Court Navigator Project

(The University of Baltimore)

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I. Overview of the Court Navigator Pilot Project

A. What this project is

Most people who go to court here in Baltimore don't have attorneys to help them with their cases. That's because people with civil legal problems don't have a right to counsel the way that criminal defendants do.

Of course, that doesn't mean that civil cases don't have serious consequences. For example, landlord-tenant cases can involve the risk of eviction, hazardous housing conditions that haven't been repaired, and thousands of dollars at stake. There are some free attorneys available to help low-income litigants, but many more people need help than there are free lawyersavailable.

That means that most people with legal problems of this kind have to handle them on their own, unrepresented by a lawyer. But the legal system is complicated, and many people find the experience of going to court intimidating and confusing.

Research we have done here at UB indicates that it is difficult for unrepresented tenants with substandard housing conditions to get the results they are entitled to under the law.[1] As the *Baltimore Sun* has also reported, such tenants face an uphill climb in enforcing their rights.[2]

Of course, the best way to ensure real access to justice is to provide a free lawyer for everyone who needs one. But until and unless that happens, we can still do something to improve the ability of people to get justice in their civil legal cases.

UB has embarked on an important pilot project with the Baltimore City District Court, that provides unrepresented people with "court navigators." Court navigators are undergraduate and graduate students who have been trained about how the court works and can help unrepresented people navigate the steps of the court process. This pilot project focuses on helping tenants who are suing landlords for failure to repair unsafe and unhealthy housing conditions such as lack of heat, leaks and mold, and vermin infestation.

Court navigators provide these tenants with basic information about their legal options, assist them with filling out court forms, go with them into the courtroom hearings and into hallway negotiations, and aid with any followup steps afterward. Navigators also help tenants with organizing their paperwork, figuring out budgets, and getting access to resources. In other words, navigators can help unrepresented people pursue their legal cases more effectively than when they go it alone. They can also help streamline the legal process to make the court work more efficiently.

[1] Michele Cotton, *When Judges Don't Follow the Law: Research and Recommendations*, 19 City University of New York Law Review 57 (2015).
[2] http://data.baltimoresun.com/news/dismissed/

New York City has been using navigators for several years now.[3] The success of that program has encouraged the courts here in Baltimore to undertake this navigator pilot project, which we think will be even better than New York's. UB students are the first court navigators in Maryland and receive course credit for their participation.

Serving as a navigator is an opportunity for participating students to learn about the legal profession and how the courts work, to interact with the judges and lawyers of the court, and to come into contact with community groups and businesses. And it's a way to serve Baltimore and local residents by helping the law do what it is supposed to do, including improving rental housing conditions.

Students participating in the navigator pilot project receive extensive training on how the court operates, the steps of the process for legal cases, what typically happens in these types of cases, and the things that nonlawyers are allowed and not allowed to do to help the unrepresented. Since navigators are not directly supervised by an attorney responsible for their work, they have to avoid doing those things that would constitute the "unauthorized practice of law." But the navigator training includes detailed instruction on how to provide meaningful assistance within the existing legal limitations.

Students are tested before becoming navigators to ensure that they are ready, and both they and the navigator pilot project will be evaluated to determine whether the objective of improving the process is being achieved. If this pilot is successful, it can be expanded to cover more types of cases and more courts in the State.

A lot of people – faculty, students, and community partners – have come together to make this project possible. Every person involved – and that includes you – is an important contributor to its success.

B. How this project came about

Faculty and students from the Legal and Ethical Studies (LEST) master's degree program at UB have been working toward the navigator project for about seven years. An early effort to establish a similar project that used trained nonlawyers to provide assistance to the unrepresented didn't get off the ground, because it was blocked.[4]

After that failed attempt, the LEST program concentrated on doing case study research on what happens to unrepresented litigants in court. Many students in the LEST program contributed to these

[3] See, e.g., https://www.nytimes.com/2015/02/21/opinion/bold-plans-for-new-york-courts.html

[4] Michele Cotton, *Experiment Interrupted: Unauthorized Practice of Law Versus Access to Justice*, 5 DePaul Journal for Social Justice 179 (2012).

research efforts, which led to published articles describing the results[5] and greater collaboration with the local court on how to improve the system for the unrepresented. Such collaboration has led, for example, to improved court forms that are more user-friendly to tenants[6] and a faster, expedited hearing process for tenants who have emergency conditions in need of repair.

Then, a few years ago, one of the students in the LEST program wrote a paper on what nonlawyers are doing around the country to assist the unrepresented. That paper inspired some faculty and students from the LEST program to form a Working Group on Legal Assistance Alternatives, which began meeting to explore whether there were programs for nonlawyer assistance used elsewhere that could serve as a model. The Working Group settled upon the court navigator program in New York, and worked for two years on developing a pilot version for Maryland. At the same time, the Working Group began seeking out the input and support of community organizations, including the Legal Aid Bureau, Public Justice Center, Baltimore Neighborhoods Inc., the Pro Bono Resource Center, and UB's law school.

Not long after that, the Public Justice Center published a report about the difficulties experienced by tenants in Baltimore's district court, which included a section on the research done by LEST faculty and students.[7] That report inspired draft legislation for the Maryland General Assembly to try to improve the situation of tenants in court. The first time around, the bill was not voted on by the General Assembly but tabled for the next session, and a study group was convened by the bill's sponsors, then-Senator (now mayor) Catherine Pugh and Delegate Samuel Rosenberg. This study group was chaired by Honorable Mark Scurti of the Baltimore City District Court and consisted of representatives from over thirty legal assistance providers, community organizations, and landlord groups, as well as representatives of the courts. After deliberating for about six months, the study group made a number of recommendations to the General Assembly and the courts – and one of those recommendations was to implement the pilot navigator project designed by the UB working group.

The bill unfortunately still did not get voted on after that, even after the extensive work put in by the study group convened by the General Assembly – the politics of the situation are complicated. But the navigator pilot recommended by the study group is now happening.

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[5] Michele Cotton, *A Case Study on Access to Justice and How to Improve It*, 62 Journal of Law in Society 61 (2014); Michele Cotton, *When Judges Don't Follow the Law: Research and Recommendations*, 19 City University of New York Law Review 57 (2015).

[6] Kathryn Summers, Amy Pointer & Michele Cotton, *Designing to Include Judges and Inner-City Tenants*, Applied Human Factors & Ergonomics conference proceedings published by Springer International, Design for Inclusion subconference (2017).

[7] *Justice Diverted: How Renters are Processed in the Baltimore City Rent Court* (co-written by the Public Justice Center, in collaboration with the Right to Housing Alliance, Dan Pasciuti of Johns Hopkins University, and Michele Cotton) (Public Justice Center, December 2015).

C. What this project does

The Court Navigator Pilot Project is focused on a particular type of court case, brought by a tenant against a landlord because the tenant says that the unit they are renting has conditions that are a threat to life, health, or safety.

There are various legal remedies available to a tenant in such a situation. The judge presiding over the case can establish an escrow account with the court for the tenant to pay into until the repairs are made by the landlord. The judge can also order that the amount of rent paid by the tenant to the landlord to be reduced (called a "rent abatement") to reflect the conditions. The judge can order that the lease be terminated, or that the landlord correct the problems. In addition, the court can make various orders pertaining to the rent that the tenant pays into escrow, including returning all or some of that money to the tenant. Tenants can also get a refund or offset against prior rent, going back to the date the landlord was first notified about the conditions and failed to repair them.

