COMMONWEALTH OF MASSACHUSETTS
SUPREME JUDICIAL COURT

Ruth Adjartey, Ismail Abdelhamed, Vesta Ballou, Mildred Collins, Jackeline Cucufate, Marjorie Evans, Matthew Griffin, Gerard Hughes, Donna Mejias-Berrios, Janet Montgomery, Elizabeth Norris, Luciano Oliveira, Mychelyne Oliveira, Susan Osborne, Daniel Peristere, Christy Raymond, Caitlin Ryals, John Schumacher, Myron Swanston Petitioner-Appellants v. Worcester Housing Court, Original Respondent-Appellee, Santander Bank, Midfirst Bank, Nationstar Mortgage LLC, MRH Sub1LLC, Freddie Mac, Fannie Mae, U.S. Bank N.A. As Trustee Of J.P. Morgan Acquisition Trust 2006-WMC3, Lisa Y. Barron, HSBC Bank USA N.A. As Trustee For Nomura Asset Acceptance Corporation Mortgage Pass Through Certificates Series 2005-AR3, HSBC Bank USA N.A. As Trustee, On Behalf Of Fremont Home Loan Trust 2006-CMortgage-Backed Certificates Series 2006-C, Savers Co-Operative Bank, Deutsche Bank National Trust Co. Trustee For Ameriquest Mortgage Securities Inc. Asset-Backed Pass Through Certificates Series 2003-13, US Bank N.A. As Trustee For Bear Stearns Asset Backed Securities Trust 2004-Ac4, U.S. Bank Trust N.A. Trustee Of Volt 2012-NPl1Asset Holdings Trust Respondents-Appellees	Docket No. SJC-12380

Christine Hilton, Ruth Adjartey, Ismail Abdelhamed, Vesta Ballou, Lori Cairns, Jackeline Cucufate, Marjorie Evans, Gerard Hughes, Maria Navedo, [illegible] Norris

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Petitioners' Motion for Reconsideration[1] to Include Relief

NOW COMES Petitioner Mychelyne Oliveira and requests relief as to the true focus of these Petitions, practices of the Worcester Housing Court and, given affirmation of our rights to equal access to justice, means for individual relief as well.

Pursuant to G.L. Ch. 211, § 3, the authority and jurisdiction to correct the misconduct of a lower court lies only

[1] Motion pursuant to M.R.A.P. Rule 27 **Motion for recon-sideration or modification of decision:** Within 14 days after the date of the decision of the appellate court, any party to an appeal may file a motion for reconsideration or modification of decision unless the time is shortened or enlarged by order. It shall state with particularity the points of law or fact which it is contended the court has overlooked or misapprehended and shall contain such argument in support of the motion as the movant desires to present."

with this Honorable Court. Instant Petitioners in both *Adjartey* and *Hilton* have experienced and continue to experience a hostile, harassing, and discriminatory environment in the Worcester Housing Court ("WHC"). In it they cannot effectively exercise their rights that they know they have under our Constitution, or be treated equally and have equal access to justice. Such substantive rights necessitate relief:

> "We have noted, however, that "a person whose constitutional rights have been interfered with may be entitled to judicial relief even in the absence of a statute providing a procedural vehicle for obtaining relief." Phillips v. Youth Dev. Program, Inc., 390 Mass. 652 , 657-658 (1983). Certainly a State may not violate a person's constitutional rights and then fairly assert that no redress can be had because the State has not provided a statutory means of enforcing those rights." *Layne v. Superintendent, Mass. Correctional Inst.*, 406 Mass. 156, 159, (1989)

Petitioner accordingly asks this Court for two types of relief: (1) what is, in effect, the second, relief phase[2] of their petition in the nature of Mandamus, that is, appointment of a Special Master or similar official to apply all the principles that this Court enunciated in *Adjartey* (and similar Petitioners hope will be enunciated as to equal access to the courts including as pro se and regardless of status as to

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[2] Petitioners in Adjartey brief a request for a second phase for relief; it is apparently appropriate as *Layne* continues: "... plaintiffs would have been entitled to a declaration of rights (G. L. c. 231A [1988 ed.]) and to injunctive relief as long as any rights under art. 114 were denied to them". And, presumably other such constitutionally recognized rights.

political affiliation) to Petitioners' cases below, and (2) comprehensive measures that will address and, Petitioners hope, will ameliorate the hostile atmosphere that they experience in the WHC, and which might well prevail elsewhere for pro se, indigent, or disabled litigants.

To put this more positively, Petitioners' second request here is for comprehensive measures to ensure that ALL litigants can access the justice in our courts that is their right under the Massachusetts Declaration of Rights.

Why a Special Master?

