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HOUSING SYMPOSIUM

THE CLEVELAND HOUSING COURT ACT: NEW ANSWER TO AN OLD PROBLEM

FREDERIC P. WHITE*

"What we want is a housing court that works, and not one that is as indecisive, inefficient and interminable as the present one. . . ."

I. INTRODUCTION

THE OPERATIONS OF THE CLEVELAND MUNICIPAL HOUSING COURT commenced April 2, 1980. The Housing Court, a division of the Cleveland Municipal Court system, was established to resolve all housing-related disputes. While considered by some as a welcome solution to overcrowded court dockets, others view it as simply another unnecessary cog in an already overburdened bureaucratic wheel. Close examination indicates, however, that there is a serious question as to whether this specialized judicial division is in fact meeting its intended purpose.

This Article will critically examine the Housing Court's historical setting, constitutional foundation and jurisdictional powers. In addition, comparison with systems established in other states provides possible alternative suggestions for successful operation. Finally, an in-depth analysis of current problems, including inadequate funds and staff, political manipulation and protracted procedural delays, seeks to answer the question of whether the Housing Court will become a meaningful and positive force for change, or simply an "indecisive, inefficient and interminable"² bureaucratic nightmare.³

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¹ Andrzejewski, *The Plain Dealer*, Feb. 24, 1980, A25, col. 2, at A35, col. 4 (quoting Norman Krumholz, former Cleveland City Planning and Community Development Director. Krumholz, who headed a task force to establish the Housing Court's operations, was referring to the manner in which cases were handled in the Cleveland Municipal Court prior to the establishment of the Housing Court.)

² OHIO REV. CODE ANN. § 1901.011 (Page Supp. 1980).

³ See note 1 *supra*. Opinions about the relative merits of the Housing Court vary. For instance, "Advocates of the housing court believe one judge handling all the building and housing code cases, as well as landlord-tenant cases, would bring continuity and expertise to housing cases, and his staff would be able to round out a housing strategy to complement other city programs. . . ." *Quoted from Cloud Hangs Over Housing Court Already*, *The Plain Dealer*, Feb. 24, 1980, A35, col. 5.

Several cities have established a special housing court, usually a term or

II. HISTORICAL SETTING FOR ESTABLISHMENT OF THE HOUSING COURT

A. *The Housing Problem*

Over thirty years ago, Congress, in recognition of the magnitude of our nation's housing dilemma, passed the Housing Act of 1949,⁴ seeking to reach the goal of a "decent home and suitable living environment for every American Family."⁵ Twenty years later the housing problem remained unresolved, and in 1968 a special Presidential Committee observed:

There is an immediate and critical social need for millions of decent dwellings to shelter the nation's lower-income families.

Overlying this need is one raising an unprecedented and challenging production problem. The nation is heading toward a serious shortage of housing for the total population, unless production is sharply increased.⁶

It is this very shortage of adequate housing that has filled the courts with an excessive number of cases arising out of dissatisfied property owners, tenants and local government officials.

Cleveland has not escaped this national crisis, nor the extra burden placed upon the judiciary as a result. Significantly, the Landlord-Tenant Act⁷ appears to be a boon to raising some of these sub-standard living conditions, yet the ultimate effect has been increased litigation which has added to the back-log in the court. The findings of a twelve month survey conducted during 1967-68 revealed that "there are over 43,743 dwelling units in Cleveland's file pending action. . . . This figure represents housing units in which people are living in conditions where even the minimal standards for the protection of their health, safety and welfare are not being met."⁸

part of a municipal criminal court. Judges are generally assigned for periods varying from six weeks to one year. In theory, a housing court judge should become familiar with enforcement policies, the meaning of code provisions, the efficacy of available sanctions, and the identity of flagrant violators. Five judges who sat on the Baltimore Housing Court estimated that it took at least six months to understand the complexities of code enforcement, so that even a year's assignment seems too short. Yet it may be impossible to extend the period because the Housing Court is often considered an undesirable assignment. To make a long term more palatable, housing cases might be divided among several judges, none hearing housing cases exclusively

Note, *Enforcement of Housing Codes*, 78 HARV. L. REV. 801, 881 (1965).

⁴ Housing Act of 1949, 42 U.S.C. § 1441 (Supp. III 1979).

⁵ T. LORD, *DECENT HOUSING: A PROMISE TO KEEP* 10 (1977).

⁶ REPORT OF THE PRESIDENT'S COMMITTEE ON URBAN HOUSING: *A DECENT HOME* 8 (1969).

⁷ OHIO REV. CODE ANN. § 5321.01-19 (Page 1981).

⁸ Marco & Macino, *Housing Code Enforcement—A New Approach*, 18 CLEV. ST. L. REV. 368, 369-70 (1969).

Due to city budget constraints and limited federal subsidies, current housing facilities remain inadequate, even though the Cleveland population has dropped substantially since 1969. Consequently, as in other cities across the country, these inadequacies are unlikely to be abated, thus increasing the need for a special judicial division.

B. *Development of the Housing Court*

Housing courts have generally developed as attempts to cure dissatisfaction with the handling of serious housing problems.⁹ Presently, several cities have instituted a separate judicial branch to resolve housing disputes.¹⁰ In addition, more of these specialty courts are in the planning stages.¹¹

These housing courts are based on varying models. Some handle only code enforcement,¹² while others are limited to summary proceedings such as evictions.¹³ Many, including the Cleveland Housing Court, are

⁹ See generally Scott, *Housing Courts and Housing Justice: An Overview*, 17 URB. L. ANN. 3 (1979).

