

Practical Need For Recording Devices In All Forcible Courtrooms

A Statement From LAF

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More than 40,000 forcible entry and detainer actions are filed every year in Cook County. The vast majority of defendants are low-income tenants, most of whom appear in court without representation because they cannot afford an attorney and do not know about organizations that provide legal assistance for free or at a reduced cost.

I work for one of these organizations. LAF is the Midwest's largest provider of free legal assistance to the poor in civil cases, and I am the director of the agency's Housing Practice Group. My colleagues and I spend most of our time defending tenants—usually subsidized housing residents who have endless leases and pay a reduced rent equal to a percentage of their household incomes—against unfair evictions. Our work, which is already hard, is made even more difficult by the absence of digital recording devices in the forcible courtrooms.

These devices are vitally important for two obvious reasons: (1) they make it possible to get a transcript that can support a post-judgment motion to challenge a decision that is against the manifest weight of the evidence or incorrect as a matter of law; and (2) they document and make it possible to address inappropriate judicial behavior.

Twenty-five years ago, when I started working at LAF, there were court reporters in every forcible courtroom in the First Municipal District. Therefore, if I needed to challenge a trial court's decision, either through a motion to reconsider and vacate or through an appeal, I ordered a transcript of the proceedings so I could easily document the alleged errors. More important, if a forcible defendant came to LAF after appearing in court pro se and losing at trial, my colleagues and I did not have to rely solely on the defendant's account of what transpired in court. We could order and review the transcript and make an informed decision regarding the defendant's request for assistance. That is no longer the case.

Now we must try to discern what happened through nothing more than our client's version of events, a task that is made especially difficult by the fact that many if not most low-income tenants are confused by courtroom procedures and proceedings, by the legal terminology that judges and plaintiffs' attorneys use, and by the speed with which cases are handled in the high-volume forcible courtrooms. (A report issued by the Lawyers Committee for Better Housing and Chicago Kent College of Law found that hearings lasted an average of just one minute, forty-four seconds. *No Time For Justice—A Study of Chicago's Eviction Court*, December 2003.)

When, despite these obstacles, we are able to reconstruct what happened in the trial court and identify reversible errors, we are forced to present a summary of the proceeding through our

client's affidavit (which, unlike a trial transcript, can be dismissed as inaccurate if contested by opposing counsel or by the judge). And if we decide to appeal without a transcript of proceedings, we must produce a bystander's report pursuant to S. Ct. Rule 323(c).

Some of these issues arose in *Draper & Kramer v. King*, 388 Ill. App. 571 (1st Dist. 2014), a case in which LAF successfully challenged a forcible court's refusal to grant our motion to vacate an agreed order that our client, who was unrepresented when she signed the order, did not understand. Though we brought a court reporter to the hearing on our motion, there was no transcript of proceedings from the return date (when the agreed order was entered) and the plaintiff challenged our failure to provide the reviewing court with a bystander's report.

The appellate court rejected that challenge, finding that the uncontested information set forth in the affidavit we attached to our client's motion provided a sufficient record to permit meaningful review. Nevertheless, the court confirmed that appellants are required to provide the reviewing court with a record sufficient to support his or her claims of error, and that any doubts and deficiencies arising from an insufficient record will be construed against the appellant. This holding underscores the importance of providing recording devices in all forcible courtrooms, where low-income and unrepresented defendants who are unsophisticated about legal procedures will struggle, even if they subsequently get a lawyer on appeal, to produce a sufficient record without a transcript from the trial court proceedings.

King highlights another problem that can be addressed through digital recording devices: inappropriate judicial behavior. In *King*, the trial judge admitted that he routinely enforces orders that he knows unrepresented tenants signed without understanding, and that will be used to evict these tenants from the only decent housing they can afford. We were lucky enough in that case to capture this disturbing admission on the record, but over the years my colleagues and I have heard forcible judges make countless equally or even more troubling remarks, or commit errors of law, that were not recorded.

While sitting in court waiting for our own cases to be called we have seen on far too many occasions a judge award a plaintiff possession of the subject premises without requiring the plaintiff to establish a prima facie case, or allow a plaintiff's attorney to testify about facts outside the attorney's personal knowledge, or tell a pro se defendant that there is no defense to a joint forcible action, or deny a pro se defendant an opportunity to speak. To give just one unfortunately representative example, I saw a public housing resident approach the bench when her case was called. The plaintiff's attorney handed the judge a termination notice alleging that the defendant had violated her lease. The judge then turned to the defendant and asked whether she had received the notice. When the defendant said "yes," the court said, "Judgment for plaintiff, stayed seven days." He did not ask the defendant whether she had committed the alleged violation, whether she had any defenses, or even if she had anything at all to say. Since the defendant knew that the plaintiff wanted her to move, she had to move. This proceeding was not recorded, so there was no way to order a transcript, document the judge's error, and challenge this error either through a

post-judgment motion or by bringing it to the attention of the presiding judge of the municipal district.

Forcible judges sit in high-volume courtrooms and preside over thousands of cases involving low-income and unrepresented defendants, many of whom are facing eviction from the only housing they can afford. If these proceedings are not recorded, it will be extremely difficult to challenge bad decisions and inappropriate conduct, and to thereby improve the administration of justice in courtrooms where so much is at stake for so many of the most vulnerable members of our society.

Lawrence D. Wood
Director, Housing Practice Group
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