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The hallways in the city's housing courts are filled with landlords' attorneys and tenants all talking at once, mothers with young children in tow, people arguing, sometimes heatedly, over the various circumstances of the cases. The hallways are where most of the action â€"- the arguments between landlords and tenants â€"- in the housing courts takes place. And the hallways are where many landlords (almost always represented by attorneys) work out deals with their tenants (almost never represented by attorneys).

But these "hallway settlements" are often unethical, according to Russell Engler, a law professor at the New England School of Law, who explored the subject during a recent ethics course held by the New York City Bar Association. Many of the lawyers involved in hallway settlements, Engler said, may have no idea they are breaking ethical rules.

The court itself has acknowledged the problems with hallway settlements -- and vowed way back in 1997 to eliminate them. But that effort has largely failed.

"The court discourages hallway settlements" said Judge Fern Fisher, the administrative judge who oversees housing court. However, there is a "practical issue," she says. "We're doing our best."

Why Hallway Settlements Are Unethical

The ethical rules attorneys follow are written with the assumption that two attorneys are negotiating for their respective clients. But in housing court almost all tenants represent themselves â€"- and not by choice. Many are poor and cannot afford attorneys; free legal services are available to a small fraction of the poorest among them. The providers of such services have had their funding cut substantially over recent years and can represent fewer and fewer people.

In criminal matters, the courts have ruled that a defendant has a constitutional right to legal representation. No such right has been established in housing cases -- though housing advocates believe it should be.

Unrepresented litigants in housing court do have a right to have a court attorney mediate the

discussion that occurs between a tenant and a landlord's attorney. But many tenants are unaware of this right and the volume of cases limits the amount of time and personnel that can be used on each case. Each and every day, the 51 housing court judges deal with about 1,200 cases.

The Lawyer's Code of Professional Responsibility, put out by the New York State Bar Association, states that when dealing with people who are not represented by attorneys, "a lawyer should not undertake to give advice to the person who is not represented by a lawyer, except to advise the person to obtain a lawyer."

For attorneys, giving advice means one of two things, Engler explains --telling people how the law applies to their cases, or proposing or suggesting a course of action. This includes telling people the possible outcomes of their cases and listing a "parade of horribles," he said.

In the negotiations occurring daily in the hallways at housing court, tenants are routinely told that if they do not sign agreements to settle cases, they will be evicted. Others are told the repair issues they cite for not paying rent "don't matter."

"Many conversations violate the rules that prohibit lawyers from overreaching, threatening, misleading and pressuring in their negotiations with unrepresented litigants," Engler explains. But these happen routinely, he says, in housing court hallway settlements.

Surprised Attorneys

The news that attorneys' behavior often violates ethical rules was met with some incredulity by some attorneys in Engler's class. One commented during the class that the court itself instructs litigants in housing court to talk to each other in the hallway.

"Lawyers are permitted, and expected, to speak with unrepresented litigants," Engler says. "The problem is with what many of them say."

The rules governing such interactions are clearly not well understood.

"Many attorneys are not familiar with the rules of the game, and part of the reason for that is that there are no repercussions," Engler says. "Complaints are not triggered for a variety of reasons. First, the behavior is in the hallway and is not monitored. Second, the unrepresented person does not recognize the problem and has enough to worry about without filing an ethics complaint."

Judges Can Only Do Just So Much

Judges do not seem to be big fans of hallway settlements. For one, they can only do so much when they review the agreements. "I can't supervise conversations in the hallway," one judge at the ethics class said. "There's a great deal that goes into the creation of that document that I have no access to."

That is one reason why in a 1997 initiative to reform housing court, the court sought to eliminate hallway settlements. But court officials appear to have given up the fight.

Judge Fisher said the bar association's class, which she moderated, was one part of an effort to educate attorneys, who need to take the lead on addressing the problem.

"It has to be an effort by the profession because we're not in the hallways spying on attorneys, nor would it be appropriate for us to do that," she said. "It's a matter of the profession as a whole understanding that the prevalence of self-representation is not going to stop. It's going to grow."

But Engler believes the court has to step up.

"I agree the profession as a whole needs to act," Engler wrote in a follow-up email message. "However, the court itself bears responsibility since the negotiations occur under its auspices. Through oversight of the negotiation and stipulation process, the court can have the most immediate impact."

Like other professions, lawyers themselves establish ethical guidelines for their work.

“From a point of ethics, the rules should be enforced and the misconduct should be addressed,” Engler said. “Having unenforced rules may be worse than having no rules at all because it seems hypocritical. I would add that the ethics problem is just part of the bigger problem of fairness in the courts for people without lawyers.

“You can’t leave people at the mercy of lawyers who are trying to represent their clients but along the way are misbehaving,” he said. “It’s a mismatch. Most citizens, if you ask them if it’s fair to pit an unrepresented party against a lawyer would immediately see the unfairness of it.”

Joe Lamport is the assistant director of the City-Wide Task Force on Housing Court , a coalition of community housing organizations that has worked to end these hallway settlements. Â