¹⁰ CONN. GEN. STAT. ANN. § 47a-68 (West 1981) (Hartford); IND. STAT. ANN. § 33-6-1-2(b) (Burns 1976) (Indianapolis); MASS. ANN. LAWS ch. 185C (West Supp. 1979) (Boston); N.Y. CITY SERV. LAW § 110 (McKinney Supp. 1980) (New York); N.Y. PUB. HOUS. LAW §§ 1-554 (McKinney Supp. 1980) (various municipalities); PITTSBURGH, PA. ORDINANCE § 375 (Aug. 7, 1967).

¹¹ See note 9 *supra*.

¹² Buffalo, Indianapolis and Pittsburgh all have examples of this type of court. See generally Comay, *The City of Pittsburgh Housing Court*, 30 U. PITT. L. REV. 459 (1969); Jesten, *The Indianapolis Environmental Court*, 17 URB. L. ANN. 209 (1979); LoRusso, *The Buffalo Housing Court: A Special Court for Special Problems*, 17 URB. L. ANN. 199 (1979). In addition, both Detroit and Minneapolis provide for code enforcement activities under their versions of Housing Courts. These two jurisdictions, however, also provide mechanisms for activities other than code enforcement. See generally Dick & Pfarr, *Detroit Housing Code Enforcement and Community Renewal: A Study in Futility*, 3 U. MICH. J. L. REF. 61 (1969); Mosier & Soble, *Modern Legislation, Metropolitan Court, Miniscule Results: A Study of Detroit's Landlord-Tenant Court*, 7 U. MICH. J. L. REF. 9 (1973); Penkower, *The Housing Court of Pittsburgh*, 17 URB. L. ANN. 141 (1979); Reed, *Detroit Code Enforcement and the Housing Court Debate*, 17 URB. L. ANN. 215 (1979); Rogers, *An Alternative to a Housing Court*, 17 URB. L. ANN. 177 (1979); Rose & Scott, "Street Talk" *Summonses in Detroit's Landlord-Tenant Court: A Small Step Forward for Urban Tenants*, 52 J. URB. L. 967 (1975).

¹³ Chicago, Los Angeles and Washington, D.C., operate along these lines. Each has a specialized court which is either set up exclusively for "eviction," an "unlawful detainer" action or, because of crowded dockets, has merely evolved into this type of court. See generally ABA, *HOUSING JUSTICE IN THE UNITED STATES: RECOMMENDATIONS FOR CHANGE AND INNOVATION IN OUR COURTS* (R. Scott, ed., 1980); Epstein, *The Los Angeles Landlord-Tenant Court*, 17 URB. L. ANN. 161 (1979); Fusco, Collins & Birnbaum, *Chicago's Eviction Court: A Tenants' Court of No Resort*, 17 URB. L. ANN. 93 (1979); McNamara, *The District of Columbia Landlord and Tenant Court: An Obsolete Structure in Need of Reform*, 23 CATH. U. L. REV. 275 (1973); Nebron & Epstein, *Landlord Tenant Court in Los Angeles: Restructuring the Justice System*, 11 LOY. L.A. L. REV. 537 (1978); Rothstein, *The Chicago Experience*, 17 URB. L. ANN. 133 (1979).

more comprehensive and deal with code enforcement and evictions, as well as related matters.¹⁴

III. RECONCILING THE RELATIONSHIP OF THE HOUSING COURT ACT WITH THE OHIO CONSTITUTION

Article II, Section 26 of the Ohio Constitution mandates that: "All laws, of a general nature, shall have a uniform operation throughout the state. . . ."¹⁵ Any possible conflict between this requirement and a statute creating a housing division for only one city's municipal court system has long been resolved. There are two bases upon which this conclusion rests. First, courts are reluctant to find laws unconstitutional as a matter of law. More importantly, the Housing Court Act is considered an exception to the uniform requirement of Article II, Section 26, since municipal courts operate under *special* rather than *general* grants of legislative power.

It is clear that the General Assembly has the power to create inferior courts.¹⁶ In addition, the General Assembly may define the jurisdiction and procedure to be followed by such courts.¹⁷ Whether all such constitutionally mandated, statutorily created, inferior courts are of a "general nature" is another question.

In *Miller v. Eagle*,¹⁸ the court, following *State v. Block*,¹⁹ reconciled any possible constitutional conflict:

¹⁴ See generally Cohen, *The New York City Housing Court—An Evolution*, 17 URB. L. ANN. 27 (1979); Garrity, *The Boston Housing Court: An Encouraging Response to Complex Issues*, 17 URB. L. ANN. 15 (1979); Goodman, *Housing Court: The New York Tenant Experience*, 17 URB. L. ANN. 57 (1979); Greaney, *County Housing Court*, 8 J. HOUSING 402 (1975); Peck, *The Hampden County Housing Court: An Overview*, 17 URB. L. ANN. 65 (1979); Rutzick & Huffman, *The New York City Housing Court: Trial and Error in Housing Code Enforcement*, 40 N.Y.U. L. REV. 738 (1975); Spada, *The Hartford-New Britain Judicial District Housing Court*, 17 URB. L. ANN. 187 (1979); Walsh, *Housing Code Enforcement in New York City—Another Look at an Administrative Tribunal*, 17 URB. L. ANN. 51 (1979); Comment, *The New York City Housing Court: New Remedy for an Old Dilemma*, 3 FORD. URB. L.J. 267 (1975).

Since the Massachusetts, New York City and Hartford-New Britain housing courts are similar to Cleveland's system in approach and structure, they will be compared and contrasted in Part V of this article. See notes 30-54 *infra* and accompanying text. Although theoretically Detroit and Minneapolis have similar structures and difficulties, these housing court systems will not be discussed because their operations are not administered through a unified court.

