

**NEW YORK  
CITY BAR**

**COMMITTEE ON  
CRIMINAL JUSTICE OPERATIONS**

---

**JAMES M. BRANDEN**

**CHAIR**

551 FIFTH AVENUE, SUITE 1922

NEW YORK, NY 10176

Phone: (212) 286-0173

Fax: (212) 286-0495

jamesbranden@aol.com

**GERALD E. ROSS**

**SECRETARY**

551 FIFTH AVENUE, SUITE 1922

NEW YORK, NY 10176

Phone: (212) 286-0099

Fax: (212) 286-0495

geraldross@fryerross.com

January 11, 2011

John B. Rhea Chairman  
New York City Housing Authority  
250 Broadway  
New York, New York 10007

Dear Chairman Rhea:

On behalf of the Criminal Justice Operations Committee of the Association of the Bar of the City of New York, (“the Committee”) we submit the following recommendations intended to improve the transparency of the procedures governing the use of stipulations to resolve administrative termination of tenancy proceedings brought by the New York City Housing Authority (“NYCHA”) against NYCHA residents.<sup>1</sup>

In particular, the Committee has studied the manner in which NYCHA resolves termination of tenancy proceedings arising out of allegations of criminal activity. Upon discovering that the vast majority of these proceedings are resolved by stipulation in lieu of a hearing officer’s decision after a recorded factfinding hearing, the Committee recommends that NYCHA take steps as outlined below to better educate all stakeholders in the use of these stipulations. For the benefit of both NYCHA personnel and residents, the Committee urges that current NYCHA publications, the NYCHA website and notices to tenants pertaining to

---

<sup>1</sup> The Committee recognizes that a number of criticisms have been raised regarding how NYCHA termination of tenancy proceedings are conducted, including the content and operation of the stipulations. The Committee’s comment focuses on one aspect only of the proceedings, and does not directly or by implication approve or disapprove any other NYCHA hearing procedures.

termination proceedings be amended to include specific information regarding the stipulation process, the meaning of standard stipulation terms and the consequences of violating them. This is particularly important because, unfortunately, virtually all tenants in these proceedings are not represented by counsel.

The Committee has reviewed a number of NYCHA publications for guidance on procedures governing termination of tenancy based on allegations of criminal activity of the tenant or member(s) of the tenant's household.<sup>2</sup> Absent from these materials is any review of the stipulation process whereby the tenant forfeits a factfinding hearing and decision by a neutral hearing officer and instead signs a stipulation permitting the continuation of the tenancy subject to certain conditions. While NYCHA's publications provide detailed guidance as to the termination process, from the initial housing manager interview through the hearing and possible appeal, there is almost no mention of the stipulations.<sup>3</sup> For example, the standard form notice of specific charges and the time and place of the hearing ("notice of hearing") includes no explanation that NYCHA personnel may offer the tenant a stipulation disposing of the termination proceeding, waiving the tenant's right to a hearing and hearing officer's decision and

---

<sup>2</sup> The Committee reviewed the following NYCHA publications:

- New York City Housing Authority Termination of Tenancy Procedures, NYCHA 040.302S (Rev. 8/97);
- NYCHA Management Manual, Chapter VII, Termination of Tenancy;
- NYCHA Management Manual, Chapter VII, Appendix B – Termination of Tenancy – Non-Desirability Actions;
- NYCHA's website;
- NYCHA's standard form notice of charges and hearing; and
- A Home to Be Proud Of, A Handbook for Residents of the New York City Housing Authority ("NYCHA Resident Handbook").

