2015 Leap Conference

New York City at a Crossroads: The Role of Civil Legal Services in Preserving Diverse Communities

Organizing and Representing Tenants in Group Legal Actions

Presenters
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Stephanie Rudolph, Staff Attorney, Urban Justice Center
Barbara Schliff, Organizer, Los Sures

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Speaker Biographies

**Ryan Dubois**
Mr. Dubois is an organizer at the Goddard Riverside Law Project, where he works primarily with low-income tenants, many of whom live in SRO housing. Prior to his work at Goddard Riverside, Ryan served as a Peace Corps Volunteer in the Dominican Republic, facilitating youth-based educational activities focused on sexual health, gender equality, and professional development. Ryan graduated from American University with Bachelors’ degree in International Studies, and has extensive experience working on behalf of under resourced communities in Latin America as well as the United States.

**Martin Needelman**
Mr. Needelman is the Co-Executive Director and Chief Counsel at Brooklyn Legal Services Corporation A (“Brooklyn A”). Marty has 43 years of experience providing legal services to clients in North Brooklyn, the majority of which have been spent with Brooklyn A as a Staff Attorney, and then for the last 30 years as Project Director (now Co-Executive Director) and Chief Counsel. Marty has received many honors and awards, including the Pro Bono Award from the Brooklyn Bar Association in 1992, the 1998 Risk Taker of the Year Award from Jews for Racial and Economic Justice, and the 2010 Louis Lefkowitz Award from the Fordham Law School Public Interest Center for his contributions to the law as it affects urban communities. Mr. Needelman is a 1969 graduate of Boston University Law School.

**Stephanie Rudolph**
Ms. Rudolph is an attorney in the housing practice area of the Community Development Project (CDP) of the Urban Justice Center where she specializes in group affirmative litigation against neglectful and harassing landlords. In conjunction with grassroots organizing groups, CDP represents low-income tenants in HP proceedings, 7A cases, rent strikes, and harassment cases. Prior to joining CDP, Stephanie served as a Skadden Fellow at New York Lawyers for the Public Interest, carrying out the “Healthy Homes” Project aimed at remediating indoor toxins such as mold.

**Barbara Schliff**
Ms. Schliff has been an organizer at Los Sures (The “Southside”), a community-based, non-profit organization that has served as an integral part in rebuilding the South Side of Williamsburg, Brooklyn since 1972. Barbara arrived in Williamsburg as a Vista volunteer in 1974 and stuck around, joining Los Sures shortly after its founding. Today, after serving as the Director of the Housing Resources Unit for 37 years, Barbara is back to organizing full time, still climbing tenement stairs and attending late-night meetings.
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I. Introductions and Overview

A. What is the relationship between legal representation and organizing?

B. What legal strategies do lawyers employ in partnership with organizers?

II. Legal Overview

A. HP Actions in Private Housing

1. An HP action is a special proceeding brought in the HP Part of Housing Court pursuant to NYC Admin Code § 27-2115 asking for an order to correct violations of the Housing Maintenance Code (HMC).

2. HP Actions can be commenced as a group of tenants living in the same building or individually.

3. Preparation:

   a. Tenants must call 311 to report HPD violations.

   b. It is a good idea to write a demand letter to the owner (though not legally required).

   c. Tenants should keep contemporaneous notes and snap photos.

   d. For heating, tenants should keep a heat log contemporaneously, noting the indoor temperature, the outdoor temperature, time, and date.

   e. Tenants can also call 311 to report DOB (e.g., broken elevator) and Department of Health and Mental Hygiene Violations (e.g., elevated levels of lead dust due to construction).

   f. The HP court can make an order to correct based on DOB violations as well: Various Tenants of 515 East 12th Street v. 515 East 12th Street Inc. 128 Misc. 2d 235 (Civ. Ct. NY Co 1985).

4. Starting the Case:

   a. OSC & Verified Petition: Civil Court Act § 110(a)(9) and CPLR § 403(d) require an OSC and a verified petition.
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b. Who to name:
   → As per NYC Admin Code § 27-2004(a)(45), tenants can name as “owner” parties including the “owner or owners of the freehold of the premises or lesser estate therein, a mortgagee or vendee in possession, assignee of rents, receiver, executor, trustee, lessee, agent, or any other person, firm or corporation, directly or indirectly in control of a dwelling.”
   → HPD is a necessary party and should be named as a respondent pursuant to NYC Admin Code §27-2115(h)(1).

c. The Court will have the tenants (or their attorney) fill in inspection request forms (carbon copy papers). Tenants will be scheduled for HPD inspections on given dates and times. Tenants MUST be home for these inspections.
   → Tenants can request reinspection but this will slow down the case considerably.

d. If it is an emergency situation and/or violations have already been placed through 311 calls, Tenants can file for “emergency” relief and forgo the inspection (thus assuring a quicker court date).

e. Attach the following the pleadings:
   → Schedule A: A list of all tenants and their apartment numbers
   → Schedule B: A list of all alleged common area conditions
   → Schedule C: A list of all alleged conditions by apartment.
   → HPD print outs showing already-placed violations
   → DOB print outs showing already-placed violations
   → DOHMH violations, if any.

f. Filing Fee of $45 can be waived with a poor person waiver CPLR 1101§ (A) and/or if the Tenants are represented by a non-profit with its “primary purpose” being “furnishing of legal services to indigent person.” CPLR § 1101(E).