¹⁵ OHIO CONST. art. II, § 26.

¹⁶ OHIO CONST. art. II, § 1; art. IV, § 1. See *State ex rel. Stanley v. Bernon*, 127 Ohio St. 204, 187 N.E. 733 (1933); *State ex rel. Ramey v. Davis*, 119 Ohio St. 596, 165 N.E. 298 (1929); *Ohio ex rel. Atty. Gen. v. Bloch*, 65 Ohio St. 370, 62 N.E. 441 (1901).

¹⁷ OHIO CONST. art. IV, § 15. See *State ex rel. Ramey v. Davis*, 119 Ohio St. 596, 165 N.E. 298 (1929).

¹⁸ 96 Ohio St. 106, 117 N.E. 23 (1917).

¹⁹ 65 Ohio St. 370, 62 N.E. 441 (1901).

[S]ection one, Article four of the Constitution, authorizing the establishment by the General Assembly of inferior courts, was a *special* grant of legislative power upon a particular subject, which itself prescribed the rule for the government of the legislative body in the exercise of that power. . . . [T]he General Assembly is vested with full power to determine what courts, inferior to the Court of Appeals it will establish, . . . and to define their jurisdiction and power, and in the enactment of laws relating thereto is not subject to the limitation imposed upon the legislative power in requiring all laws of a *general* nature to have uniform operation throughout the state.²⁰

There is, therefore, no constitutional basis for an attack against the Housing Division of the Cleveland Municipal Court. The court is established pursuant to the special grant of legislative power to create inferior courts provided under Article IV, Section 1 of the Ohio Constitution, and, as such, is beyond the reach of Article II, Section 26 of the Ohio Constitution. Hence, if the Housing Court has any potential problems, they would appear to emanate from within its internal structure.

IV. INTRODUCTION TO THE HOUSING COURT

The Cleveland "Housing Court Act," which created a housing division within the Cleveland Municipal Court system,²¹ became effective April 2, 1980.²² Under the Act this division is granted exclusive jurisdiction in any criminal or civil action to enforce local building, housing, air pollution, sanitation, health, fire or safety codes.²³

²⁰ 96 Ohio St. at 117, 117 N.E. at 25 (emphasis added).

²¹ OHIO REV. CODE ANN. § 1901.011 (Page Supp. 1980).

²² The bill was forwarded to Governor Rhodes on November 30, 1979, and was "not signed or returned to the Senate wherein it originated within ten days after being so presented" and, therefore, became effective automatically. OHIO CONST. art. II, § 16. The Act amends §§ 1901.14, 1901.18, 1901.19 and 1901.36, and enacts §§ 1901.011, 1901.025, 1901.031, 1901.041, 1901.051, 1901.181 and 1901.331. OHIO REV. CODE ANN. § 1901 (Page Supp. 1980).

²³ OHIO REV. CODE ANN. § 1901.181(A) (Page Supp. 1980). Theoretically, the Housing Court has the power to decide disputes based on the following City of Cleveland laws discussed herein below.

The Health Code is directed against nuisances and, as such, regulates such problems as weeds, air pollution, vacant lands and vermin and rodent infestation. The nuisance abatement provisions of the Health Code are enforced by the Commissioner of Environmental Health, whereas the air pollution control provisions are enforced by the Commissioner of Air Pollution Control under the supervision and direction of the Director of Public Health and Welfare. CLEV., OHIO, PART TWO—HEALTH CODE (1978).

The Public and Private Land Use Regulations Code is primarily directed at violations of the zoning, housing, fire prevention and building laws. CLEV., OHIO, PART THREE—HEALTH CODE (1978). The Zoning Code, Title Seven of this Part, designates and regulates various types of use districts. The Code is enforced by the Divisions of Building and Housing under the direction of their respective com-

The Housing Court also has power to hear and determine all legal and equitable remedies²⁴ and to adopt and publish its own civil and criminal rules of procedure.²⁵ In addition, the Administrative Judge of the Cleveland Municipal Court has authority to transfer cases from other courts in the Municipal Court system to the Housing Court.²⁶

The Act provides the Housing Court with "one full-time judge" who "shall be elected specifically as the Housing Division Judge," a "Chief Housing Specialist, housing specialists and other employees."²⁷ The general duties of the Housing Specialist include visiting premises to examine the extent of needed repairs, interviewing owners and tenants to ascertain what can be done to effect such repairs and, from time to time, revisiting the property to examine the progress for work being done. Primary duties of the specialist, however, consist of steering homeowners to various loan and grant programs to secure funds for necessary repairs.²⁸

missioners. Appeals from determinations of these commissioners are handled by the Board of Zoning Appeals.

The Housing Code, Title Nine of this Part, establishes standards and regulates residences, rental dwellings and rooming houses, and is enforced by the Commissioner of Housing. Appeals from the commissioner are referred to the Board of Building Standards and Building Appeals or the Board of Zoning Appeals.

The Fire Prevention Code, Title Eleven of this Part, regulates flammable liquids, flammable materials and grease, explosives, fire extinguishing equipment and fire alarm and detection systems. The Fire Chief and such members of the Fire Division as are designated by him are in charge of enforcement and, except in emergencies, appeals from abatement orders are made directly to the Board of Building Standards and Building Appeals.

The Building Code is the most comprehensive of the housing-related legislation in Cleveland and regulates such diverse items as permits and occupancy certificates, outdoor signs and displays, residential occupancy, light and ventilation, heating, ventilation and air conditioning, plumbing and electrical wiring. Enforcement is through the Commissioner of Buildings, and appeals are heard by the Board of Building Standards and Building Appeals.

