

OFFICE OF
BOARD OF SELECTMEN
TOWNSEND, MASSACHUSETTS

01469

TEL. (617) 597-2837

November 10, 1986

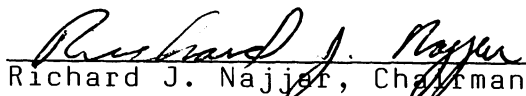
Dear Councillors:

At the outset of this fiscal year we ended a Bi-Town Agreement and hired a full-time Building/Zoning Official. Mr. Michael Gallant had previously worked in Worcester County. He has made us aware of a new program instituted in the court system there; Housing Court has been in effect for about nine months and addresses only those issues involving housing problems. Mr. Gallant found it to be an expedient, inexpensive and satisfactory way to solve problems arising in a Building Inspector's office.

We would like to have a similar system instituted in Middlesex County, and would appreciate your help. Please read the enclosed brochures, and have them reviewed by Town Counsel if you wish, and then, assuming you view it as a valuable asset, please write to your State Senator and Representative requesting the formation of a Housing Court in Middlesex County on a rotating calender between locations.

If you have any additional questions, please call Michael Gallant, (617) 597-5411.

Thank you,


Richard J. Najjar, Chairman


Samuel S. Thorpe, Jr., Vice Chairman


Andrea R. Wood, Clerk

WORCESTER COUNTY HOUSING COURT
2 MAIN STREET, ROOM 101
WORCESTER, MA 01608
(617) 792-0800

ENFORCING THE STATE BUILDING CODE

INTRODUCTION

The Worcester County Housing Court has jurisdiction over any situation that affects the health, safety or well being of the occupants of any type of residential property located in the four cities and 56 towns of Worcester County (and also Bellingham, in Norfolk County).

This jurisdiction provides state and local officials with a broad array of tools that can be used to enforce provisions of state laws and regulations as well as local ordinances and bylaws regulating the construction, placement and rehabilitation of buildings, the minimum standards for human habitation, childhood lead poisoning prevention and fire prevention.

THE HOUSING COURT

The Worcester County Housing Court, in matters under its jurisdiction, has powers that are equal to the Superior Court. These powers include the ability to grant restraining orders and injunctions which direct a person to desist or refrain from certain activities. Violations of injunctions are considered contempt of court.

CIVIL AND CRIMINAL

Both civil and criminal actions may be brought in the Housing Court. A civil action is a suit by a individual or unit of government in which the Court is asked to order a defendant to do something, refrain from doing something and/or pay money damages as a result of the defendant's behavior. There is no civil filing fee charged to a unit of government.

A criminal action is commenced by a complainant (such as an inspector) on behalf of the Commonwealth. A criminal complaint alleges that a violation of law has occurred. In a criminal case, the Court cannot order the defendant to do anything. The Court can only punish the defendant for disobeying the law.

BEFORE GOING TO COURT

A building inspector can file a complaint in the Housing Court by following a number of steps that will be explained later. Before a complaint is filed, however, the following should have happened.

1. Inspection: As a result of a citizen complaint or routine inspection, an inspector should go to the property in question to observe conditions there.

2. Order: If building code violations are observed, the inspector should prepare a written report identifying the violations as specifically as possible (including references to pertinent laws and regulations). The report should include an order specifically notifying the violator to take certain action in order to eliminate violations and should also include the statutory time limit allowed for compliance..

3. Determination of Ownership: Before a violation notice is sent out, it is important to determine who owns and controls the property where the violations exist. This can be done by consulting the local tax assessor and by checking with the Registry of Deeds. It is best to get a certified copy of the deed and the assessment records in order to prove ownership.

4. Notice: The report and order must be delivered to the violator in a way that will allow the inspector to prove receipt of the order, if necessary. Orders are customarily delivered by certified mail, return receipt requested with another copy being sent by first class mail. If the certified mail is returned unclaimed, the order should be delivered by a constable. In any event, documentation proving receipt of the order should be kept in the file that is opened when the inspector is first made.

5. Reinspection: When the time allowed for compliance has expired, the inspector should make a reinspection to observe the current situation. The time for compliance begins when the order is received. It is also a good idea to make another reinspection the day before any court appearances relating to the property.

FILING A CRIMINAL CASE FOR BUILDING CODE VIOLATIONS

(Sample copies of all forms referred to are attached for reference. Blank copies of all forms are available from the Housing Court Clerk's Office.)