<sup>3</sup> There is a single reference to stipulations in the NYCHA Resident Handbook at page 26, whereby residents are informed that "[t]he Special Investigations Unit makes periodic visits to ensure that the provisions of the permanent exclusion stipulations are complied with." The section entitled "The Eviction Process for Criminal Activity And Other Termination of Tenancy Cases," devoted principally to the hearing process, appears to make only an oblique reference to the stipulation process, stating that "[y]ou can avoid [the hearing process and landlord/tenant court] by ensuring that you, the members of your household and all household guests comply with all NYCHA rules and regulations." *Id.* at 16-17.

permitting the tenant's continued residency subject to conditions of probation and/or permanent exclusion of a household member(s).<sup>4</sup>

The absence of information regarding the stipulations is surprising given that NYCHA statistics provided to the Committee pursuant to a FOIL request (enclosed herewith) reveal that stipulations are the most frequent method of disposing of termination proceedings, not only in cases involving criminal or alleged criminal activity, but in all cases. In that regard, the following statistics bear mentioning:

- For 2007:
  - 6,126 of 12,192 cases (more than half of all cases) were concluded by stipulation;
  - in contrast, only 563 of all cases were concluded by way of hearing;
  - for combined Tenant Administrative Hearings Division ("TAHD")/Anti-Narcotics Strike Force ("ANSF") matters (not including Operation Safe Housing ("OSH") and Registered Sex Offender ("RSO") cases), 1503 cases were concluded by stipulation in comparison to 482 cases concluded by hearing;
  - for RSO cases, 212 of 284 total closed cases were concluded by stipulation, in comparison to 15 cases concluded by hearing;

---

<sup>4</sup> NYCHA statistics obtained through a FOIL request (enclosed herewith) show that the vast majority of stipulations in cases involving criminal or alleged criminal activity contains a provision for exclusion:

- of Registered Sex Offender ("RSO") cases closed since the inception of the program, 340 of 354 stipulations included an exclusion provision;
- of Operation Safe Housing ("OSH") cases closed since inception of the program, 771 of 910 stipulations included an exclusion provision;
- of RSO cases for 2009, 42 of 42 stipulations included an exclusion or exclusion with probation provision;
- of OSH cases for 2009, 210 of 237 stipulations included an exclusion or exclusion with probation provision;
- of Anti-Narcotics Strike Force ("ANSF") cases for 2009 (including non-desirability and narcotics cases which were not a part of OSH or the Sex Offender Initiative), 237 of 437 stipulations included exclusion or exclusion with probation;
- of RSO cases for 2008, 17 of 19 stipulations included an exclusion or exclusion with probation provision;
- of OSH cases for 2008, 270 of 332 stipulations included an exclusion or exclusion with probation provision; and
- of ANSF cases for 2008 (including non-desirability and narcotics cases which were not a part of OSH or the Sex Offender Initiative), 398 of 656 stipulations included exclusion or exclusion with probation.

- for OSH cases, 339 of 484 closed cases were concluded by stipulation, in comparison to 34 cases concluded by hearing.
- For 2008:
    - for OSH cases, 332 of 542 closed cases were concluded by stipulation, in comparison to 82 cases concluded by hearing;
    - for RSO cases, 19 of 42 closed cases were concluded by stipulation, in comparison to 16 cases concluded by hearing;
    - for ANSF cases unrelated to OSH or the Sex Offender Initiative, 656 of 1295 closed cases were concluded by stipulation, in comparison to 260 cases concluded by hearing;
    - for TAHD, 649 of 1927 closed cases were concluded by stipulation, in comparison to 495 cases concluded by hearing.
- For 2009:
    - for OSH cases, 237 of 468 closed cases were concluded by stipulation, in comparison to 68 cases concluded by hearing;
    - for RSO cases, 42 of 59 closed cases were concluded by stipulation, in comparison to 7 cases concluded by hearing;
    - for ANSF non-desirability and narcotics cases unrelated to OSH or the Sex Offender Initiative, 437 of 1082 closed cases were concluded by stipulation, in comparison to 254 cases concluded by hearing;
    - for the TAHD, 610 stipulations were entered, compared to 392 hearings held.