Examination of forcible entry and detainer (chapter 1923), landlord-tenant law (chapter 5321) and land installment contracts (chapter 5313) is beyond the scope of this article. For further information about these actions see Baillis, *Ohio Landlord-Tenant Act of 1974*, 3 OHIO N. L. REV. 122 (1975); Haley, *Landlord-Tenant Reform in Ohio*, 2 N. KY. ST. L.F. 212 (1975); Note, *Reformation of the Landlord-Tenant Relationship in Ohio*, 4 CAP. U. L. REV. 258 (1975); Note, *Bankruptcy and the Land Sale Contract*, 23 CASE W. RES. L. REV. 393 (1972); Note, *Covenant of Habitability and the Ohio Landlord-Tenant Legislation*, 23 CLEV. ST. L. REV. 539 (1974); Note, *Forcibly Ejected Tenant—Damages, Possessions, Both or Nothing?*, 28 U. CIN. L. REV. 369 (1959).

²⁴ OHIO REV. CODE ANN. § 1901.031 (Page Supp. 1980).

²⁵ *Id.* §§ 1901.14(B),(C).

²⁶ *Id.* § 1901.041.

²⁷ *Id.* § 1901.051.

²⁸ There are currently three such programs: CASH, NHS and the 3% Home Loan Program. CASH is a non-profit organization consisting of the City of

Although theoretically the Housing Court has broad jurisdiction over various housing, health and safety issues, as a practical matter most cases involve only evictions.²⁹ It is hoped that in the future the activities of the Housing Specialist will help to increase the scope of matters handled by the court, and enable this special judiciary to play a greater role in the improvement of inadequate housing.

V. COMPARISON OF THE CLEVELAND HOUSING DIVISION WITH OTHER HOUSING COURTS

Many jurisdictions possess special judicial machinery designed to alleviate housing-related problems. Because each jurisdiction has a particular philosophy concerning the eradication of its housing problems, attempting to compare the various and diverse approaches is, at best, a

Cleveland acting in combination with various Cleveland-area financial institutions. Its purpose is to make rehabilitation loans and grants to Cleveland residents living in so-called Community Development Neighborhood Strategy Areas who wish to bring their homes into compliance with City of Cleveland Housing and Building Codes. Funds are supplied to CASH through the pooling of City of Cleveland Community Block Grant monies with funds from the participating financial institutions. CASH has no income limits for its applicants; rather, loans and grants are based on an applicant's disposable income. CASH loan and grant recipients receive funds through one or more of the following sources: (1) city loans at the current annual interest rate; (2) interest-free deferred loans from the city placed as a lien on the property, payable only when the title to the property is transferred; (3) bank loans at the current annual interest rate; and (4) deferred loan/grants in combination with any of the above, depreciating to zero over an eight-year period and becoming a grant.

Neighborhood Housing Services, Inc. (NHS) is a private, nonprofit corporation formed by city residents and various Cleveland-area financial institutions. NHS has two designated "service areas" for the east and the west side of Cleveland. Regardless of income, residents of these services areas are eligible for rehabilitation loans. For residents who are eligible for traditional bank loans, NHS will assist them in the loan application process. For those residents who are not eligible for bank loans, NHS considers making loans directly to the residents from its so-called "revolving fund." The money for this fund is provided by local foundations and the Urban Reinvestment Task Force. Loan funds are used to bring homes located within the service areas into compliance with City of Cleveland Housing and Building Codes.

The City of Cleveland administers a combination of 3% loan and grant/deferred loan program for residents of certain designated areas of the city. Eligibility for loan funds is based on the applicant's ability to pay. Maximum amounts to be transferred to applicants currently are the following: (1) grants, \$4,000; (2) grants and deferred loans, \$18,500; (3) deferred loans, \$18,500; and (4) 3% loans, from \$27,000 (1 unit) to \$36,000 (4 units). The program only pays for those items which are determined by a Rehabilitation Advisor to be current or prospective code violations.

²⁹ On April 1, 1980, prior to the inception of the Housing Court, there were 113 housing code violations and 1,578 forcible entry and detainers pending. Since establishment of the special court, new cases filed between April 1 and October 30, 1980, total 525 housing violations and 5,323 forcible entry and detainers.

difficult task. Three jurisdictions, Hartford,³⁰ Boston³¹ and New York³² do, however, have systems similar to Cleveland's so as to provide meaningful comparisons. The wording of the Housing Court Act is substantially similar to that of these other Housing Acts. There are some important differences. For example, the Cleveland Housing Court Act provides that the "judges of the Housing Division of a Municipal Court may adopt, publish and revise rules"³³ for the administration of the Housing Court. But the Court presently consists of only one judge.³⁴ Therefore, although the rules are made by the Housing Court, they are in effect made by only one person. Similarly, the Massachusetts Act provides that the "senior justice in time of service shall be the first justice of [his] division."³⁵ This justice is deemed to be the Administrative Head³⁶ who has the authority to make the general rules and forms of procedure for the department.³⁷ In contrast, the Connecticut Housing Court is part of the Connecticut Superior Court.³⁸ Rules of the New York City Housing Court, a division of the New York City Civil Court, are promulgated in a fashion similar to that of the Connecticut Court.³⁹

There is also disparity among these courts regarding the attainment of judicial office. Unlike the Cleveland and New York systems, both the Massachusetts and Connecticut Acts provide for the appointment, not

³⁰ CONN. GEN. STAT. ANN. § 47a-68 (West Supp. 1981). The Hartford-New Britain Judicial District Housing Court (the "Connecticut Act") was passed by the Connecticut General Assembly in 1978.