To file a criminal complaint in the Housing Court, a building inspector should do the following:

1. Take a blank lined CRIMINAL COMPLAINT form (see sample) and fill it out as follows:

(A) Name, title and place of employment of complaining inspector.

(B) Complete name and address, including ZIP, of the person complained against. In the case of multiple owners, use a separate complaint form for each person.

(C) Cite the law or regulation that has been violated.

(D) Enter the possible penalties for the violation.

Type in the language from the sample complaint, filling in the three blank spaces as follows:

(E) Cite the law or regulation that has been violated.

(F) Enter the complete address and/or description of the property where the violation was observed.

(G) Enter the date of the day after the order or notice expired.

(H) Enter the date the complaint is signed.

(I) Sign the complaint.

2. Tear off the last (gold) copy of the complaint and keep it with your records.
3. Take a NOTICE OF SHOW CAUSE HEARING form and type in only the name and address, including ZIP, of the defendant
4. Deliver or mail the COMPLAINT, the NOTICE OF SHOW CAUSE HEARING, and TWO copies of your order to the Clerk of the Housing Court, Room 101 of the Worcester County Courthouse, 2 Main Street, Worcester. Complaints may also be delivered in hand (but not by mail) to the Housing Court at its Fitchburg, Dudley and Uxbridge sessions. Contact the Clerk's Office for information about these sessions.

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A copy of the NOTICE OF SHOW CAUSE HEARING will be sent by the Court to the Defendant and the inspector to notify all parties of the time and place for the Clerk's hearing. If the Clerk finds sufficient evidence, he will issue the Criminal Complaint and a Criminal Arraignment will be scheduled. At the arraignment, a trial will be scheduled.

ATTACHMENTS

Sample Criminal Complaint

Sample Notice of Show Cause Hearing

Chart outlining the Criminal prosecution process

A description of the arraignment process.

For more information:

Paul S. Groesbeck, First Assistant Clerk Magistrate
Edward W. Goggins, Chief Housing Specialist
(617) 792-0800

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT

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HOUSING COURT DEPARTMENT
WORCESTER COUNTY DIVISION

CRIMINAL COMPLAINT

NO.

TO ANY JUSTICE OR CLERK MAGISTRATE OF THE ABOVE NAMED COURT:

(A)

_____, on behalf of the Commonwealth, on oath complains that

(NAME, ADDRESS AND ZIP CODE OF DEFENDANT)

STATUTE VIOLATED

(B)

(C)

POSSIBLE PENALTIES

(D)

did fail to comply with an order issued pursuant to (E)

to abate a condition existing at (F)

and that on (G), the time provided for in the

order for compliance therewith by the defendant having expired and

from day to day thereafter, the defendant has failed to comply with

the order, a copy of which is attached.

and did so wilfully, intentionally, recklessly or repeatedly.

DATE: (H)

(I)

COMPLAINANT

SWORN TO BEFORE THE UNDERSIGNED CLERK MAGISTRATE OF THIS COURT.

DATE: _____

CLERK MAGISTRATE

S A M P L E

COMMONWEALTH OF MASSACHUSETTS

WORCESTER, SS.

HOUSING COURT DEPARTMENT
WORCESTER COUNTY DIVISION
SHOW CAUSE NO.

NOTICE OF SHOW CAUSE HEARING

1 TO: Mary C. Jones
111 Main Avenue
Worcester, MA 01609

A Criminal Complaint naming you as the Defendant has been filed in this Court. A copy of the Complaint accompanies this notice. Before any criminal process is issued, however, a Clerk-Magistrate of this Court will hold an informal hearing to determine if there is sufficient cause to require you to be charged with the offense alleged. This hearing will be held:

_____, 19____, _____ M.

at _____

At this hearing, you may tell your side of the story, bring witnesses and be represented by an attorney, if you so choose.

If, after the hearing, the Clerk-Magistrate believes there is enough evidence to warrant a trial, you will receive a Criminal Summons and another copy of the Complaint.