In its April 10, 2019 decision, in the above *Adjartey* case this Court acknowledged that the law on indigency and disability establishes substantive rights, and Petitioners had accurately set forth that law; such an affirmation of constitutionally guaranteed rights seems to be the equivalent of declaratory judgments as to the applicable indigency and disability law.

Although its discussion also affirmed that indigent or disabled Petitioners should not be so disparately treated (as they are in the WHC), this Court's only suggestion was that "judges considering requests for reasonable accommodation should accompany their decisions with 'findings adequate to permit [appellate] review.'"[3] It admonished to also be "reasonable" as

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[3] Quoting McDonough the Petitioner, 457 Mass. 512, 536 (2010). The efficacy of this is limited by whether a rogue court, which

to providing waivers so the "doors of the courts" are not closed to indigent litigants[4].

It did not provide disabled litigants, who are frequently enough also indigent and pro se, with an "enforcement" mechanism short of appeal.[5] And all those who are indigent (especially likely given a foreclosure) in these Summary Process cases have to get a "reasonable" decision as to waiver of Appeal Bond to reach a full appeal panel first.

Furthermore, *Adjartey* looks to future cases only. It does not help the Petitioners here. To take but one example, WHC judges have defaulted some disabled Petitioners who were in the court hallway for refusing to enter the courtroom against doctor's orders, giving the medical opinion that the stress could kill them. The record contains substantial testamentary and documentary evidence, both about disabled Petitioners' limitations and their requests for reasonable accommodation that

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in Petitioners' experience regularly disregards McDonough, will comply with Adjartey.

[4]Quoting Reade v. Galvin, 472 Mass. 573 (2015) but again, the efficacy of this is limited by whether a rogue court, which in Petitioners' experience regularly disregards Reade v. Galvin, will comply with Adjartey.

[5] This Court said that it could not evaluate the individual claims of individual disabled Petitioners as the record before it "provides little information about the specific disabilities at issue or the particular accommodations requested." Adjartey, at 30. Information about specific disabilities is impounded but should be available to this Court; disabled Petitioners' affidavits provide substantial information about their respective limiitations, and the reasonable accommodations requested but denied.

the WHC has denied. This Court will recall Petitioner Mychelyne Oliveira, who argued so affectingly on December 6, 2018. The WHC judge denied her, her jury trial and entered judgment against her, because she had not checked herself out of the hospital, where she was on morphine in intensive care, to appear for pre-trial conference; the Judge referred to her being in hospital as "suspicious and disingenuous" in open court in her absence.

In this connection, see *SJC Recon Intersectionality Grid of Protected Class Identities*, filed with the Motion Concerning Matters of First Impression. This organizes each Petitioner's status as to disability, indigency, being pro se, and WAFT membership (1st Amendment rights of free speech, affiliation, etc.) A Special Master would have a lot with which to work.

The same is true of this Court's treatment of what lower courts *should* do in waiving the costs of audio recordings of indigent Petitioners' court hearings. This Court held that such recordings are "extra costs," under G.L. c. 261, s. 27A, and "expect[ed] that judges will waive the fee for indigent applicants need them for upcoming hearings or non-frivolous appeals." (Adjartey, p. 29.)

Even for future cases, this does not avail the indigent litigant whose evidence that an appeal is non-frivolous is on a recording that s/he cannot afford or where the judge later denies having made a ruling of which the recording is the only

record. But it is of no avail at all for indigent Petitioners whose motions seeking fee waivers the WHC has already, and improperly, denied. Despite this Court's restriction on fee waivers for indigent litigants, however, a Special Master who rewound indigent Petitioners' cases to the point at which the lower court denied the recordings, and applied *Adjartey*, could do a lot to administer the just results that Petitioners sought by petitioning this Court.

Also, a Special Master could apply the clear criteria that this Court set forth for determining whether an applicant was legally indigent. (*Adjartey*, app.19 – 21) This would be a relief to indigent Petitioners whose applications have been complete and regular on their face, but whom judges of the lower court have interrogated in open court as to their families' finances and then denied. This practice continues post-*Adjartey*[6].

Further if this Court is not yet satisfied with the facts before it, a Special Master could also be tasked with organizing, verifying and, if needed, adding facts related to disparate treatment. Petitioner's have provided outside sources

[6] As recently as 4-25-19, post-*Adjartey*, a WHC judge interrogated an WAFT member (indigent under 'A') in open court about her family's finances. Another WAFT member witnessed and reported this. The indigent WAFT member's name is available on an impounded basis if needed.

that certainly see the WHC as partial; certainly, more research could satisfy this Court as to the appearance of partiality.[7]

How to ameliorate the WHC's hostile atmosphere?