³¹ The "Massachusetts Act," MASS. ANN. LAWS. ch. 185(c), §§ 1-23 (Michie/Law. Co-op Supp. 1981), was enacted on July 18, 1978. This act is an almost literal redrafting of the two pieces of legislation which established the Boston Housing Court and Hampden County Housing Court. Both statutes establishing these courts have since been repealed by MASS. ANN. LAWS. ch. 478, § 91 (Michie/Law. Co-op Supp. 1981).

³² CITY CIV. CT. ACT § 110 (McKinney Supp. 1981). New York's Housing Court became a reality by the addition of Section 110 to the New York City Civil Court Act (the "New York Act").

³³ OHIO REV. CODE ANN. § 1901.14(C) (Page Supp. 1980).

³⁴ *Id.* § 1901.051.

³⁵ MASS. ANN. LAWS. ch. 185(c), § 8 (Michie/Law. Co-op Supp. 1981).

³⁶ *Id.* § 8(A).

³⁷ *Id.* § 7. Allowing one justice to make the rules is not important until either the justices grow in number and, therefore, have a wider variety of opinions with regard to the scope of the rules, or until the present method becomes inadequate to serve the court's purpose.

³⁸ CONN. GEN. STAT. ANN. §§ 47(a)-74 (West Supp. 1981). Since, according to CONN. GEN. STAT. ANN. §§ 51-165 (West Supp. 1981), there are over one hundred Superior Court judges, it is likely that the judges assigned by the state Chief Court Administrator to hearing housing-related matters promulgate the Connecticut Housing Court's rules of practice and procedure.

³⁹ N.Y. CITY CIV. CT. ACT § 19(e) (McKinney Supp. 1979).

election, of judicial officers.⁴⁰ Also, the Massachusetts and the Connecticut Acts provide for the appointment of Housing Specialists whose duties are identical to those of the Housing Specialists appointed pursuant to the terms of the Cleveland Housing Court Act.⁴¹ The New York Act provides for "pro se clerks" whose duties appear to be similar to, but not as all-encompassing as those of the Housing Specialists.⁴²

There remains, however, a more important consideration in the comparison of the various housing court systems: that of the scope of the courts' powers. Traditionally, housing or landlord-tenant courts have been looked upon as lightweight, inferior courts, or close to, but not quite the same as small claims courts.⁴³ Presumably to combat this perception, the Massachusetts Act provides that "the divisions of the housing court department shall have superior and general jurisdiction with reference to all cases and matters within their jurisdiction."⁴⁴ In Massachusetts, courts endowed with this superior and general jurisdiction are more on a par with the Ohio courts of common pleas than with municipal courts, as they have some appellate jurisdiction.⁴⁵ In addition, the Massachusetts Act not only provides the Housing Court Department with jurisdiction over housing code enforcement, but also over any crimes which might occur on the premises during the performance of code enforcement duties.⁴⁶ Thus, for example if a housing inspector is

⁴⁰ CONN. GEN. STAT. ANN. §§ 2-42 (West Supp. 1981); MASS. ANN. LAWS. ch. 185(c), § 8 (Michie/Law. Co-op Supp. 1981). Connecticut judges are appointed for eight year terms by the General Assembly. Massachusetts judges are appointed for life by the General Assembly. New York City Civil Court judges are elected for ten year terms; the Criminal Court judges in the unified Civil-Criminal Court system are appointed by the Mayor for ten year terms. Some of the New York judicial officers in the Civil Court, the housing judges, are appointed by the court's administrative judge. Their status seems to be akin to that of a referee. See CITY CIV. CT. ACT § 110(e)(f), (i) (McKinney Supp. 1979).

There are also differences regarding the number of housing court judges a particular court may have. Under the Connecticut Act the state's Chief Court Administrator appoints one housing judge from the ranks of Superior Court Branch. See Spada, *The Hartford-New Britain Judicial District Housing Court*, 17 URB. L. ANN. 187, 187-88 (1979). The Massachusetts Act further provides for the appointment of three justices: one for the Hampton County Housing Court Division and two for the City of Boston Housing Court Division. See MASS. ANN. LAWS. ch. 289(c), § 8 (Michie/Law. Co-op Supp. 1981).

⁴¹ CONN. GEN. STAT. ANN. § 47a-69 (West Supp. 1981); MASS. ANN. LAWS. ch. 185(c), §§ 1, 16 (Michie/Law. Co-op Supp. 1981).

⁴² CITY CIV. CT. ACT § 110(o) (McKinney Supp. 1981).

⁴³ Note, *Enforcement of Municipal Housing Codes*, 78 HARV. L. REV. 801, 818 (1965).

⁴⁴ MASS. ANN. LAWS. ch. 185C, § 2 (Michie/Law. Co-op Supp. 1981).

⁴⁵ *Id.* §§ 2, 56.

⁴⁶ *Id.* § 3.

assaulted in the course of an inspection, theoretically his assailant could be prosecuted in the Housing Court Department for that crime.⁴⁷ While such a possibility is not readily apparent from the terms of the Cleveland Housing Court Act,⁴⁸ the ability to hear cases of this nature could raise the level of respect given to the Cleveland Court. Similar to Massachusetts are the Connecticut and New York Acts which also provide for greater jurisdictional power than that of their Cleveland counterpart.⁴⁹

This jurisdictional ability to hear cases on a variety of housing matters is a key to the effectiveness of housing courts. The Massachusetts Act, in particular, allows for greater flexibility with regard to actions which can be brought in the Housing Court Department. Section 20 of the Massachusetts Act provides that:

Any civil action within the jurisdiction of the housing court department which is pending in another court department may be transferred to the housing court department by any party thereto, but no civil action originally entered in the housing court department shall be transferred to any other department.⁵⁰

This provision of the Massachusetts system has the effect of allowing any party to transfer and *keep* actions pending before the more experienced and possibly more equitable forum of the Housing Court.