As stipulations constitute the primary means of disposing of termination proceedings – eclipsing by far the number of dispositions after factfinding hearings – the process surrounding stipulations should be transparent. To this end, the Committee recommends that relevant NYCHA materials, including the Termination of Tenancy Procedures, the Management Manual, the notice of hearing, resident handbooks and the NYCHA website, explain the stipulation process (*e.g.*, the waiver of the tenant’s right to a hearing; the pros and cons of stipulation versus hearing; whether the stipulation’s terms are subject to negotiation; whether the signed stipulation is subject to review, challenge or subsequent modification); the meaning of standard terms of the stipulation (*e.g.*, probation, permanent exclusion) and the consequences of violating them (*e.g.*, termination of tenancy). Moreover, when the tenant receives the notice of hearing, in addition to advising the tenant to obtain counsel or other assistance, if a stipulation is to be offered, a copy thereof should be included, along with an updated list of contact information for legal service/advocacy organizations.<sup>5</sup>

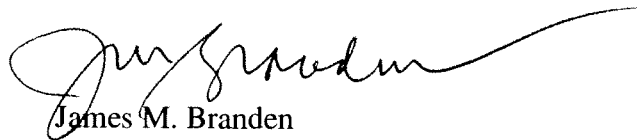
---

<sup>5</sup> For tenants who do not speak English, translated materials should be made available.

Additionally, the Committee recommends that NYCHA's Management Manual detail NYCHA's expectations for its employees who administer the stipulation process. Since many residents sign stipulations without the benefit of counsel and since stipulations are generally not reviewed by a neutral arbiter, the guidelines pertaining to NYCHA personnel's administration of the stipulation process should be robust and transparent.

In sum, the Committee believes that educating NYCHA tenants and personnel as to the stipulation process will enhance overall procedural safeguards. We anticipate your thoughtful consideration of the Committee's recommendations.

Very truly yours,

A handwritten signature in black ink, appearing to read "James M. Branden", with a long, sweeping flourish extending to the right.

James M. Branden

Chair, Criminal Justice Operations Committee



**NEW YORK CITY HOUSING AUTHORITY**  
**LAW DEPARTMENT**  
 250 BROADWAY NEW YORK, NY 10007  
<http://nyc.gov/nycha>

**JOHN B. RHEA**  
 CHAIRMAN  
**EARL ANDREWS, JR.**  
 VICE-CHAIRMAN  
**MARGARITA LÓPEZ**  
 MEMBER  
**VILMA HUERTAS**  
 SECRETARY  
**MICHAEL P. KELLY**  
 GENERAL MANAGER

Freedom of Information Law (FOIL) Unit  
 Telephone (212) 306-8680  
 Fax (212) 306-8710

**Sonya M. Kaloyanides**  
 General Counsel

March 31, 2010

New York City Bar  
 James M. Branden, Esq.  
 551 Fifth Avenue, Suite 1922  
 New York, NY 10176

Re: Freedom of Information Request  
 Records re: Tenancy Termination Info

Dear Mr. Branden:

A diligent search of New York City Housing Authority's ("NYCHA") records disclosed the information indicated on the enclosed 7 pages of records responsive to the above-noted request. The information provided is in the format retained by NYCHA.

Pursuant to FOIL, this matter is hereby concluded and our file closed.

Very truly yours,

Jacqueline C. Hernandez, Esq.  
 Chief-FOIL Unit  
 Records Access Officer

FOIL: 20079  
 JCH:

In 2007, the Tenant Litigation Division closed a total 12,182 cases. Of these closed cases, 2025 contained charges of violations of probation and 160 contained charges of violation of permanent exclusion or continued absence.

The 12,192 cases were concluded in the following manner:

**Stipulation - 6126**

CRD/NVI cases - 4623

TAHD/ANSF matters (not including OSH or RSO cases) - 1503

**Hearing - 563**

CRD/NVI cases - 81

TAHD/ANSF matters (not including OSH or RSO cases) - 482

**Default - 3150**

CRD/NVI cases - 2696

TAHD/ANSF matters (not including OSH or RSO cases) - 454

**Withdrawn - 1368**

CRD/NVI cases - 964

TAHD/ANSF matters (not including OSH or RSO cases) - 404

The statistics for the Registered Sex Offender cases and the Operation Safe Housing cases are as follows:

**Registered Sex Offender Cases**

Total Closed 2007 - 284

<b>Stipulation</b>	<b>212</b>	
<i>Exclusion</i>		202
<i>Termination</i>	3	
<i>Probation</i>	7	
<b>Hearing</b>	<b>15</b>	
<i>Termination</i>	8	
<i>Exclusion</i>		1
<i>Probation</i>	4	
<i>Dismissed</i>	2	
<b>Default</b>	<b>11</b>	
<b>Withdrawn</b>	<b>46</b>	

Total Closed Since Inception of Program - 490

<b>Stipulation</b>	<b>354</b>	
<i>Exclusion</i>		340
<i>Termination</i>	7	
<i>Probation</i>	7	
<b>Hearing</b>	<b>23</b>	
<i>Termination</i>	10	
<i>Exclusion</i>		7
<i>Probation</i>	4	
<i>Dismissed</i>	2	
<b>Default</b>		<b>18</b>
<b>Withdrawn</b>	<b>95</b>	

\*\*\*\*\*

**Operation Safe Housing Cases**

Total Closed 2007 - 484

<b>Stipulation</b>	<b>339</b>	
<i>Exclusion</i>		282
<i>Termination</i>	1	
<i>Probation</i>	56	
<b>Hearing</b>	<b>34</b>	
<i>Termination</i>	24	
<i>Exclusion</i>		4
<i>Probation</i>	3	
<i>Dismissed</i>	3	
<b>Default</b>	<b>38</b>	
<b>Withdrawn</b>	<b>73</b>	

Total Closed Since Inception of Program - 1307

<b>Stipulation</b>	<b>910</b>	
<i>Exclusion</i>		771
<i>Termination</i>	2	
<i>Probation</i>	137	
<b>Hearing</b>	<b>87</b>	
<i>Termination</i>	59	
<i>Exclusion</i>		17
<i>Probation</i>	6	
<i>Dismissed</i>	5	
<b>Default</b>		<b>64</b>
<b>Withdrawn</b>	<b>246</b>	

**Hernandez, Jacqueline**

From:

Sent:

To:

Subject:

Attachments:

**Breakdown of Administrative Cases by Matter Type**

	Closed 2007	Closed 2008	Closed 2009
Non-Desirability/Narcotics	2359	2386	2215
Chronic Rent Delinquency	5575	5416	6840
Non-Verifiable Income/Lesser Breaches	2436	2679	2119
Misrepresentation	171	113	153
Grievances	264	350	343
Section 8	180	185	178
Serious Breaches	536	603	736
Transfer of Possession	20	20	8

Please note that these above numbers do not include defaults that have since been reopened.

**2009 Statistics:**

**Anti Narcotics Strike Force**

468 Operation Safe Housing cases were closed, as follows:

**68 - Hearing** (36 Termination of Tenancy, 2 Dismissed, 22 Exclusion or Exclusion with Probation, 8 Probation)

**237 - Stipulation** (210 Exclusion or Exclusion with Probation, and 27 Probation)

**23 - Default**

**140 - Withdrawn**

3/31/2010



During 2009, 53 sex offender cases were opened in ANSF and 59 registered sex offenders cases were closed, as follows:

- 7 - Hearing** (3 Termination of Tenancy, 1 Probation, 2 Exclusion or Exclusion with Probation, and 1 Termination overridden by the Board and reduced to exclusion)
- 42 - Stipulation** (42 Exclusion or Exclusion with Probation)
- 4 - Default**
- 6 - Withdrawn**

ANSF closed an additional 1082 non-desirability and narcotic cases that were not part of the OSH or Sex Offender Initiative, as follows:

- 254 - Hearing** (131 Termination of Tenancy, 38 Probation, 73 Exclusion or Exclusion with probation, 12 Eligible/Dismissed)
- 437 - Stipulation** (237 Exclusion or Exclusion with Probation, 198 Probation and 2 Termination of Tenancy)
- 51 - Default**
- 340 - Withdrawn**