You will learn a lot more about this type of case and the law that applies to it in a future lesson. But the thing to keep in mind for now is that the cases you will be dealing with have a lot of different kinds of available legal remedies, and involve different ways to address and compensate tenants for bad housing conditions that the landlord knew about but failed to repair. You will be helping tenants go through the legal process and seek the outcome(s) that they prefer from the available alternatives. You may be able to help tenants get more livable housing, obtain financial compensation for unsafe and unhealthy conditions, and improve their stability and avoid homelessness.

D. The big picture this project fits into

Housing is a difficult issue in this country, and certainly in the city of Baltimore. The economics of the situation are complicated. But the reality is that low-income people often wind up paying a huge portion of their incomes for rental housing, and that housing is often substandard.

The problems are not entirely or even mostly the fault of landlords. The bottom line is that we as a society have made a collective decision to leave housing mostly up to the marketplace. And that marketplace has created a mismatch between the cost of quality housing and what many people can actually afford to pay.

As a result, it's really hard to be a landlord. To make a profit requires a lot of care and skill. And sometimes the way that landlords do business is to cut corners. The worst landlords are probably those who went to some seminar or watched some infomercial that sold the idea that residential rental housing is a sure and easy way of making money. Discovering how hard it actually is must be a frustrating experience for such landlords, and tenants can seem like obstacles to the good life that was promised to them as real estate moguls.

In addition, the government in many places, and certainly in Baltimore, tends to be worried that that landlords will give up on rental housing as a way to make money. Not only is rental housing

important to the sheltering of residents, but local governments count on real estate taxes from rental housing as a major source of funding. Every time a landlord throws in the towel and disappears, the buildings owned by that landlord stop providing the government with tax revenues and will eventually go into city ownership for tax arrears, becoming a continuing headache. Baltimore is full of vacant buildings that have been abandoned by their former owners (or that are now owned by speculators who were sold them cheaply by a government desperate to get them back on the tax rolls). The fear of exacerbating building abandonment can affect how much effort government makes in enforcing housing standards against landlords.

We don't have an agency that inspects all housing and ensures that it meets minimum standards (as we do for elevators or automobiles). Rather, substandard conditions aren't usually addressed until and unless tenants figure out how to use the law to make an issue of it. Our society has essentially put the burden on tenants to be the code enforcers. They get an assist from the legal system, but it is still largely on them to pursue the repair of unsafe and unhealthy conditions. (A cynical way of looking at it is that this dynamic is intentional and designed to limit the pressure on landlords and to reduce the risk that they will get fed up and walk away from their buildings.)

Further, there are very few free lawyers to help with the legal process that is tenants' main recourse for addressing bad housing conditions. Most tenants don't even try to get legal help, maybe because they don't expect to be able to get a lawyer to represent them or doubt that lawyers can do much to help. Most tenants also don't know what their rights are under the law. For them, the court process is difficult and intimidating, and requires them to take time off from work and other responsibilities, and the results are often disappointing.

As you will see, it's not easy to get judges to enforce the laws that deal with housing conditions. That's not a blanket criticism of judges – like landlords, they're coping with the realities of a system they didn't create. Those realities include limited judicial time and resources, and having to deal with tenants, and landlords, who are struggling and frustrated.

They [landlords] know how to work this stuff. They know what to do, and here I am, I don't know anything about the law. I would have to hire a lawyer or something, and I really can't afford that. I really don't know my rights. I don't know all the court lingo. I knew that up against them I would lose.

– Maryland tenant Kamiia Warren,
explaining her experience of court
(quoted in Alec MacGillis, "Kushnerville," *New York Times* magazine, 44, 47 (May 28, 2017)).

None of this is to say that things suck and the situation is hopeless. As you will see, there are laws that give tenants the legal right to decent housing and that can be used to get repairs and compensation for poor conditions. If our navigator project is anything like New York's, we could make a big difference by helping tenants with enforcing these laws. The New York project has been

evaluated by social scientists,[8] and it's shown impressive results in improving the way the court works and the outcomes that tenants get. But it's important to be aware of the systemic difficulties involved, because the best navigator is one who knows where the submerged rocks and dangerous whirlpools are located. Your task will require an understanding not only of the legal process but also of the systemic pressures that affect it.

Here's a fact worth considering. Every year in Baltimore City, about 140,000 cases are filed by landlords against tenants for nonpayment of rent (leading to about 7000 actual evictions). To put that into perspective, there are only about 240,000 households in Baltimore. At the same time, about 1000 cases are filed by tenants against landlords for failing to provide safe and healthy housing. That might suggest that tenants in Baltimore are particularly bad about paying rent, and that the housing stock is in really great condition. Or it might suggest that the courts are a commonly-used mechanism for rent collection, but are not so useful for housing code enforcement. You'll be in a position to learn for yourself why things are the way they are and what could be done to make things better. What you're going to be experiencing in individual cases will give you insight into how the whole system functions.

E. Navigator ethics

Navigators aren't attorneys, so the strict ethical requirements that apply to lawyers don't apply to navigators. Nonetheless, this project will be governed by ethical expectations that are similar to those that apply to lawyers. You will be expected to abide by the ethical expectations listed here, and your performance will be judged in part based on compliance with these expectations.

Navigators must give tenants diligent assistance.

Attorneys are required to zealously represent their clients, and they have a fiduciary duty to put their clients' interests first. But navigators aren't representing anyone, and they don't have clients as such, so neither of those things is expected of navigators. Still, the reason the navigator project exists is because most tenants can't afford attorneys. You should be dedicated to providing tenants with complete information and supportive assistance, so that they get as good an opportunity as we can give them to get what they are entitled to under law.

Navigators won't share with others information that the tenant has given them, unless they have the tenant's permission.

Attorneys are required to keep client information confidential. Again, navigators aren't attorneys and aren't subject to the same serious consequences if they share tenants' personal information. But that doesn't mean that navigators should be indifferent to protecting tenants' privacy. Rather, you should not share anything personal about a tenant with anyone else without the tenant's permission.

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[8] http://www.americanbarfoundation.org/uploads/cms/documents/new_york_city_court_navigators_report_final_with_final_links_december_2016.pdf

While assisting tenants to get access to resources, or in answering questions posed by others seeking to assist the tenant, make sure that you have the tenant's permission before sharing any personal information.

Navigators must let the tenant be in charge of the tenant's case.

Attorneys have a lot of control over the litigation of a case. This is one way in which navigators are going to behave very differently from attorneys. Navigators should do their best to make the tenant the driver of the legal case and play a supportive role rather than a leading or guiding role. That doesn't mean that you have to leave the tenant to figure everything out on their own. On the contrary, you should provide information and explanation that enables the tenant to make intelligent decisions about how to proceed. But your assistance should be guided by the tenant's objectives and decisions, not by your own ideas or opinions about how best to proceed.

Navigators must treat tenants with respect.

Many of the tenants you will see in court aren't having an easy time of it. They often have financial and other problems, in addition to bad housing conditions. If they are working, and many of them are, they may have to take time off from work and make other arrangements in order to deal with this case, to be present for the housing inspection and to attend court hearings, often repeatedly. The clerks and judges of the court may not be very sympathetic. Their landlords may be noticeably irritated.

You as a navigator aren't expected to like all the tenants you assist or to give up whatever moral judgments you make in your own mind about what they do and don't do. But you are expected to realize that they are in a difficult situation and to keep any negative opinions to yourself. And you should treat all tenants respectfully, as participants in a system that assumes that everyone deserves their day in court.