This approach is to be contrasted with that of the Cleveland Housing Court Act, which provides that only "upon the institution" of the Housing Court will a case filed in another division of the Cleveland Municipal Court be assigned to the Housing Court Judge.⁵¹ Thus, no matter how meritorious a case might be, if a Housing Court Judge is disinclined to take it, it will not be transferred to the Housing Court. The result is

⁴⁷ *Id.*

⁴⁸ OHIO REV. CODE ANN. § 1901.181 (Page Supp. 1980).

⁴⁹ CONN. GEN. STAT. ANN. §§ 47a-68, 70 (West Supp. 1981); N.Y. CITY CIV. CT. ACT § 110(a) (McKinney Supp. 1981).

⁵⁰ MASS. ANN. LAWS. ch. 195C, § 20 (Michie/Law. Co-op Supp. 1981). Massachusetts does provide for an exception to this increased jurisdiction in that "the supreme judicial court may direct any cause pending in the housing court department to be transferred in whole or in part for further action or directions, and in cases of partial transfer may issue such orders or direction in regard to the part of such cause not so transferred as justice may require." *Id.* Also, when cross actions between the same parties or two or more actions arising out of or connected with the same housing accommodation are pending, or when one or more actions in the housing court department or other courts such as the district court or the probate and family court are outstanding, the administrative judge may order that the action pending in such other courts be transferred to the housing court department. Such actions shall thereafter proceed in the housing court department as though originally entered therein. *Id.*

⁵¹ OHIO REV. CODE ANN. § 1901.041 (Page Supp. 1980).

that this provision may keep cases off the Court's docket. Additionally, even if the Housing Court decides to take a case pending in another court, such reassignment will only take place "if the administrative judge determines that reassignment will not delay the trial of the case" and "is in the best interest of the parties."⁵² Clearly, in potential Housing Court litigation, a recalcitrant housing code violator may not have the same "interest" as the party making claims against him, and consequently may fight the transfer of such a case to the Housing Court. Most importantly, the Cleveland Housing Court Act does not make clear whether a party can transfer out to the regular session of the municipal court.⁵³ If such transfer is possible, it would authorize avoidance of the Housing Court and present major questions as to the court's necessity.

While the Massachusetts Act is like the Cleveland ordinance in some ways, the power of the Massachusetts Housing Court Department seems to be clearly superior because of its broader jurisdictional power and its greater ability to keep competing parties before it. The limited appellate jurisdiction of the Connecticut model has similar advantages over the Cleveland system.⁵⁴

VI. CRITERIA FOR A VIABLE HOUSING COURT IN CLEVELAND

A key to the effectiveness of any court is its ability to command and deserve the respect of the citizens it serves. This respect results from the strength of the judiciary, adequate funding to allow proper functioning of the court and the speed and effectiveness with which the court distributes justice. The new Cleveland Court, to be a powerful and motivating force in the Cleveland housing market, must incorporate these requirements as permitted by the legislature, to determine all housing related matters. Unfortunately, there is concern that these essentials are not presently possessed by the new court.

A. *Money and Staffing*

Cleveland City Council is charged with supplying "suitable accommodations" for the Housing Court.⁵⁵ Concomitant with this duty, the Council also provides for the compensation of all housing court employees other than the judge. The Council must also provide "such other ordinary or extraordinary expenses as it considers advisable or necessary for the proper operation of the court."⁵⁶

Clearly, City Council has complete discretion in determining what

⁵² *Id.*

⁵³ *Id.* The Massachusetts Act makes it clear that this option is available. See MASS. ANN. LAWS, ch. 185(c), § 20 (Michie/Law. Co-op Supp. 1981).

⁵⁴ CONN. GEN. STAT. ANN. §§ 47(a)-70(a) (West Supp. 1981).

⁵⁵ OHIO REV. CODE ANN. § 1901.36(B) (Page Supp. 1980).

⁵⁶ *Id.* § 1901.36(A).

funding will be provided for the Housing Court. Before its inception, start-up costs of the Court approximated \$100,000.⁵⁷ The Cleveland City Council, however, appropriated \$50,000 for the Court. While City Council must allocate funds necessary to facilitate the administration of justice in its municipal court, it is not required to allocate all the funds sought.⁵⁸ Moreover, there has also been inquiry over whether the funds to finance the Court's operation are to come from the city general fund, or a more temporary source like federal community development money. Additionally, the Court originally felt it needed fourteen employees.⁶⁰ At this writing, the Court has no more than five, including the judge and his bailiff, due to the absence of adequate funding.

Political squabbling as well as the general fiscal problems of the city make unrealistic a rise in the amount of funds allocated to the Housing Court in the near future. As long as staffing and funding of the Housing Court continue to be treated as political footballs, its future operation cannot hope to be less than erratic. These problems contribute to the difficulties of defining the Court's role and, if unresolved, will significantly erode respect for this new forum before it has a chance to succeed.