5. Relief

a. An Order to Correct: Typically this includes violations placed by HPD and open on the HPD website. However, NYC Admin Code § 27-2115(h) allows the court to place a violation “if the court finds a condition constituting a violation exists, it shall direct the owner to correct the violation.”
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b. An Order for Civil Penalties (payable to the City) and based on the severity and number of violations. See NYC Admin Code 27-2115(c).

c. Schedule of Access Dates.

d. Usually relief is won through settlement but an order to correct can result from trial.

6. Contempt

If the order is not followed, and the owner is not operating in good faith, a civil or criminal contempt motion can be brought by Petitioners. This training will not delve into contempt but relevant statutes include:

a. Civil Contempt: Judiciary Law § 753(a) and § 774.

b. Criminal Contempt: Judiciary Law § 750, NYC Admin Code §27-2124, CPRL § 5104 and Article 19 of the Judiciary Code (there are special service requirements for criminal contempt—see e.g., Lu v. Betancourt, 116 A.D.2d 492, 494, 496 N.Y.S.2d 754, 756 (1986))

B. “7-A Cases” Brought Pursuant to RPAPL § 7-A

1. How to commence a 7-A

a. One third of the tenants may commence a summary proceeding under Article 7-A of the Real Property Actions and Proceedings law (RPAPL) Section 7-A for the appointment of an administrator to run the building.

b. HPD can commence its own 7-A case.

2. When to Commence 7-A

a. In law grounds are VERY broad RPAPL §770(1): “If there exists in such dwellings or in any part thereof
   → a lack of heat or of running water; or
   → light or of electricity or of adequate sewage disposal facilities; or
   → any other condition dangerous to life, health or safety, which has existed for five days; or
   → an infestation by rodents; or
   → any combination of such conditions; or course of conduct by the owner or his agents of harassment, illegal eviction, continued deprivation of services; or
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→ other acts dangerous to life, health or safety."

b. In practice: A judge will not appoint a 7-A unless conditions are dire. Often, Judges want to see that the tenants and/or HPD have brought HP actions and gotten no results.

c. Service and Papers: This CLE will not delve into the details but service is complicated and so a professional process server is advised.

d. Defenses: RPAPL § 775
   → conditions do not exist or have been fixed
   → tenants and/or their families/guests cause the conditions complained of.
   → tenants have denied access

e. If tenants prevail:
   → a list of approved 7-A Administrators is posted on HPD’s website. Research these folks ahead of time. Some are much better than others. If you have a person in mind, you can try to get them approved prior to your victory.
   → the 7-A Administrator will collect all rents and make all repairs. The owner must continue to pay the mortgage, insurance premiums, and property taxes. If the owner cannot pay these taxes and expenses, the building could go into foreclosure.

C. Rent Strikes

Tenants coordinate withholding rent and wait to get sued. All rent is escrowed either with the tenants or their attorneys. Once sued, the Tenants move to have all cases consolidated. Typically this leads to a global settlement.

D. DHCR cases and challenging rent-regulation status

1. Administrative Determinations for full building or individual tenants: Best used when the owner is claiming the unit or building is no longer rent-regulated. Procedures found here:

2. Rent Overcharges: If the rent is too high but the owner has not tried to move the unit or building out of rent-regulation.
   http://www.nyshcr.org/forms/rent/ra89.pdf
3. Failure to re-new lease complaints: If an owner is not recognizing a rent-regulated tenancy and accordingly, withholding a lease, tenants can request a lease and battle over the rent-regulated status of the unit via this complaint. http://www.nyshcr.org/forms/rent/ra90.pdf

4. $1 vacate orders: If tenants are vacated because of a fire or other major issue, and are not sure of their rent-regulated status, they should file a $1 order anyway. This $1 order maintains their rights to the unit during the vacatur period. DHCR is generous in granting the $1 and it is up to the landlord to dispute to tenant’s right to the order via a PAR. If the landlord files a PAR, tenants can respond with proof of rent-regulation. Tenants and/or their advocates can now fill out the $1 order online via the RA-81 form.

III. **Organizing Tools**

A. **Forming Tenant Associations**
   
   → Steps involved in creating a successful decision-making structure and common challenges/barriers.