F. Navigator logistics

The court schedule

There are two types of cases on the weekly court schedule that you should know about. The first type, cases where the landlord is suing the tenant for nonpayment of rent, take place in sessions that are referred to as "rent court." You won't be dealing with such nonpayment cases in this pilot project, but you will still spend time in rent court because some of the tenants sued for nonpayment also have bad housing conditions, which can be asserted as a defense to the landlord's suit for nonpayment. The tenants with such a defense may be given an opportunity by the judge in rent court to go file a rent escrow action, which is where you could begin assisting the tenant. The other type, cases on the "rent escrow docket," involve the actual hearings on whether tenant conditions are serious enough to qualify for legal relief, and you may also be providing assistance to tenants at those hearings.

Below is a rough sketch of the court schedule for these types of cases, though the exact time the court sessions start and end is up to the individual judges.

Court schedule

	Monday	**Tuesday**	**Wednesday**	**Thursday**	**Friday**
8:30-12:00	Rent court	Rent court	Rent court	Rent court	Rent court
1:15-5:00	Rent court Rent escrow	Rent court Rent escrow	Rent court	Rent court Rent escrow	Rent court Rent escrow

The courthouse

The courthouse where navigators will be providing assistance is located on the corner of Fayette and Gay Streets. You can reach the courthouse by

•taking the Metro from Penn Station to the Shot Tower stop, which is close to where the courthouse is located
•taking the free circulator bus (Purple Route) which can be caught at the stop on the other side of Penn Station from UB (on St. Paul Street); it lets off at Fayette Street and then you walk a few blocks east to Fayette and Gay (passing City Hall on the way). The circulator runs about every 30 minutes and typically takes less than 15 minutes to get to the Fayette Street stop. But budget at least an hour for the trip, to be on the safe side, if you take the bus, because it can be delayed.
• If the weather is decent, you may prefer to walk. It's about a half-hour walk from UB, or a bit less if you're a fast walker.
• taking the Light Rail. The Lexington Market stop is the best stop, though it's not particularly close to the courthouse. But you can walk east from there to the courthouse.

Driving is not ideal because of the parking issues, but if you're a parking pro and don't mind paying, there are potential parking spaces and garages in and around the courthouse.

You will enter the courthouse on the main level on the side of the building (on Fayette St.) and go through a metal detector. Don't bring food or beverages (other than water) with you, as the court officers will confiscate them and throw them out! That main level has courtrooms and the clerk's office. There is also a basement level downstairs where the records offices are located. And there are more courtrooms, and other offices, on the second and third floors. There is an elevator located in the lobby near the metal detector and stairs at either end of the building.

Working with our collaborators

You may be working with a lot of people besides tenants. For example, a number of legal services providers work in the courthouse. Below is a chart listing these programs/projects, their supervisors, and the kind of assistance they provide. Feel free to try to get to know these attorneys and to develop

a good working relationship with them.

Program	Location	Supervisor	Services
Tenant Volunteer Lawyer of the Day	usually on the main floor outside Courtroom 2	Dean Fleyzor	assisting tenants with rent court cases, including limited representation
Self Help Center	3rd floor offices	Abena Williams	assisting tenants and landlords by giving them legal advice
Public Justice Center	2nd floor office	Zafar Shah and Matt Hill	assisting tenants with representation and appeals in rent court and rent escrow

Our other collaborators are the judges and clerks of the district court. The judge in charge of the civil division of the district court is Hon. Mark Scurti. Judge Scurti has been a strong supporter of the navigator project for a long time and was instrumental in getting the pilot accepted in the court. He even went on a field trip with other judges and court personnel to Brooklyn, New York to see how the navigator program was operating there – and was really impressed.

The judges who serve in the district court are regularly rotated, so new judges come and go. Suffice it to say that you'll be seeing how things operate in the courtroom and probably getting to know a lot of the judges in whose courtrooms you will frequently be sitting.

The clerks are also important participants in the system. They are, like you, nonlawyers who assist unrepresented litigants. You will probably be making their lives easier, so you might find them to be particularly eager collaborators. Once you sit outside the clerk's office on the main floor for a while, you will come to see which clerks assist tenants with rent escrow cases and may work closely with those clerks.

Decorum and rules of behavior

Addressing judges. Judges are generally addressed as "Your Honor" or "Judge so-and-so." The court's website has some interesting advice in this regard. It tells litigants:

> Refrain fromcalling a judge "sir," "ma'am," "mister" or "miss." Communication with the judge should be carried out with a proper amount of respect.

Despite what this says, most judges will not object to a tenant calling them "sir" or "ma'am" (though definitely avoid Mr./Ms./Mrs./Miss). But you can tell which people are the most knowledgeable

about court customs, because they generally address the judge as "Your Honor."

What to wear. There is no dress code as such for navigators or for litigants, but aim for something akin to "business casual." You don't want to be an embarrassment to UB, or communicate a lack of professionalism to the tenants you're assisting. On the other hand, you don't need to try to look like a lawyer and you won't need a new wardrobe. You can give much the same advice to tenants, if they ask, about what to wear. The court's website says that there is no dress code but it does suggest that people "[d]ress appropriately for court, or as you would for a job interview." (Of course, there are lots of different kinds of jobs out there, and what people wear to interviews for jobs as landscapers, lifeguards, or cooks may not be what the authors of the website have inmind.)

Electronic devices. The court has a lot of rules about electronic devices.[9] In general, don't expect to be able to use your cell phones, computers, cameras, and other electronic devices in any courtroom. Be especially careful about making sure that your electronic devices are off in the courtroom, or you may have them confiscated by a court officer. Sometimes, a judge will give a landlord or tenant permission to turn on and use a cell phone or iPad, but don't count on it. And don't try to photograph or record anything in the courthouse.

When things go wrong

Since this is a pilot project, things are going to go wrong at some point and at various points. Lots of highly-motivated people have worked for a long time on this project to plan it out fully and carefully. But all of those involved are less-than-perfect human beings, and not every contingency can be anticipated. To some extent, we will be building the plane as we fly it.

The good news is that there will be a lot of resources available to deal with things that go wrong. The instructor will be making frequent visits to the courthouse to see how things are going, and can often be reached by email and phone for consultation. There are also the attorneys from the other projects listed in the chart above, who may be able to help out if an issue arises. And some experienced navigators, who "know the ropes," will be participating alongside the new navigators.

We will be concentrating on learning from our experience, using mistakes and problems to find ways to make the project work better. So don't hesitate to give feedback and voice concerns. Indeed, we will be holding some discussion sessions to help gather such information.

We expect things to mostly go well, but you are pioneers on the leading edge of a new frontier, so expect there to be pitfalls and problems, as well as accomplishments and improvements.

[9] Maryland Rule 16-208 has all the details.

II. What Navigators Can and Can't Do

Court navigators can do many things to assist unrepresented tenants with their cases. But because navigators aren't directly supervised by attorneys taking full responsibility for their work, there are also many things navigators can't do, because of the laws against the unauthorized practice of law (UPL). Navigators need to stay on the right side of the line between appropriate assistance and UPL, and this class will provide detailed guidance on how to do that.