B. *Speed and Effectiveness of Cleveland Housing Court Determinations*

The time between the initial issuance of a code violation notice and compliance can often be long and drawn out process. The procedure under the Cleveland Building Code begins with an inspection. Upon the finding of a violation, the inspector provides the owner, agent or person in control of the building with a written notice.⁶¹ The person served is given a stated period of time, usually thirty days, to comply. If the person sought cannot be served personally, mail service is attempted.⁶² This procedure may add an additional thirty days to the process. If the alleged violator is finally found he will typically be given thirty to ninety days to comply. If at the end of the ninety days he is still not in compliance, he may either be given more time or his file turned over to the City's Law Department. The Law Department investigation may take from thirty to sixty days before the violator is brought before the Hous-

⁵⁷ See Andrzejewski, *Cloud Hangs Over Housing Court Already*, The Plain Dealer, Feb. 24, 1980, A35, col. 4.

⁵⁸ State *ex rel.* Clev. Municipal Court v. City of Clev. Council, 34 Ohio St.2d 120, 196 N.E.2d 544 (1973).

⁵⁹ See note 57 *supra*.

⁶⁰ *Id.*

⁶¹ CLEV., OHIO, CODIFIED ORDINANCES tit. 13, § 3103.08(C)(1) (April 12, 1973).

⁶² *Id.* § 3103.08(C)(2).

ing Court. This scenario is not unusual. Typically a person does not face the Housing Court until approximately one year from the date of issuance of the initial violation notice. Because of the already overcrowded Housing Court docket, existing violations may not be remedied until almost two years after the first violation notice is issued.

Other jurisdictions have sought to remedy this time delay problem by permitting direct access to the Housing Court.⁶³ In Massachusetts, since the holding in *Commonwealth v. Haddad*,⁶⁴ individual citizens can bypass the law department and file code violations directly with the Housing Court. *Haddad* involved a complaint by an inspector for a neighborhood association against a property owner for violations of the Massachusetts State Sanitary Code. The City of Boston Housing Court found the defendant guilty of code violations, but nevertheless requested the Supreme Judicial Court of Massachusetts to answer the question whether a private citizen could pursue such an action. The state Supreme Court held: (1) complaints under the State Sanitary Code could be brought by interested parties other than a city or state inspector; and (2) neither the Boston Commissioner of Housing Inspection nor the State Department of Public Health had the exclusive right to bring criminal complaints for such violations. The court reasoned that:

[A]nyone may make a criminal complaint in a District Court who is competent to make oath to it. General statutes imposing a duty to prosecute on particular public officials are read as directory only, and do not exclude the right of any other citizen to enter complaints for violations of the law.⁶⁵

Applying the reasoning of *Haddad* might allow the Cleveland Housing Court to expedite the process of bringing homes into compliance with Cleveland's housing codes. Making available such direct private citizen action would be advantageous, as it aids in speeding the prosecution of violators, as well as assisting in establishing the Court as a positive force in the community. This is a step which should be made part of

⁶³ At some of the neighborhood meetings held throughout the city in an attempt to get community input into how the Housing Court should be run, there was at least one suggestion that inspectors file code violations directly with the Housing Court as opposed to filing through the Law Department. Presently there are no provisions in the Act or in the City of Cleveland Ordinances to allow a private citizen to pursue such actions. At this time all code violations are prosecuted by a member of the Law Department staff. See note 27 *supra*.

⁶⁴ 364 Mass. 795, 308 N.E.2d 899 (1975).

⁶⁵ *Id.* Note that in Massachusetts, under these circumstances, the jurisdiction of the Housing Court Department is concurrent with the district courts. See MASS. ANN. LAWS ch. 185, § 3 (Michie/Law. Co-op Supp. 1981). Such procedure would likely strengthen the court, assuming the problems of malicious filing of complaints and private citizen ignorance of what constitutes a violation can be solved.

Housing Court procedure, as it would make the Court more useful and effective by aiding citizen access to it.⁶⁶

C. *Administrative Appeals*

There is concern as to how successful the court will be in effectuating compliance with Cleveland's housing codes. Because the Housing Court lacks appellate jurisdiction, the clever advocate can circumvent or completely ignore its reach. This limited scope of review dilutes the Housing Court's power and is another obstacle to its efficacy.

Some of this lost strength seems to be regained by virtue of section 1901.181 of the Ohio Revised Code, which gives the Housing Court "exclusive jurisdiction" in civil and criminal actions to enforce Cleveland's building and health and safety codes. An investigation of the procedure for the enforcement of these codes, however, indicates that the Housing Court's jurisdiction may, in some cases, be ephemeral. For example, the Cleveland City Charter provides for the establishment of administrative boards by the Mayor.⁶⁷ The Charter itself establishes a Board of Building Standards and Building Appeals⁶⁸ whose members are appointed by the Mayor.⁶⁹ Also, the Codified Ordinances of the City of Cleveland give the Commissioner of Housing the power to enforce the Housing Code.⁷⁰ If a person notified of a violation "fails, neglects or refuses to comply," the Commissioner may issue a notice ordering the premises to be vacated or "he may advise the Director of Law of the circumstances and request the Director to institute an appropriate action at law to compel a compliance, or both."⁷¹ Unquestionably the Housing Court Act contemplates that the "appropriate action" of the Director of Law should commence in the Housing Court. But the mere presence of these options is another way in which Housing Court involvement, in matters for which it was created, may be defeated.

If the administrative option is taken, and a violation found, subse-

⁶⁶ Whether such procedure is wise or warranted, however, depends on many variables; one major variable is possible City Law Department opposition.

⁶⁷ CLEV., OHIO, CHARTER ch. 11, § 70 (Nov. 9, 1931).

⁶⁸ *Id.* § 76-6.

⁶⁹ *Id.* § 76-6(c).