Dated: _____

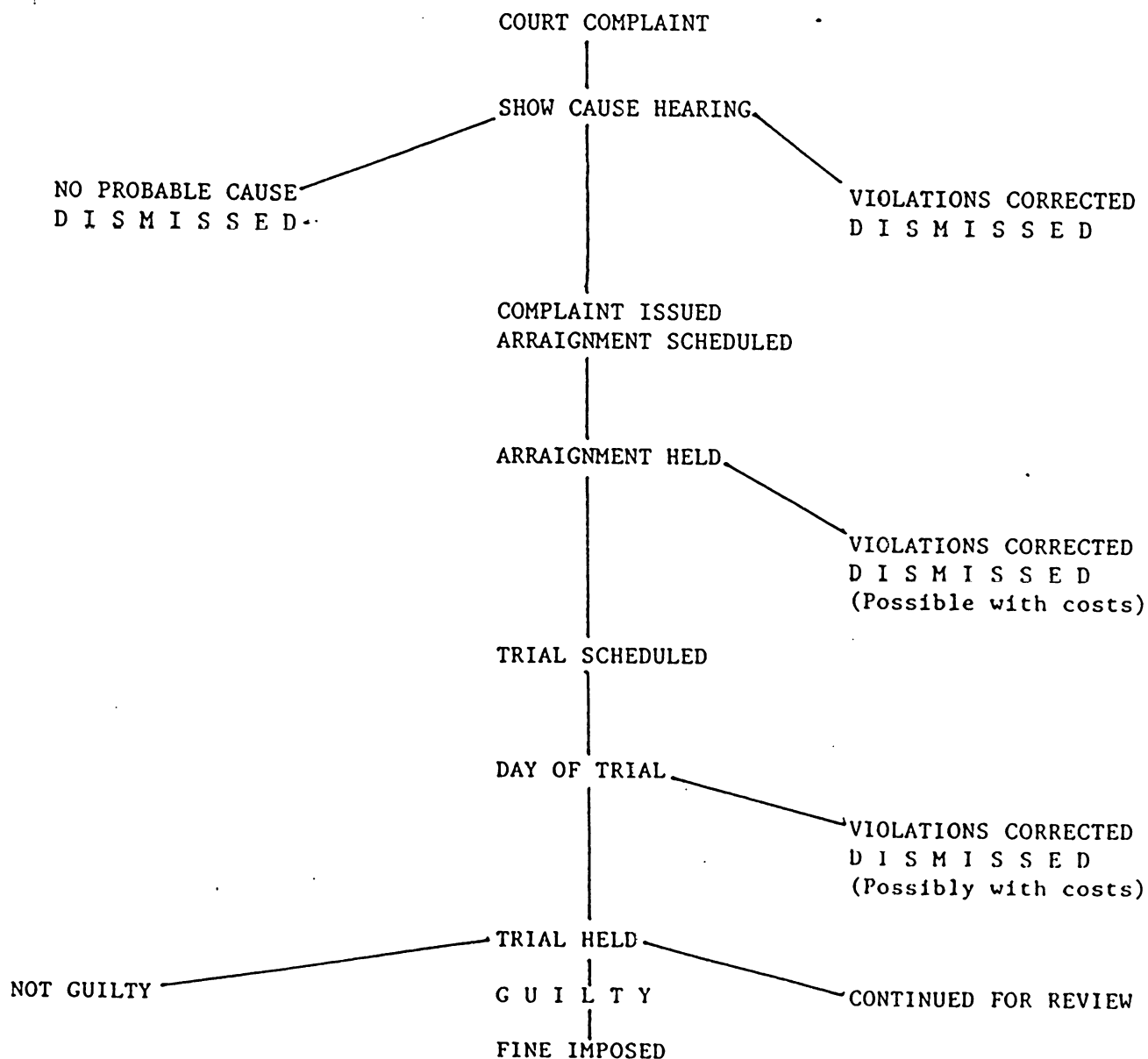
James A. Bisceglia
James A. Bisceglia, Clerk Magistrate

THE CODE ENFORCEMENT PROCESS
(CRIMINAL APPROACH)
IN THE WORCESTER COUNTY HOUSING COURT

A D M I N I S T R A T I V E P H A S E

COMPLAINT
INSPECTION
ORDER
REINSPECTION
ADMINISTRATIVE HEARING
ETC,

C O U R T P H A S E



4. Civil

The Housing Court has a wide range of powers which can be used to resolve a dispute involving residential property. Under the Court's Civil powers, any party can sue another for any amount of money and may also ask the Court to order another party to temporarily or permanently cease an activity that the first party finds objectional. Civil remedies available from the Housing Court fall into four general categories.

Injunctive Relief: The Court can issue temporary restraining orders and injunctions. For example, a landlord who locks a tenant out of an apartment may be ordered to allow the tenant to resume occupancy. A tenant who is bothering other tenants may be ordered to modify his or her behavior. Violation of a restraining order or injunction may be considered contempt of court.