A. The law on the unauthorized practice of law

With a few specific exceptions, Maryland's Business Occupations and Professions Law (B.O.P.L.) limits the "practice of law" to licensed attorneys only. The part of the law that is most relevant for navigators is below:

> § 10-206. Admission required; exceptions
>
> (a) In general. – Except as otherwise provided by law, before an individual may practice law in the State, the individual shall:
>
> (1) be admitted to the Bar; and
>
> (2) meet any requirement that the Court of Appeals may set by rule.
>
> (b) Exceptions – In general. – This section does not apply to:
>
> (1) a person while representing a landlord in a summary ejectment or a rent escrow proceeding in the District Court of Maryland;
>
> (2) a person while representing a tenant in a summary ejectment or a rent escrow proceeding in the District Court of Maryland if the person is:
>
> (i) a law student practicing in a clinical law program at a law school accredited by the American Bar Association with the in-court supervision of a faculty member; or
>
> (ii) employed by a nonprofit organization receiving grants from the Maryland Legal Services Corporation and:
>
> 1. the person has training and experience;
> 2. the person is supervised by a lawyer; and
> 3. the supervising lawyer's appearance is entered in the proceeding …

Notice certain details of this law. First, navigators aren't covered by this provision because technically they are not "supervised" by a lawyer (even though they will sometimes collaborate with other lawyers and be overseen by the instructor who is a lawyer). Second, landlords and tenants don't have parity under the law when it comes to the assistance of nonlawyers. Landlords can have agents who are nonlawyers represent them, but tenants can only have lawyers or certain lawyer-supervised persons to represent them. In other words, tenants have many more limitations on who can represent them in court. This law is why navigators can provide tenants with assistance but not representation, while landlord agents can provide landlords with both.

Also note that in order to avoid violating this law, it is necessary to understand what constitutes the practice of law. Another part of Title 10, B.O.P.L. § 10-101(h), gives a definition of that.

(1) "Practice law" means to engage in any of the following activities:

(i) giving legal advice;

(ii) representing another person before a unit of the State government or of a political subdivision; or

(iii) performing any other service that the Court of Appeals defines as practicing law.

(2) "Practice law" includes:

(i) advising in the administration of probate of estates of decedents in an orphans' court of the State;

(ii) preparing an instrument that affects title to real estate;

(iii) preparing or helping in the preparation of any form or document that is filed in a court or affects a case that is or may be filed in a court; or

(iv) giving advice about a case that is or may be filed in a court.

Of course, nonlawyers already do engage in many of these activities while working in law offices and for legal services providers. And they are allowed to do so as long as they are under the direct supervision of a lawyer who takes full responsibility for the work of the nonlawyer. By contrast, court navigators do not work under the supervision of a lawyer who is taking full responsibility for their work. That means that they have to avoid engaging in any of these activities that are listed as being part of the practice of law.

The definition in § 10-101(h) of what constitutes the practice of law might seem to greatly limit what unsupervised nonlawyers can do. But this law has been interpreted by the Maryland Attorney General's office to be less restrictive than it sounds. There are things commonly done by unsupervised nonlawyers in Maryland that could be viewed as violating this statute but that aren't.

For example, this definition says that practicing law includes "representing another person before a unit of the State government or of a political subdivision." But some administrative agencies in Maryland have regulations that expressly allow nonlawyers to represent a party before those agencies, which are seemingly units of State government or political subdivisions of State government. And there are lots of nonlawyers who could be said to "prepar[e] instruments that affect title to real estate" – including real estate agents, loan officers, and closing agents – who have not been treated as violating this law. So what constitutes an activity that cannot be legally performed by a nonlawyer isn't as clear or as wide-ranging as this statute makes it sound.

The legal limitations on what nonlawyers can do have to be taken seriously because UPL is a criminal offense under Maryland law. B.O.P.L § 10-601(a) states that "[e]xcept as otherwise provided by law, a person may not practice, attempt to practice, or offer to practice law in the State unless admitted to the Bar." And § 10-606(a)(3) provides that " a person who violates § 10-601 of this subtitle is guilty of a misdemeanor and on conviction is subject to a fine not exceeding $5,000 or imprisonment not exceeding 1 year or both." Criminal prosecutions of people for violating this law are, thankfully, very rare. But that doesn't mean that it shouldn't be taken seriously. Accordingly, navigators will be given a lot of guidance in this lesson on avoiding UPL.

It should be added that although nonlawyers aren't allowed to represent peoplein court, parties to cases are still allowed to represent themselves in court. According to § 10-102, "[t]his title does not limit the right of … an individual to appear on the individual's own behalf before a court or other unit of the State government …." That means that persons who can't afford or otherwise obtain a lawyer, or who don't want a lawyer, are allowed to represent themselves.

Those who represent themselves are often referred to as "self-represented." For example, the Maryland courts have a work group on "self-represented" litigants as well as guides and programs for the "self-represented." It's not clear why people without attorneys are referred to as self-represented rather than unrepresented. It seems a little like calling an orphan "self-parented." When tenants have to take care of their own legal matters, despite having little familiarity with the law and with court processes, it seems fairer to say that they are going to court unrepresented.

B. The context for the law against UPL

Laws against the unauthorized practice of law are actually somewhat controversial. Many other countries, including Great Britain, which probably has the legal system most like our own, don't even have them. And at times, certain federal agencies, such as the Federal Trade Commission (FTC) and Department of Justice (DOJ), have criticized the American Bar Association (ABA) and the States for adopting highly restrictive laws against UPL.

For example, not that long ago, the FTC and DOJ sent a letter to the ABA criticizing a proposed model definition of the practice of law that was under consideration by the ABA as a guide to the States. According to the federal agencies, the proposed model definition was contrary to federal antitrust policy. That letter said:

> [W]e urge the ABA not to adopt the current proposed Definition, which, in our judgment, is overbroad and could restrain competition between lawyers and nonlawyers to provide similar services to American consumers. If adopted by state governments, the proposed Definition is likely to raise costs for consumers and limit their competitive choices. There is no evidence before the ABA of which we are aware that consumers are hurt by this competition and there is substantial evidence that they benefit from it. Consequently, we recommend that the proposed Model Definition be substantially narrowed or rejected.

Letter to Task Force on the Model Definition of the Practice of Law (December 20, 2002).

The federal agencies are suggesting here that when nonlawyers are greatly limited from doing anything to assist others with legal matters, that gives lawyers a monopoly, which can harm consumers by limiting competition and driving up the price of legal services. As the federal agencies indicate, there has been research done on services provided by nonlawyers that has found that in some situations nonlawyers can provide high-quality legal services and do so at a lower cost than lawyers. The federal agencies weren't suggesting that there should be no rules on what nonlawyers

can do, but pointing out that consumers could be harmed if there were too many limitations.

The ABA ended up abandoning the plan for its model definition, but most States, including Maryland, have definitions that are similarly broad. In fact, the FTC and DOJ have also sent letters of this kind to many State bars (though not including Maryland). The federal agencies haven't pursued any legal action against the States for antitrust violations for overly broad definition of UPL, and it's not clear that the States are in fact violating any antitrust laws. Because the law of every State is different and each State licenses its own lawyers, it's not clear that there is any interstate commerce going on that the federal government would be constitutionally entitled to regulate. But the point is that the federal government has recognized that the monopoly lawyers have on legal services is anticompetitive and may hurt consumers in some cases.

