, how many warrants of eviction were received by your office as a result of Town and/or Village Justice Court summary eviction proceeding?	Of those warrants received from a Town or Village Justice Court, how many actual evictions took place?	Comments
Broome County	450	All of them. 450	We will always send a Deputy even if the landlord states they are out.
Chautauqua	41	In the majority of the cases, the tenant moved out after the service and before the actual scheduled date for the eviction.	
CHENANGO	16	6	
Clinton County	152	59	
COLUMBIA	139	124	THE TOTAL NUMBER OF EVICTIONS ALSO INCLUDE OUR ONE CITY COURT IN THE COUNTY
Cortland	44	40	
Delaware	35	1	
Erie	177	Unknown.	We do not keep the requested statistic, however, our field staff estimate 20-25% of warrants actually require full enforcement with movers, etc.
FRANKLIN	47	27	
Genesee	111	95	
Jefferson	We processed 113 evictions for 2011, unfortunately, we do not keep track by the court.		
Kings County	We received approximately 70 evictions for 2011 from NYC Housing Court.	Of those received, about 65 were completed.	
Lewis	10	8	
Livingston	56	54	

NEW YORK STATE SHERIFFS' ASSOCIATION  
EVICITION SURVEY

Name of County	For the year 2011, how many warrants of eviction were received by your office as a result of Town and/or Village Justice Court summary eviction proceeding?	Of those warrants received from a Town or Village Justice Court, how many actual evictions took place?	Comments
Madison	90	82	
Monroe	19	16	
Montgomery	18	18	
Oneida County	115	18	In most cases evictions are cancelled due to the tenants vacating the property. In a lesser percentage, tenants will pay the landlord and eviction is cancelled.
Ontario	85	65	All of our evictions come from Town/Village Courts. The city police departments handle evictions in the two cities in Ontario County. We do average about 5 Orders to Compel per year from Supreme Court.
Orange	764	We do not have the capability to obtain this data.	We do not have the ability to distinguish between City courts and Town/Village courts so the actual number of evictions from strictly local courts would be less than the number reported.
Orleans	93	121 (some including 2 per address)	count includes 72 hour, 30 day & 90 day
OSWEGO	291	243	VERY BUSY
Otsego	40	6	The 6 listed required the tenant to be removed by this office.
Putnam	115	approx. 30	
Rensselaer	137	137	



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EVICITION SURVEY

Name of County	For the year 2011, how many warrants of eviction were received by your office as a result of Town and/or Village Justice Court summary eviction proceeding?	Of those warrants received from a Town or Village Justice Court, how many actual evictions took place?	Comments
Rockland	We do not track which courts the warrants are issued out of. However, in 2011 this office received 1245 issued from all courts.	Unable to determine	
Seneca County	56	51	
Steuben	92	65	
Tioga	106	24	
Ulster	341	225	
Warren	215	All	
Wayne	173	82	This is down 30% from 2 years ago.
Westchester	77	37	It should be noted that the numbers above only reflect the warrants received in the Sheriff's office. There are a substantial number of constables operating throughout the county.
Wyoming	32	6	
Yates	We average about 50 annually but last year we only had 36.	Approximately 8	We are down from our average so far this year.