This Court has already noted that the clerk of each court is required to post conspicuously, in the public part of the clerk's office, a notice "informing the public in plain language" that waivers of fees and costs are available for indigent persons under G.L. c. 261, s. 27C.[8] This is a start.

But the statute does not specify how large or in what size font such notices shall be, or everything indigent litigants need to know, e.g., where to get applications. Nor does it require these notices to be in languages other than English. We strongly suggest that this Court request an appropriate body to craft a standard notice that tells indigent litigants what they need to know about this; have it translated into the five most common languages; and direct that it be posted in the Clerk's Office public area and in the rest rooms, as well.

Litigants with Disabilities: What They Need to Know

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[7] **Commonwealth v. Morgan Rv Resorts, LLC.** No. 13-P-119. (2013): "Conclusion. We have no reason to question the judge's good-faith belief that she could decide these cases fairly and impartially. However, even the appearance of partiality undermines confidence in the judicial system. …, we conclude that a reasonable person might question her impartiality. We therefore reverse the orders denying the judge's disqualification and remand for further proceedings before other judges.

[8] Adjartey, fn. 14.

The same principles apply to what disabled litigants need to know. WAFT members had been supporting one another in the WHC for years before they learned, in 2016, about the ADA Coordinator. Petitioners, therefore request that this Court take appropriate measures, including posters in public places and the rest rooms, to ensure that ALL disabled litigants know their rights; all the court services that can assist them, **including assistive hearing devices, as to which no information is posted;** and how to access these. Such notices should be in Braille as well as in the five most common languages in Massachusetts.

ADA Coordinators in Courthouses. Though they do their best, it rapidly became clear to WAFT members that when a WHC judge was refusing a reasonable accommodation that a disabled defendant needed, e.g., an enlargement of time[9], the ADA Coordinator had no

[9] In fact, the shocking disparate treatment of those needing a postponement where they have just been diagnosed with a life-threatening illnesses (which stress could result in death) but all postponement was denied has occurred in at least five cases. See impounded evidence with the Solitro Reconsideration Motion; it includes the story of a woman whose husband was dying of cancer and she got diagnosed with such high blood pressure that they warned her to avoid all stress or they could not promise she would not die; this was ten days or so before hearing; no way they could medicate her fast enough for that. She asked for a decision on the pleadings because it was straightforward that the Plaintiff had filed a dispositive motion scheduled long after the Court order allowed for such a hearing. **The Court gave retroactively a significantly greater extension of time so that Plaintiff's dispositive motion was heard but no postponement where defendant needed it to not die if she was to appear.** But Plaintiff lawyers are giving extensions of time for any reason — in Petitioner Kozak's case, lawyers even after being checked with about timing, missed and belatedly asked for an extension

teeth and was of no avail. Clerk's Office personnel have frequently blocked WAFT members from accessing the ADA Coordinator. This was even true of the Statewide ADA Coordinator whom WAFT members found incredibly helpful in other ways; but although she is responsible for the official complaint process, this has yielded *no* results to date.

Disabled litigants must a) know that there is an ADA Coordinator; b) what the Coordinator can do for them; and c) be able to contact the ADA Coordinator without interference by court personnel. If Judges are trained in McDonough the Petitioner's guidance and, Petitoners would point this Court to plenty of social science research as a basis, in prejudice reduction, the ADA Coordinator could advocate with the judge for a disabled litigant's reasonable accommodation, thus expediting cases, increasing access to justice and obviating appeals.

In any case, the ADA Coordinators' processes need modification to fit expedited Summary Process timelines. The WHC ADA Coordinator requires 72 hours' notice for reasonable accommodation requests. However, despite her requests for at least 24 hours' notice of hearings, the WHC gave disabled WAFT member E. Norris less than that. So, we urge this Court to

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of time for a filing due 1st week of January, 2019. Reason given? Because of the intervening winter Holidays. The Court honestly believed that they did not know when Christmas and New Years fell in 2018 and therefore could not plan accordingly?

ensure that litigants know about the ADA Coordinators, and that they become more effective, e.g., by having an effective process for appeal as to emotional as well as physical disabilities, particularly for those who are also pro se and indigent.

Focus Groups for the Access to Justice Commission

This Court is deeply committed to access to justice. There are even Guidelines for judges before whom pro se litigants appear. Yet Petitioners' experience is that it is next to impossible for even caring and committed jurists to understand what we pro se face; the WHC serves as a fertile example (unfortunately) but nowhere could findings be better used.