B. **Media and Demonstrations**
   
   1. When to protest.
   2. Where to protest.
   3. When to involve the media.
   4. Lawyer’s role in facilitating protests (if any).

C. **Working with banks and buyers**
   
   1. Foreclosure
   2. Tenants fending off bad buyers
   3. First Look Program
   4. HPD’s Third Party Transfer

D. **Elected officials and other political leverage points**
   
   → Getting HPD, DOB, DOHMH inspections; shaming bad landlords into “doing the right thing.”
E. To rent strike or not to rent strike?

1. The organizing prospective on the pros and cons of rent strikes.

2. What are the most successful models?

IV. Next Frontier of HPs: Focus on Harassment

A. 2008 Harassment Law


2. Definition of harassment is “any act or omission by or on behalf of an owner that: Admin Code § 27-2004 (a)(48)

   a. “causes or is intended to cause any person lawfully entitled to occupancy of a dwelling unit to vacate such dwelling unit or to surrender or waive any rights in relation to such occupancy, and

   b. includes one or more of the following:
      • using force against, or making express or implied threats that force will be used against, any person lawfully entitled to occupancy of such dwelling unit;
      • repeated interruptions or discontinuances of essential services, or an interruption or discontinuance of an essential service for an extended duration or of such significance as to substantially impair the habitability of such dwelling unit;
      • failing to comply with the provisions of subdivision c of section 27-2140 of this chapter;
      • commencing repeated baseless or frivolous court proceedings against any person lawfully entitled to occupancy of such dwelling unit;
      • removing the possessions of any person lawfully entitled to occupancy of such dwelling unit;
      • removing the door at the entrance to an occupied dwelling unit; removing, plugging or otherwise rendering the lock on such entrance door inoperable; or changing the lock on such entrance door without supplying a key to the new lock to the persons lawfully entitled to occupancy of such dwelling unit; or
      • other repeated acts or omissions of such significance as to substantially interfere with or disturb the comfort, repose, peace or quiet of any person lawfully entitled to occupancy of such dwelling unit and that cause or are intended to cause any person lawfully
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entitled to occupancy of a dwelling unit to vacate such dwelling unit or to surrender or waive any rights in relation to such occupancy.”

B. Recent changes to harassment law


1. NYC Admin Code § 27-2004(a)(48)(f)(1): Creates a 180 day limit on offers of a buyout. If the tenant turns down the offer in writing, the owner cannot make another offer for at least 180 days.

2. NYC Admin Code § 27-2004(a)(48)(f)(2): Disclosure requirement → the following must be disclosed with regard to buyouts:
   a. the reason the landlord is contacting the tenant.
   b. that the tenant can reject their offer and stay in his/her home.
   c. where legal assistance can be obtained to learn more about the offer.
   d. if the representative is someone other than the landlord itself, the representative needs to tell the tenant on whose behalf he/she is contacting the tenant.

→ See attached sample one-page Fact Sheet.

3. DHCR harassment complaint: http://www.nyscr.org/forms/rent/ra60h.pdf

C. Case studies

1. 444 East 13th Street: recordings and videos as proof in a harassment HP.

2. 510 East 6th Street: writings as proof in a 7-A based on harassment.

V. Organizing in SROs

A. SRO-specific organizing challenges.

B. Organizing independently of the courts.

C. Multi-pronged approach combining organizing and legal tactics.
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D. Organizing beyond court rulings (when decisions fail to translate into improved conditions for tenants).

VI. Ethics: The Intersection and Conflicts Between Organizing and Lawyering

A. How does the legal case intersect/interfere with organizing?

B. The “no contact rule” and protests-collective action.

C. The third party witness rule and organizer participation in trials.

D. Waiving privilege with organizers in the room.

VII. Closing Thoughts and Additional Q&A

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Selected Reference Materials


New Buyout Protections in New York City
(Effective January 3, 2016)

How and When Can Your Landlord Offer a Buyout?

It harassment for a landlord, while offering a buy-out, to: (See NYC Admin Code § 27-2004(48)(f-3))

- Threaten you, intimidate you or use obscene language.
- Call repeatedly, at unusual hours, or in an abusive or harassing way.
- Contact you at your job without your consent, or lie, falsify or misrepresent any information to you.

How Often Can Your Landlord Offer You a Buyout?

- If you turned down a buyout offer from your landlord, in writing, they cannot offer you another buyout for 180 days. (Admin Code § 27-2004(a)(48)(5)).

What Does Your Landlord or Their Representative, Have To Tell You When They Make a Buyout Offer?

As per NYC Admin Code § 27-2004(48)(f-2):

- Why they are contacting you,
- That you can reject their offer and continue to stay in your apartment,
- Where you can get legal assistance and more information about their offer,
- If it is someone other than your landlord, that person needs to identify who they are contacting you on behalf of.