It is also possible that preventing nonlawyers from providing some forms of legal assistance may violate the U.S. Constitution. Nonlawyers are not allowed to give legal advice, but legal advice is the kind of speech – involving the expression of ideas, opinions, and advocacy – that has generally been entitled to First Amendment protection under the Free Speech Clause. Thus, it is not surprising that some commentators have suggested that UPL restrictions interfere with free speech rights of nonlawyers and those who would hear such speech.[1]

The First Amendment also protects the right of persons to petition their government for a redress of grievances. In addition, the Due Process Clause of the Fifth and Fourteenth Amendments also entitles people to fair treatment in court. Where people cannot afford to hire a lawyer and cannot find a free one to take their cases, it could be said that the constitutional rights of petition and due process are being interfered with by laws that prevent people from getting any assistance from trained nonlawyers who could help them pursue their legal rights.

The Supreme Court has never directly addressed the issue whether laws restricting nonlawyers from providing legal assistance are unconstitutional. Justices of the Court have occasionally raised questions, however. In *Hackin v. Arizona*, 389 U.S. 143 (1967) (*per curiam*), one of the Justices, Justice Douglas, dissented from the Court's decision not to accept that case, involving a nonlawyer's legal assistance, for review. Douglas's dissent made an argument in favor of letting nonlawyers provide more services:

> Certainly the States have a strong interest in preventing legally untrained shysters who pose as attorneys from milking the public for pecuniary gain. But it is arguable whether this policy should support a prohibition against charitable efforts of nonlawyers to help the poor. It may well be that until the goal of free *legal* assistance to the indigent in all areas of the law is achieved, the poor are not harmed by well-meaning, charitable assistance of laymen. On the contrary, for the majority of

[1] See, e.g., Michele Cotton, *Improving Access to Justice by Enforcing the Free Speech Clause*, 83 Brooklyn Law Review __(to be published December 2017).

> indigents, who are not so fortunate to be served by neighborhood legal offices, lay assistance may be the only hope for achieving equal justice at this time.

Id. at 151-52 (citations omitted).

When Justice Douglas wrote his dissent, there were actually many more lawyers available to assist low-income people than there are today. The funding for such lawyers is down considerably, and many legal services offices engage in a kind of triage in which only the most serious cases are assigned for representation by an attorney. Free lawyers have to be rationed, and it is more true than ever that "lay assistance may be the only hope for achieving equal justice at this time."

There are current efforts in Maryland and many other States seeking to increase the funding available to pay for attorneys in civil cases where people cannot afford them, and such efforts have been going on for many years, mostly without success. This pilot project is an attempt to find another way to provide quality service to the unrepresented, while costing very little. It may be an approach which can provide meaningful assistance until and unless the day comes when there are free attorneys for everyone who can't afford one.

While it's important to avoid violating the laws against UPL while providing such meaningful assistance, it's also worth knowing that the laws against UPL are themselves subject to criticism and may need reform to improve access to justice.

C. What navigators can and can't do, given UPL restrictions

Don't give legal advice; do give legal information

Maryland law prohibits nonlawyers – including navigators – from giving "legal advice." Legal advice involves giving a person an opinion about what that person should do based on the law that applies to their situation[2] or proposing ways that a person might use the law to obtain their objectives.[3] So you shouldn't tell a tenant what you think about how the law applies to their

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[2] See, e.g., *Franko v. Mitchell*, 158 Ariz. 391, 406 (1988) (Grant, J., concurring in part, dissenting in part) ("Legal advice is often defined as giving an opinion as to the law applicable to the subject matter," citing *Togstad v. Vesely, Otto, Miller & Keefe*, 291 N.W.2d 686, 692-93 (Minn. 1980)); *In re McDaniel*, 232 B.R. 674, 679 (Bankr. N.D. Tex.1999) (legal advice occurs where the nonlawyer "applies the statutes, rules, and information from [legal] publications to the facts of the particular case"); *Kennedy v. Bar Ass'n*., 316 Md. 646, 663 (1989) ("advising clients by applying legal principles to the client's problem is practicing law"); *Schlicksup v. Caterpillar, Inc*., 2011 U.S. Dist. LEXIS 102099, 17 (C.D. Ill., Peoria 2011) ("legal advice … include[s] advice regarding compliance with thelaw").

[3] See, e.g., *Meza-Sayas v. Conway*, 2007 U.S. Dist. LEXIS 66772, 19 (D.C. Idaho 2007) ("Legal advice includes the choice of action to pursue [and] the court in which to pursue it"); W. Va. LR Bk. P. (N.D.) LR PL P 9 (2011) (legal advice includes "recommending a course of action"); 80 Op. Atty. Gen. Md. 138 (1995) (nonlawyers "may not help [persons] decide, based upon the [persons'] particular circumstances, whether to invoke any of their rights or pursue any of their potential remedies"); Virginia Guidelines on Mediation and the Unauthorized Practice of Law, p. 13 (Legal advice "directs, counsels, urges, or recommends a course of action by a disputant or disputants as a means of resolving a legal issue").

particular situation or make recommendations about what they should do to best pursue their legal rights.

On the other hand, you can give a tenant information about the law, define legal terms, explain legal procedures, and answer general questions involving the law. One way to think about it is that whenever you provide legal information to the tenant, it should be information that is generally applicable, not information that is tailored to fit the tenant's facts. And you should always frame that information in terms of what tenants *can try to do*, not to what they *should do.*

You can share with tenants anything about the law that you learn in this training or that you learn through your experience as a navigator, but what you say needs to be kept general rather than specific to the person's situation. If a person asks you what a "rent abatement" is, you can tell them. If a person asks you if judges ever give tenants rent abatements, you can answer that question as well. But if they ask you whether they are entitled to a rent abatement or whether you think they should ask for a rent abatement, then you have to say that you can't answer that kind of question.

It's also okay to give nonlegal advice that's generally helpful, such as "bring all your paperwork to court" or "make sure to be home for the inspection." That's advice, but it's not legal advice, because you're not using the law as the basis for your suggestions to the person.

Don't represent people; do give them assistance in representing themselves

Maryland law also prohibits nonlawyers from representing others in legal matters. That means that you can't speak on a tenant's behalf in the courtroom or in hallway negotiations with a party or a party's representative, or do any drafting of legal agreements or settlements.

When you give tenants information about the law, it helps them draw their own conclusions about what they want to try to achieve through their legal cases, and you are encouraged to help them achieve their objectives as they have formulated them. In the courtroom and hallway negotiations, you will generally be quiet, and only speak to the tenant to remind them of something they said was important or needed to be covered, if it appears that they have forgotten. And when it comes to legal paperwork, you will assist the tenant in filling out forms but you won't make any particular suggestions about what to fill in. Any assistance you provide with the paperwork should be guided by the directions of the tenant, based on the information you have given them.

More details on what navigators can and can't do

This page and the next have tables indicating some of the things that navigators can and can't do, along with footnotes with supporting legal sources. The Navigator Protocol (Lesson V) will provide additional information about how to implement these do's and don't's, but these are the specific rules that underlie the instructions in the protocol.

What court navigators can do:	What court navigators can't do:
The navigator can give the tenant prepared materials explaining the remedies available under law.[4]	The navigator can't offer conclusions about whether any particular remedy is relevant to the tenant's court case or make any recommendations about what the tenant should do to win.[5]
The navigator can answer basic questions the tenant has about the available remedies.[6]	The navigator can't answer questions that require the application of the law to the facts, where that application involves any level of complexity.[7]
The navigator can offer the tenant explanations of unfamiliar legal terms.[8]	
The navigator can answer basic questions about filling out court-supplied forms.[9]	The navigator can't make any specific recommendations about what the tenant should put on the form, beyond pointing out where the things go that the tenant wants to include.[10]

[4] See 80 Op. Atty Gen. Md. 138, 142 (1995), which indicates that " the simple act of providing *information* about legal rights, as opposed to offering advice about such rights and what to do about them, is not unauthorized." For example, "[l]ay advocates may provide information to [persons] about their potential legal rights and remedies." *Id.* See also 79 Op. Atty Gen. Md. 174 (1994) (A social worker may inform a birth parent about his or her statutory right to revoke consent to adoption).