For instance, attorneys can bring their electronics into the courthouse. We may not. We must leave our cellphones in our cars, which could be parked blocks away. This is one reason why WAFT members accompany one another to the WHC: as witnesses to the routinely degrading treatment by the Clerk's Office, refusal to take our filings, show us files, etc.; the conduct of WHC judges; and that of Plaintiffs' attorneys, who accost us in the hallways and advise us that we are going to lose, etc. WAFT members are unusually educated as pro se litigants; we could provide extensive feedback from the tiny to the pervasive uniquely collated through our cumulative experience and would be glad to participate in such focus groups. We can help reach out to similarly situated litigants around the Commonwealth.

Training. It is not enough for this Court to issue a decision and expect the lower courts to comply with it. Last year, e.g., the full Appeals Court said, "Cucufate is mistaken in her assertion that a valid foreclosure is an element of standing in summary process cases…." *MRH Sub I, LLC v. Cucufate, et al.*, 2017-P-0896, FAR-26266 (2018). Well. So much for *U.S. Bank Nat'l Ass'n, trustee, v. Ibanez*, 458 Mass. 637 (2011), and *Eaton v. FNMA, et al.*, 462 Mass. 569 (2012). This decision was also 2 months after *Hatcher* which had clearly been ignored even though Cucufate had used the same citations as to standing *Hatcher* did.

For good reason, regular training is part of the mechanism of change when a corporation or other organization is ordered, or chooses, to alter its culture to eliminate sexual harassment. While sexual harassment has not been at issue here, Petitioners have shown many other kinds of harassment and denigration are.

The model policy against sexual harassment of the Massachusetts Commission Against Discrimination (MCAD[10]) might provide a template; it includes requirements as to (i) meaningful training (hours and with brush up periodically), (ii) avenues to make complaints, (iii) prohibited actions (such as here, Court stopping harassment of pro se litigants by opposing

[10] Petitioners found that MCAD itself is barred for addressing discrimination by the courts themselves.

Attorneys[11]), (iv) disciplinary action and (v) possible state and federal remedies. Apparently, ongoing coaching of key personnel where an employee literally is irreplaceable is now commonplace.

Further in a sexual harassment policies a common element is that if a person can shift to a different location within the corporation or otherwise continue to fulfill their job description under a different supervisor that is a recommended strategy. Here petitioners specifically asked about a change of venue. Both District and Superior have concurrent jurisdiction with the housing courts as to summary process cases. This Court is reminded both that the Housing Court Division Memo of 1-4-17 explicitly states that housing court judges can transfer out a case where they feel there is any question of jurisdiction; therefore, Housing Court Division has already opened the door to a change in venue. Further, in none of these cases did the WHC

[11] Lawyers first mimicked Judge's mischaracterizations of "unlicensed practice of law" in the Hallways to try to divide litigants from their support and opportunity for final practice and to directly intimidate them; they used Judge's admonishing litigants as "unprepared", uneducated or ill-informed to tell them they will lose. Then they did it frequently in the Courtroom itself. This must be addressed. See for instance, Thomas O'Connor Constructors, Inc. v. MCAD, 72 Mass.App.Ct. 549 (2008). "An employer who passively tolerates the creation of a hostile working environment implicitly ratifies the perpetrator's misconduct and thereby encourages the perpetrator to persist in such misconduct, whatever the employer's precise legal relationship to the perpetrator." Modern Continental, 445 Mass. at 105. See College-Town, 400 Mass. at 167-168 (employer that fails to take remedial action after notification of harassment is liable therefor)."

ever do an applicable test for standing and establish that it even has subject matter jurisdiction. For this court, therefore to allow all these cases to be transferred out where the jurisdictional question has in fact, never been settled would seem only appropriate. Hopefully, in a new venue the jurisdictional question as a threshold matter will be established first.

The Petitioners submit that the use of the model policy as a guide to implement similar guidance to the officers of the Court will go a long way in preventing discriminatory practices by these Court officers. Guidance will provide pro se litigants with an instrumental court policy to assert their rights when being harassed or discriminated against without the too costly appeals to this Court. A Special Master could oversee urgent implementation in the WHC, provide reports back to this Court.

In conclusion, Petitioner urges this Court to take the concrete step of implementing regular training for ALL court personnel, and coaching for key players, in how to ensure equal access to justice for pro se, indigent, and disabled litigants, and for those who affiliate in order to vindicate their rights (political affiliation). We would be glad to provide input.

Respectfully submitted,

Respectfully Submitted,

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Date 05/09/19

CERTIFICATE OF SERVICE

I, the below signed, hereby certify that a true and correct copy of the above and foregoing has been furnished to all opposing parties by pre-paid First Class Mail, U.S.P.S.

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Re: Docket #15H85SP003287, #15H85SP003288, #16H85SP003289,

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