Torts: In a tort action, one party sues another to recover money damages for loss or injury resulting from the wrongful or negligent actions of the defending party. For example, a person who is injured on another person's property may sue that person; a homeowner whose home is damaged by neighboring construction may sue the builder for the costs of repairing his house.

Contracts: If one party to a contract feels that the other party has failed to abide by the terms of that contract, the aggrieved party may sue in the Housing Court if the contract has some

relationship to residential property. A contract suit might involve a roofer who has not been paid for his work. Additionally, a contract for the sale of real estate could be enforced in the Housing Court when one party refuses to go through with the sale.

Consumer Protection Actions: Under Massachusetts Law (Chapter 93A), a party may sue another party who has engaged in unfair or deceptive acts or practices. Typical cases involve realtors, apartment rental agencies and contractors.

Under its Civil powers, the Housing Court may also appoint receivers, prevent the renting of an apartment until a discrimination charge is decided and, in general, fashion any remedy that is necessary for the fair and expedient resolution of any housing related dispute.

What is different about the Housing Court?

A helpful feature of the Housing Court is the Housing Specialist Department. The housing specialists provide voluntary mediation for parties who wish to attempt settlements. Successful mediation eliminates the time and expense of formal trials. The housing specialist also acts as the "eyes and ears of the Court" conducting on site views and inspections under the direction of the Judge.

SCHEDULE

Below is the current weekly calendar of the Worcester County Housing Court.

MONDAY	TUESDAY	WEDNESDAY	THURSDAY	FRIDAY
Worcester (9:30) Criminal Motions, Arraignments and Trials	Fitchburg (9:00) All Motions All Criminal Small Claims	Worcester (9:30) Criminal Motions Arraignments Trials Small Claims	Worcester (9:00) Summary Process	Fitchburg (9:00) All Motions Summary Process Civil
Dudley (1:30) All Matters	Worcester (2:00) Civil Motions Civil Trials	Worcester (2:00) Trials	Uxbridge (1:30) All Matters	Worcester Administrative

What does it cost?

Criminal Actions: No charge for filing a criminal complaint.

Summary Process Actions: \$25 filing fee and \$5.00 surcharge.

Small Claims Actions: Claims up to \$500 - \$8.89
Claims of \$501 to \$1,500 - \$11.39

Civil Actions: \$25 filing fee and \$5.00 surcharge
Additional \$25 for restraining order or injunction.

Summons: \$50

Waiver of Fees: If a person bringing an action in the Housing Court indigent or for some reason unable to pay the filing fees, the clerk may waive the charges. There is no filing fee for a civil action brought by any city, town or other governmental unit.

When can I file a case? Where . . . ?

The office of the Clerk of the Housing Court is located:
Room 101 of the
Worcester County Courthouse,
2 Main Street,
Worcester, MA 01608.

The telephone number is:
(617) 792-0800

Business hours are:
Monday - Friday, 8:30 a.m. - 4:30 p.m.

All filings by mail should be directed to that address. In person filings may be made in Worcester during business hours or in Uxbridge, Dudley or Fitchburg Court-houses when the Housing Court is sitting there.

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3. DO YOU PLEAD GUILTY OR NOT GUILTY?

If you plead GUILTY, the case is over. You have admitted that you committed the crime you are being charged with and the Judge can impose whatever penalty he feels is appropriate.

If you plead NOT GUILTY, you will have a trial at which the representatives of the Commonwealth must prove your guilt beyond a reasonable doubt.

It is usually best to plead NOT GUILTY in order to preserve your right to a trial. You can always change your plea later on.

4. DO YOU DEMAND OR WAIVE A JURY TRIAL?

If this case goes to trial, you have a right to a jury trial. A criminal jury is made up of 12 people drawn from the Worcester County jury pool. You have the right to participate in choosing the 12 who will sit on the jury. If you have a jury trial, the jury will decide by unanimous vote if you are guilty or not guilty. If you decide not to demand a jury, you will be tried by the judge who will decide whether you are guilty or not guilty. If you are found guilty by a jury or by the judge, the judge will impose the appropriate penalty.

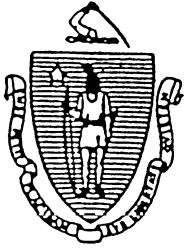
If you do not want a jury, you should answer, "I waive a jury".

If you want a jury trial, you should answer, "I would like a jury trial".