[5] The nonlawyer should not help persons decide, based on their particular circumstances, whether to invoke any of their rights or pursue any of their potential remedies, as that would be improperly suggesting a "course of conduct." 80 Op. Atty Gen. at 142.

[6] Any answers navigators give to questions from tenants must be based on "the most elementary knowledge of law." *Lukas v. Bar Association of Montgomery County,* 35 Md. App. 442, 448 (1977), *cert. denied,* 250 Md. 733 (1977) (citations omitted). It is not the practice of law just because the navigator is working on matters that involve the law; the practice of law involves "much more than merely working with legally-related matters …. *Id.* (citations omitted).

[7] Any answers navigators give to questions from tenants must avoid "applying legal principles to problems of any complexity." *Id*. The Court of Appeals has stated that the "practice of law includes utilizing legal education, training, and experience to apply the special analysis of the profession to the client's problem." *Attorney Grievance Commission v. Shaw,* 354 Md. 636, 649 (1999). Rather, the "focus of the inquiry is, in fact, whether the activity in question required legal knowledge and skill in order to apply legal principles and precedent." *Id.* (citationsomitted).

[8] See 80 Op. Atty Gen. Md. at 143, which indicates that nonlawyers may define unfamiliar terms on legal forms.

[9] See 80 Op. Atty Gen. Md. at 139, which states that a lay advocate may assist pro se litigants in "preparing a legal pleading or other legal document by defining unfamiliar terms on a form [and] explaining where on a form the victim is to provide certain information …." See also *Lukas v. Bar Association of Montgomery County,* 35 Md. App. 442, 448, 371 A.2d 669, *cert. denied,* 280 Md. 733 (1977), which indicates that the performance of "mechanical functions," such as the completion of forms or clerical work, does not constitute the practice of law. *Id.*

[10] *Id.*

The navigator can give the tenant an outline of court processes,[11] explaining how they generally run,[12] and can answer any questions that involve ordinary knowledge of how the court works.[13]	The navigator can't advise the tenant how to handle the presentation of the particulars of their case in court.[14]
The navigator can accompany the tenant in the courtroom and during hallway negotiations.[15]	The navigator may not advocate on the tenant's behalf with the other party.[16]
The navigator may assist the tenant with such nonlegal activities as budgeting and ordinary problem-solving, and with organizing the paperwork that may be relevant to the case from the perspective of the tenant.[17]	

Lesson II Exercise

Consider the following scenarios and which answer you would choose. Then look at the answers that follow to see how you did and what is the best answer and why.

1. You are helping the tenant fill out the court forms for beginningthe rent escrow case. One of the items on the form, that the tenant can ask the judge for, is a reduction in rent, whether paid or owed, going back to the time that the landlord was first told about the problems in need of repair. The form asks for the "total amount" that the tenant is seeking to be filled in. The tenant asks you what "total amount" means. What do you say?

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[11] Such an explanation would be permitted because it involves only "the most elementary knowledge of law." *Lukas v. Bar Association of Montgomery County,* 35 Md. App. 442, 448 (1977), *cert. denied,* 250 Md. 733 (1977) (citations omitted).

[12] See 80 Op. Atty Gen. Md. at 143, which indicates that nonlawyers may give persons a "general orientation or overviews about the kind of legal proceeding involved."

[13] See 80 Op. Atty Gen. Md. at 138, which states that a nonlawyer may provide persons with "basic information about the manner in which judicial proceedings are conducted." In addition, "Lay advocates may inform [persons] about purely nonlegal, basic matters such as appropriate attire, where to sit, and so forth." *Id*. at 143.

[14] See 80 Op. Atty Gen. Md. at 143, which states that nonlawyers cannot provide particular or individualized information, such as how to present a case, how to call witnesses, how to cross-examine witnesses, and the like.

[15] See 80 Op. Atty Gen. Md. at 143, which states: "Lay advocates may sit at trial table or stand by the [litigant] in the courtroom, subject to the discretion of the trial judge, provided they do not engage in any activities otherwise prohibited."

[16] See 80 Op. Atty Gen. Md., which indicates that nonlawyers are prohibited from holding themselves out as representatives at trial, *id*. at 143, or engaging in advocacy on behalf of particular individuals, *id*. at 139.

[17] See *Lukas v. Bar Association of Montgomery County,* 35 Md. App. 442, 448, 371 A.2d 669, *cert. denied,* 280 Md. 733 (1977), which indicates that the performance of "mechanical functions" that are related to legal matters does not constitute the practice of law. *Id.*

A. You say the "total amount" is the amount of all the reductions in rent, added together, that the tenant is asking for.
B. You say that you can't answer that question (because it would be UPL).
C. You say that the total amount should be calculated by adding up the damages due for violation of the warranty of habitability plus any rent abatement due based on the continuing conditions.

2. The landlord made the repairs before the first hearing in the rent escrow case. Before going into that hearing, the tenant asks you if she will still be able to get a refund of the rent she paid for the previous two months. What do you say?

A. You tell her that the case will probably be dismissed because the landlord has already made the repairs.
B. You tell her that that is one of the kinds of the relief the judge can give, but that you can't say whether the judge would order such relief in this case.
C. You tell her that she will need some documentation to prove when the landlord was first notified about the conditions.

3. The judge orders the tenant to deposit $1500 – two month's rent – into a rent escrow account by Friday. The tenant tells you that she can't decide whether to deposit that money or to use it as a security deposit and first month's rent at a better apartment. What do you say to her?

A. You tell her that if you were she, you would save it for the better apartment.
B. You tell her that it can be difficult to find an apartment with no housing code violations, and that she might be better off sticking with the rent escrow case.
C. You tell her that the decision is up to her, but you're available to help her if she decides she wants to use this case try to make this apartment livable.

4. You're about to go with a tenant into the first hearing in a rent escrow case. You stand out in the hallway and go over the documentation the tenant has brought with her. She has photos, bills, receipts, and other documents. The tenant asks you to help her organize them so that she can find them easily during the hearing. What do you say?

A. You tell her that you can't help her with that, because it would be the unauthorized practice of law.
B. You tell her that you can help her with that, based on what she thinks would enable her to get easier access to the documents while in court, but can't tell her how to present these items to the judge.
C. You tell her that she should be sure to tell the judge about the bills and receipts, but that she doesn't have to worry about the photos because the housing inspection will have photos of the conditions.

5. The tenant tells you that she is interested in asking for a rent abatement. She describes the

conditions in her housing to you, which sound pretty bad, and asks you what would be an appropriate amount for her to request from the judge. What do you say?

A. You tell her that she is the one who has to decide how much to request.
B. You tell her she should ask the judge how much money would be appropriate.
C. You tell her that she should ask for the entire rental amount to be abated until the landlord has made the repairs.

The answers are on the next page.

Lesson II Exercise answers:

1. The best answer is A. It's fine here to say what "total amount" means, because it's not based on legal analysis but only on ordinary knowledge of what the words "total amount" would mean in context. In other words, it doesn't take legal knowledge or skill to answer that question. C is not a good answer because it is technical in nature and does imply the application of legal analysis.