#### Tenant Administrative Hearings Division

- 392 - Hearing** (75 Termination of Tenancy, 218 Grievance Not Sustained/Dismissed, 20 Grievance Sustained, 2 Grievance Withdrawn, 43 Probation, 2 Exclusion or Exclusion with Probation, 3 Eligible, 4 Dismissed and 25 awaiting decision)
- 610 - Stipulation** (480 Probation, 71 Exclusion or Exclusion with Probation, 34 Termination of Tenancy, 25 Grievance Withdrawn)
- 333 - Default**
- 665 - Withdrawn**

3/31/2010

**The CRD/NVI/Breach Units of TAHD**

**CRD**

**105 - Hearings** (54 Termination of Tenancy, 38 Probation, 2 dismissed and 11 awaiting decision)

**3917 - Stipulation**

**1705 - Default** (178 probation, 1527 termination)

**1115 - Withdrawn**

**NVI**

**13 - Hearing** (6 Termination of Tenancy, 6 Probation and 1 Awaiting Decision)

**574 - Stipulation**

**641 - Default** (627 termination, 14 probation)

**893 - Withdrawn**

3/31/2010

**2008 Statistics**

**Anti Narcotics Strike Force**

ANSF opened a total of 1757 cases and closed a total of 1879 cases in 2008.

In 2008, 542 OSH cases were concluded as follows:

- 82 - Hearing** (55 Termination of Tenancy, 2 Eligible, 19 Exclusion or Exclusion with Probation, 4 Probation, 1 Default and 1 awaiting decision)
- 332 - Stipulation** (270 Exclusion or Exclusion with Probation, and 62 Probation)
- 42 - Default**
- 86 - Withdrawn**

In 2008, 42 cases involving registered sex offenders were closed, as follows:

- 16 - Hearing** (6 Termination of Tenancy, 3 Eligible, 4 Probation, 2 Exclusion or Exclusion with Probation, and 1 awaiting decision)
- 19 - Stipulation** (2 Probation, 17 Exclusion or Exclusion with Probation)
- 1 - Default**
- 6 - Withdrawn**

ANSF closed an additional 1295 cases that were not part of the OSH or Sex Offender Initiative, as follows:

- 260 - Hearing** (122 Termination of Tenancy, 50 Probation, 78 Exclusion or Exclusion with probation, 3 Eligible and 7 dismissed)
- 656 - Stipulation** (398 Exclusion or Exclusion with Probation, 255 Probation and 3 Termination of Tenancy)
- 95 - Default**
- 284 - Withdrawn**

**Tenant Administrative Hearings Division**

3/31/2010

In 2008, TAHD opened 1918 cases and closed 1927 cases, as follows:

- 495 - Hearing** (109 Termination of Tenancy, 264 Grievance Dismissed, 31 Grievance Sustained, 3 Grievance Withdrawn, 61 Probation, 6 Exclusion or Exclusion with Probation, 9 Eligible, 6 Dismissed and 5 awaiting decision)
- 649 - Stipulation** (494 Probation, 95 Exclusion or Exclusion with Probation, 5 Termination of Tenancy, 33 Grievance Withdrawn, 22 Apartments Surrendered)
- 362 - Default**
- 421 - Withdrawn**

**Productivity in the CRD/NVI Units**

The CRD Unit closed 5600 cases as follows:

- 34 - Hearing** (21 Termination of Tenancy, 10 Probation, 1 Eligible and 2 awaiting decision)
- 3361 - Stipulation**
- 1716 - Default**
- 489 - Withdrawn**

The NVI Unit closed 2758 cases as follows:

- 15 - Hearing** (10 Termination of Tenancy, 4 Probation and 1 Eligible)
- 792 - Stipulation**
- 949 - Default**
- 1002 - Withdrawn**