TRIAL SCHEDULING

After you have answered the four arraignment questions, the Court will schedule your trial date and time. At that point your arraignment is over and you are free to leave. Please check with the Court officer on the way out of the Court. He will ask you to sign a waiver of jury or waiver of lawyer if you have waived either of those rights. He will also give you a reminder slip notifying you of your trial date.

PLEASE NOTE: If you do not come to Court on your trial day, the judge may issue a warrant for your arrest.



Commonwealth of Massachusetts

WORCESTER COUNTY HOUSING COURT

INFORMATION FOR CRIMINAL DEFENDANTS APPEARING IN THE HOUSING COURT

A R R A I G N M E N T

When a Criminal Complaint is issued against you by the Housing Court, the following will happen:

ARRAIGNMENT: The first time you come to court is known as your arraignment. This is not the trial date. On your arraignment date you will appear in front of the judge and will be asked four questions by the Court's Clerk Magistrate. Each one of these questions has something to do with your constitutional rights.

Please listen to the Clerk carefully before you answer each question. If you do not understand something, ask the Judge or the Clerk for more information.

The four arraignment questions are:

1. DO YOU WAIVE A READING OF THE COMPLAINT?

The COMPLAINT is the paper you received from the Court describing the criminal offense you allegedly committed. The most common offenses complained of in the Housing Court involve housing, fire and building code violations.

If you understand what you are being charged with, your answer to question one should be, "Yes, I waive a reading of the Complaint". If you are not sure why you are in Court you should answer, "No, I do not waive a reading of the Complaint".

2. WILL YOU BE REPRESENTED BY A LAWYER?

Because this is a criminal case, you have a right to be represented by a lawyer at every stage of the case. If you cannot afford a lawyer, the Court will appoint one to represent you.

If you do not plan on having a lawyer your answer to question two should be, "No, I will not have a lawyer*". If you are going to hire a lawyer but need some time to do so, you should say that to the judge. If you want a lawyer but cannot afford one, you should answer, "I would like the Court to appoint someone to be my lawyer".

What is the WCHC?

The Worcester County Housing Court is part of the Housing Court Department of the Massachusetts Trial Court and has jurisdiction over any matter that directly or indirectly affects residential property in the county. The Court enforces the criminal laws concerned with maintaining the health, safety and welfare of occupants of residential housing and also hears cases involving landlord-tenant disputes and problems with contracts or personal injuries that arise out of housing situations. The Court has the power to grant temporary restraining orders and injunctions within its subject matter jurisdiction.

What area is served?

The Housing Court serves 60 cities and towns in Worcester County as well as the town of Bellingham in Norfolk County. The court holds its hearings on a regular basis in four locations: Worcester County Court House, 2 Main Street, Room 101; Fitchburg Superior Court House, 84 Elm Street, Ground Floor, Room 1; and the District Courthouses in Dudley and Uxbridge. From time to time the court may sit in other locations. (Please see the schedule on reverse side).

What kind of cases are handled?

The court handles cases related to landlord-tenant disputes, health and safety issues, disputes arising from breach of contract involving the sale, repair or use of residential property and other housing related matters. A dispute generally will fall under one of the Civil, Criminal, Summary Process or Small Claims categories. The following is a description of the types of cases handled in each category.

1. Criminal

These actions are criminal misdemeanor complaints brought by governmental enforcement agencies to enforce sanitary, housing, fire, and building codes; and criminal complaints brought by tenants against landlords who intentionally fail to supply essential services like water or heat, who interfere with utilities, or who attempt to regain possession without the benefit of judicial process. Likewise, a landlord may bring a criminal complaint against a tenant for destruction of property or against an occupant for trespass.

2. Summary Process

These are eviction actions brought by landlords who wish to regain possession of an apartment and recover rent arrearage from a tenant or occupant. A tenant has the right to defend against the eviction action and to raise counterclaims when there are violations of any law arising from the tenancy.

3. Small Claims

Small Claims suits are for money damages up to \$1,500. Typical actions include suits by landlords against tenants for unpaid rent and by tenants against landlords for return of security deposits. Housing Court Small Claims actions may also be brought by homeowners against builders or repairmen and by anyone who has not been paid for providing a service to residential property.

4.

S-641

Comm. from the Board of Selectmen of the Town
of Townsend, regarding a new program relative
to a Housing Court in the Middlesex County.

In City Council,

November 24, 1986

Placed on file
Copy to all City Councilors

Copy sent to all Councilors in their
packages on Friday, December 5th, 1986
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