2. The best answer is B. A and C are not good answers because they are UPL, and also incorrect. Answer A is UPL because you are making a prediction, using legal knowledge. It's the probably wrong under the law, but it's still purporting to apply the law to this particular situation. And C is advising the tenant of how to achieve her objective in court, which is UPL. And documentation isn't actually required.

3. The best answer is C. Neither A or B is UPL, as they offer common sense advice. You wouldn't be breaking any laws against UPL if you made these recommendations. But you aren't doing what is expected of a navigator, which is to follow the guidance of the tenant, rather than directing the tenant.

4 The best answer is B. There's nothing wrong with good, old-fashioned organizing of documents, based on ordinary principles of how to find stuff (maybe labeling things, using paperclips and rubber bands, and even file folders). But you can't tell the tenant how best to present these pieces of documentation in court. You can tell her that it can be helpful to have these forms of documentation in case the judge asks for them – that's common sense. Answer C isn't a good answer because although it is true that the housing inspection has photos, you can't and shouldn't draw a legal conclusion about whether those photos are sufficient evidence.

5. The best answer is A. When the tenant asks questions of this kind, you should put the responsibility back on the tenant. Answer B isn't a good answer, because the judge won't tell the tenant what the tenant should seek. The job of the judge is to be an impartial arbiter, not advisor. And C isn't a good answer because it is legal advice, based on applying the law to the tenant's situation and making the determination that the tenant has a really strong case for such a large amount of money.

Now take the quiz to see how you're doing.

III. The Civil Legal System and the Law of these Cases

A. Introduction

People pursue noncriminal legal claims, such as those involving landlord-tenant issues, through our civil legal system. The person who has a legal claim (a "party") files a lawsuit in the appropriate civil court by commencing it with a document called a "pleading." The pleading might take the form of a "complaint" or a "petition." The party filing the pleading is usually called the plaintiff, and the party against whom the case is filed is usually referred to as the defendant. The pleading lays out the facts and the law that entitle the party to relief from the court.

If the pleading sets forth sufficient facts and law, the case will be tried. At trial, both parties present evidence and make arguments to establish their case or their defense. Then a judge or a jury decides the outcome by applying the law to the facts as indicated by the evidence, and the judge issues an enforceable order called a "judgment."

Most cases don't actually make it to trial. Instead, they're usually settled (the parties reach an agreement that resolves the case without court intervention), dismissed (because the pleadings are deficient in some way), decided by summary judgment (where the pleadings establish sufficient law and facts for the judge to decide the case without a trial), or result in a default judgment if the opposing party fails to appear.

This general pattern for how cases work in civil court will shape the cases that you assist tenants with. Summary judgments don't really happen with this type of case, but you will see settlements, dismissals, and defaults, as well as trials.

There are three types of landlord-tenant-related legal claims taking place in civil court that you need to know something about.

As the first lesson in this training indicated, the main type of landlord-tenant case that is handled in this court is the failure to pay rent (FTPR) case (also known as "summary ejectment"), where the landlord has sued the tenant for nonpayment.

A much smaller number of cases involve the situation where the tenant has sued the landlord for failing to provide safe and healthy living conditions.

You don't need to know much about FTPR cases, because those won't be part of this pilot project. Just be aware that FTPR cases may lead to monetary judgments against the tenant and even eviction.

Our pilot project focuses on cases where the landlord has failed to provide the tenant with safe and healthy housing conditions. But, as you will see, cases about bad housing conditions often go hand-in-hand with lawsuits by landlords against tenants for FTPR, which is why it's good to know what FTPR cases are and what they're about.

Cases brought by tenants about bad housing conditions can involve two different legal claims. One type of claim is based on the "rent escrow law." The other claim is based on the law pertaining to the "warranty of habitability." Many tenant-initiated cases against landlords have both of these claims as part of the same case.

You don't need to try to memorize the details of these laws, and you definitely should *not* be telling any tenant how the specifics of the law apply to that tenant's situation (that would be UPL). You are allowed to tell tenants what the law says, but you're not allowed to suggest to them how to use it in their particular cases. Your Navigator Handbook/Toolkit contains a summary of these laws and excerpts from the actual statutes for the purpose of providing such information. This lesson gives an overview of the laws to better enable you to look up any legal information that could be helpful to provide to the tenant. But be sure to frame any presentation of legal information in just that way: as information that *might be* helpful.

B. The Rent Escrow Law

Purposes

The first of the two statutory laws that give tenants a legal claim for bad housingconditions is the "rent escrow law." This law is named after the main legal remedy that it provides tenants, which is an escrow account set up with the court to pay their rent into until the landlord repairs any serious housing code violations.

The rent escrow statute indicates among its "findings and purposes" that it is intended to provide tenants with the means to bring cases against landlords for substandard housing conditions and to enable them to obtain "meaningful sanctions" against landlords who "perpetrate or perpetuate such conditions."

The statement of findings and purposes also emphasizes that the remedies available under this law are intended to address conditions that affect the "life, health and safety of tenants" and are not meant to be used to "have premises redecorated or to have minor code violations corrected." Our research indicates that most of the time tenants who make claims about conditions do have the kinds of problems that qualify as threats to life, health, or safety.

Conditions covered by the law

The rent escrow statute indicates what housing conditions are grounds for the tenant to file a lawsuit. The conditions must involve "a fire hazard or serious threat to the life, health, or safety of occupants" of the rental housing. The kinds of conditions that qualify include:

- lack of heat
- lack of hot or cold running water (except where it results from the tenant's failure to pay a water bill the tenant is responsible for)

•lack of light or electricity
•lack of adequate sewage disposal
•infestation of rodents (except where the building the tenant is in is a one-family unit)
•exposed lead paint

There are other conditions besides these that the housing code identifies as threats to life, health, or safety (LHS). For example, infestations of roaches or bedbugs can also qualify. And leaks can be a serious enough problem, especially where they occur in pipes in walls and ceilings, which can lead to structural damage or mold that can result in respiratory problems for tenants and their families. After the rent escrow case is filed by the tenant, an inspector will be sent by the court to the rental unit and will identify the conditions that are threats to LHS.

Affirmative and defensive claims

Tenants can use this law to address their housing conditions in two ways. They can bring what is called an "affirmative case" by filling out the "rent escrow petition" and suing the landlord. Or, when the landlord sues them for "failure to pay rent" (FTPR), the tenant can assert substandard conditions as a defense, in which is know as "defensive rent escrow."

Preconditions for filing

There are some "preconditions" that the tenant has to have in order to pursue a rent escrow case in court. Those preconditions are:

•the landlord must have been previously been informed about the problems with the housing
•the landlord must have failed to repair those problems in a reasonable amount of time
•the tenant must pay rent into court (into a rent escrow account created by the court)
•the tenant must have no more than five previous judgments for failure to pay rent in the previous year (if the tenant has lived there less than six months, then no more two judgments)

If any of these preconditions is not met by the tenant, the case can be dismissed (which means that the case is thrown out and the tenant gets no relief from the court for the conditions).

Notice to the landlord is a precondition that can be satisfied by the tenant directly contacting the landlord about the problems (in person, by email, by certified mail, etc.) or where the landlord has received a report from the city that there are housing code violations in the unit, as when the tenant calls 311.