---

**2007 Statistics were kept in a different format not conducive to sending in the body of an email. See attached memo.**

3/31/2010



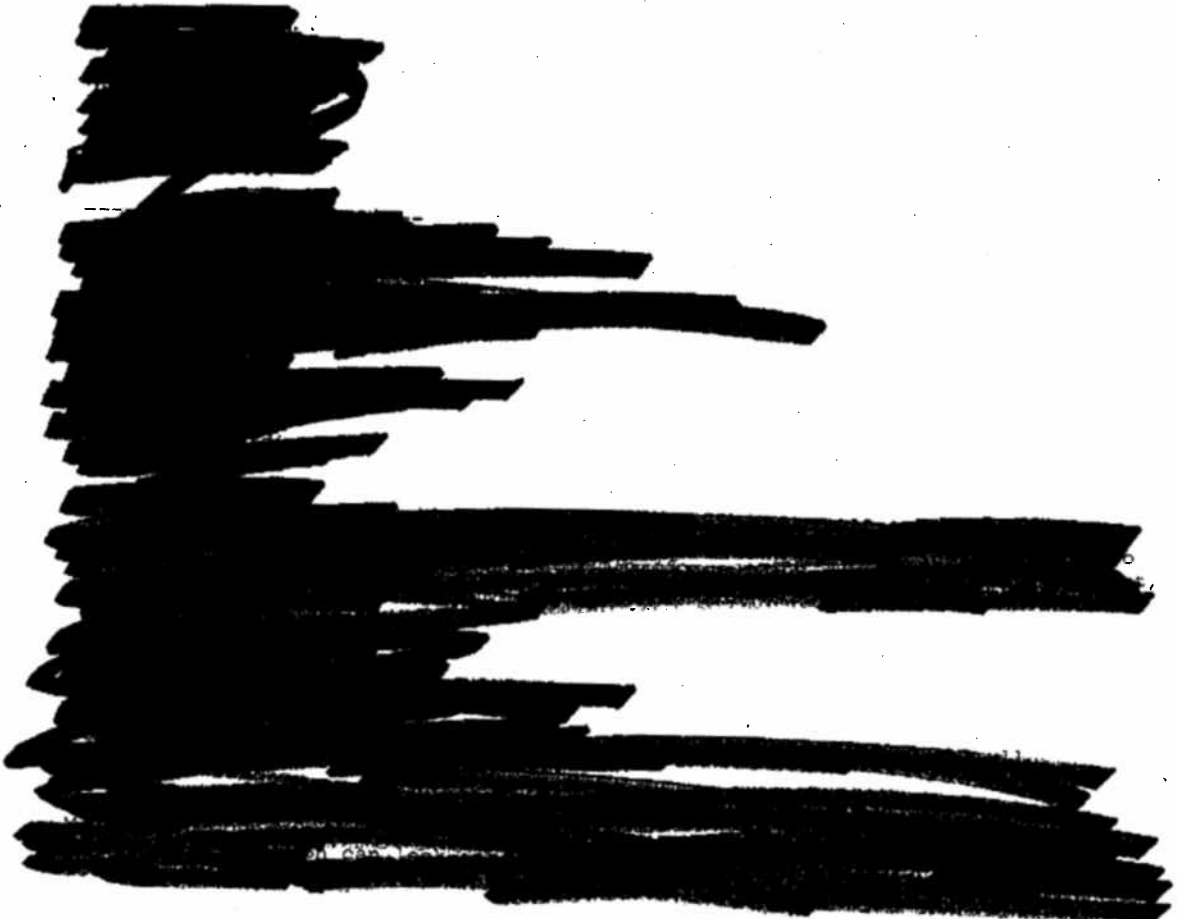
**Hernandez, Jacqueline**

**From:** [Redacted]  
**Sent:** [Redacted]  
**To:** [Redacted]  
**Cc:** [Redacted]  
**Subject:** [Redacted]

The answer for #12 is:

- 2007: 34 out of 82 Article 78s commenced involved some form of criminal activity
- 2008: 81 out of 171 Article 78s commenced involved some form of criminal activity
- 2009: 88 out of 175 Article 78s commenced involved some form of criminal activity

The criminal activity includes termination based on illegal drug activity, weapons, assault, and misrepresentation or other financial offenses.



3/29/2010