⁷⁰ *Id.* § 367.04(a). Section 367.04(a) of the Cleveland Housing Code declares that:

[W]henver the Commissioner of Housing shall find any dwelling structure, or premises, or any part thereof, to be in violation of the provisions of this Housing Code, he shall give or cause to be given to the owner or agent or person in charge of such structure of premises, and the mortgage of record, a written notice stating the violation therein. Such notice shall order the owner within a stated reasonable time to repair, improve or demolish the structure or premises concerned.

Id.

⁷¹ *Id.* § 365.05(a).

quent failure to comply may still not result in the case being brought before the Housing Court. Notices of the Commissioner of Housing can be appealed therefrom.⁷² The Codified Ordinances give the Board of Building Standards and Building Appeals the right to decide appeals from the Commissioner's notices.⁷³ Ideally, it would seem that the adverse determination by the appropriate board, if not agreed to by the claimant, should then be sent to the Housing Court for further disposition. The administrative appeals procedure embodied in the Ohio Revised Code, however, may take the determination of appeals of such board action out of the hands of the Housing Court.⁷⁴ The availability of these various administrative remedies and their appeal procedures substantially limits the ability of the Housing Court to provide the single, decisive solution to Cleveland's housing problems. Allowing administrative appeals directly to another administrative agency or to the Court of Common Pleas results in dilution of the strength of the new Housing Court. Certainly this situation is unlikely to change soon since it is doubtful that the Ohio General Assembly will confer appellate jurisdiction on a municipal court in any area. However, this limitation in strength may be remedied without legislative action if the Court of

⁷² *Id.* § 367.09.

⁷³ *Id.*

⁷⁴ The Charter of the City of Cleveland is silent on the question of whether decisions of the Board of Building Standards and Building Appeals or the Board of Zoning Appeals are appealable. Chapter 2506 of the Ohio Revised Code, however, sets up a procedure for the appeal from adverse administrative agency decisions. Section 2506.06 of the Chapter reads, in part:

Every final order, adjudication, or decision of any officer, tribunal, authority, board, bureau, commission, department or other division of any political subdivision of the state may be reviewed by the common pleas court of the county in which the principal office of the political subdivision is located, as provided in sections 2505.01 to 2505.45, inclusive of the Revised Code, and as such procedure is modified by section 2506.01 to 2506.04, inclusive, of the Revised Code.

OHIO REV. CODE ANN. § 2506.06 (Page Supp. 1980). With regard to this statute it has been written:

Ohio's Supreme Court has pointed out that Chapter 2506 was enacted by the Ohio General Assembly largely to adequately accommodate the growing volume of zoning and building litigation confronting our courts and arising from adversary proceedings in respect to the interpretation and administration of urban and rural zoning and building ordinances So long as a quasi-judicial, as opposed to either a purely legislative or purely administrative function, is being performed, the common pleas court is authorized to hear the matter on appeal according to a statutorily defined procedure.

Robiner, *Ohio Revised Code Chapter 2506—Judicial Review of Administrative Rulings*, 22 CLEV. ST. L. REV. 229, 230 (1973) (footnotes omitted).

The Court of Common Pleas of Cuyahoga County has already held that determinations by Cleveland's Board of Building Standards and Building Appeals can be appealed to it. *See Box v. Clev. Bd. of Bldg. Standards and Bldg. Appeals*, 15 Ohio Misc. 17, 43 Ohio Op. 2d 143 (1968).

Common Pleas is consistent in striking down at least the more specious appeals which have delaying action as their purpose. Such appeals may thereafter dwindle, and the Housing Court will then be free to go about the work designed for it.

VII. CONCLUSION

Cleveland, as other cities, has established a court to specifically deal with housing problems. Despite the presence of this new Housing Court, it is clear that many of Cleveland's housing-related problems will not soon disappear. The agencies charged with assisting in remedying the proliferation of substandard housing surely are overworked and understaffed;⁷⁵ additionally, many of those persons whom they would seek to have comply with city housing-related laws are not in a position which enables them to do so.⁷⁶

The Housing Court needs a predictable source of funds and staffing. This will only result when political bickering over the Court's status and the problems of city budget constraints are resolved. The Housing Court needs continuity, as well as the experience and strength that results from it. The Housing Court needs to process more code violations. Currently, code violation cases account for less than ten percent of the Housing Court docket. If this is because more homeowners are bringing their premises into compliance voluntarily, or because compliance is being secured prior to the case going before the Housing Court, it is all to the good. If, however, such a small percentage of cases is being prosecuted either because the system is not equipped to handle more, or all those charged with securing housing and building code compliance are not doing their jobs, then there will be a continuing problem.

Finally, the Housing Court needs a chance. A court of its type is a genuinely unique idea throughout this country and a specifically unique concept in this state. It can serve a role in the battle for better housing, but it must be given time to grow. Given such time it will, hopefully, grow intelligently.

⁷⁵ Two basic factors often hamper the effectiveness of the municipal department or agency charged with the enforcement of housing codes. The first of such factors is the lack of a large enough staff to administer and enforce the code. If the size of the staff is adequate, municipal budgetary limitations may prohibit the payment of salaries which will attract highly experienced and qualified personnel. In most cases, the law of the municipality requires a minimum of work experience for an inspector.

Committee, *Trends in Landlord-Tenant Law Including Model Code*, 6 REAL PROP., PROB. & TR. J. 550, 571 (1971).

⁷⁶ Nor will excessive standards cure the ills which plague the mass dwelling houses of the inner city, for in their vigor to find the remedy, the housing officials may unwittingly become overzealously oppressive, driving the landlord, overburdened by the excesses of an unrealistically stringent housing code, right out of the market.

Note, *Covenant of Habitability and the Ohio Landlord-Tenant Legislation*, 23 CLEV. ST. L. REV. 539, 551 (1974).