The landlord also has to have been given a "reasonable" amount of time to make the repairs after being notified about the conditions. What amount of time is reasonable is up to the judge to decide, but the law also says that if it takes longer than 30 days, that is an unreasonable amount of time unless the landlord can convince the judge otherwise. Keep in mind that this 30 days is supposed to be from the time the landlord first receives notification of the conditions, not 30 days from the

inspection done by the court housing inspector or 30 days from the first hearing date in the rent escrow case.

Finally, tenants are expected as a precondition of maintaining the rent escrow action to pay their rent to the court until the landlord has made all the repairs. The statute states that what should be deposited is "the amount of rent called for under the lease …, unless or until such amount is modified by subsequent order of the court …." One way of interpreting this language is that the tenant should deposit with the court, while the rent escrow case is under consideration, the monthly amount stated in the lease as it comes due, unless that amount is changed by order of the court.

But our research indicates that it is common for judges to interpret this language to mean that in order to get a hearing on their claims about the conditions, the tenant must first deposit any and all rent the landlord says is owed, including any rental arrears. That's sort of like telling a person who says she already paid off a debt, or part of a debt, to deposit the whole amount claimed by the creditor before the court will even determine whether it's actually been paid. The tenant might be able to pay the amount they actually owe as a matter of law given the conditions, but not the full amount the landlord claims – and if this deposit is required by the court as a precondition to having their case adjudicated they won't have the chance to prove that they owe a lesser amount.

As a result of this burden that many judges place on tenants, it's quite common for tenants to have their lawsuits seeking repairs and financial compensation for the conditions dismissed by the judge because they can't or won't first deposit the full amount the landlord says is due.

In addition to these preconditions, keep in mind that tenants who have had a lot of FTPR judgments against them over a short period of time won't be able to use the rent escrow action to get repairs or compensation. (A large number of these judgments is not a common obstacle, but it is worth being aware of.)

Landlord defenses

The landlord has certain statutory defenses that can prevent the tenant's case from going forward or that can limit the relief available to the tenant. Those defenses include:

- the landlord wasn't informed about the need for repairs
- no conditions exist that are a threat to LHS
- any conditions that were a threat have been repaired
- any conditions that are a threat were caused by the tenant
- the tenant unreasonably refused to give the landlord access to make the repairs.

Types of relief available

Judges have the power to order a lot of different forms of relief in this type of case. For example, the court can order:

•that an escrow account be set up for the tenant to pay rent into
•that the tenant pay a certain amount into the escrow account by a certain date
•that the amount of rent paid by the tenant into the escrow account be reduced (abated) until the repairs have been made
•that the rent paid into escrow be disbursed to the tenant or landlord, or part to each
•that the lease be terminated
•that the landlord make the repairs
•that anything else be done that justice requires

The judge can also award monetary damages to the tenant for violation of the "warranty of habitability" law (covered in the next section).

In deciding what relief, if any, to give the tenant under the rent escrow law, the judge is supposed to make "findings of fact," which means that the court is supposed to take evidence relevant to the legal claims and then decide what the facts of the case are. Then the court is supposed to make any order that "the justice of the case may require" based on those facts.

Among the outcomes that tenants could receive is a reduction (abatement) in the amount of rent to be paid into the escrow account or in the amount paid out of the escrow account to the landlord at the end of the case. That reduction is supposed to be determined by the court based on "an amount as may be equitable to represent the existence of the condition or conditions found by the court to exist." There is no specific legal definition of what is meant by "equitable," but that word is generally understood to mean "fair and just." The funds in escrow may also be disbursed entirely to the tenant "where the landlord refuses to make repairs after a reasonable time."

In general, it is hard for tenants to get the relief provided for by the rent escrow statute. For example, although the statute gives the judge the power to order the landlord to make repairs, our research, which looked at over a hundred cases, has never found one where a judge actually did that, even where there are long-standing serious housing code violations such as lack of heat. Judges sometimes say that there is no point in ordering the landlord to make repairs, because the City's housing department is already doing that through the inspection report (which indicates that the landlord may be sued by the City for failing to make the repairs). But that doesn't guarantee that any action will be taken by the housing department, and if there is no order to repair from the court, a landlord can't be held in contempt of court for failing to do the repairs.

Further, although the rent going into escrow can be reduced based on the conditions, that rarely happens. It is not clear why it is so rare, especially given that the law says that the landlord must "show cause" for why an abatement should not be granted, suggesting that the burden is on the landlord to provide grounds for not abating the rent for the conditions. But our research demonstrates that the judges seldom grant an abatement of the payment going into escrow and also usually don't ask the landlord to show cause why there shouldn't be an abatement.

Financial compensation, if it is granted by the judge, occurs more often at the end of the case, when money deposited by the tenant has built up in the rent escrow account. You might think that whenever there are serious violations that the landlord knew about and didn't repair for a long time, the tenant should get some money back. But our research indicates that tenants often don't get any, or any significant amount, of the money put in escrow.

Especially long-lasting cases

Sometimes rent escrow cases go on for months, with five or six court dates. That usually happens because the landlord is slow about making repairs. There is a special provision of the law that is supposed to allow for a tenant to receive *all* of the money that has accumulated in a rent escrow account where a case has dragged on for six months or longer. We have seen a few of these long-lasting cases in our research, but the tenant was not given all of the funds in the escrow account in any of them.

For the most part, the judge did not explain why not. But in one case where some explanation was given, the judge pointed out that the law allows for the award of all of the funds to the tenant only when the court finds that the landlord has not made "reasonable attempts to remedy the condition." In that case, the judge pointed out that most of the conditions, except for one, had been fixed by the landlord by the time the case had been in court for six months. The judge viewed that as a sufficient showing that the landlord had made reasonable attempts under the law.

There is also a part of the law that says that the escrow account is not supposed to be terminated if conditions remain that still need repair. However, in that case the judge dismissed it even though one of the repairs still hadn't been done (telling the tenant to bring another rent escrow case if the last repair wasn't completed). As with rent abatements and orders to correct, it is rare in long-lasting cases for the tenant to be awarded what the law allows.

Hearings

The first hearing in the case is usually 15 days from the date the tenant files the rent escrow action (although we have see it take much longer, as the pace of hearings depends upon the availability of housing inspectors). The time between the filing of the petition and the first court date generally involves a visit to the rental unit by the housing inspector to determine the threats to LHS, and service of the petition on the landlord.

However, if the tenant has certain emergency conditions, such as lack of heat in winter, lack of sewage disposal, or any condition that constitutes an emergency, the tenant is supposed to receive an earlier hearing. In Baltimore, emergency conditions should result in an almost immediate inspection, and a first hearing just 7 days after the filing of the action.

If the landlord doesn't show up at the first hearing date, and there is no evidence in the file that shows that the landlord was served with the petition (which notifies the landlord of the case and the

court date), the judge will postpone the case to give the sheriff another chance at service of the landlord. If the tenant doesn't appear, the case will be dismissed. But even if both parties appear, the case is unlikely to be resolved in just one hearing, unless it is resolved against the tenant for failing to deposit the amount ordered by the court.

On that first hearing date, the judge will usually hear from the housing inspector and order the tenant to deposit any rent the landlord claims is owed. The judge will generally ask (though not order) the landlord to make any repairs that were found by the housing inspector to involve threats to LHS. The judge will also typically postpone the full resolution of the case to another court date while the tenant deposits the money and the landlord makes the repairs. There will also often be a reinspection scheduled for some time after the landlord has said the repairs will be completed.

It is not uncommon for the case to be dismissed before the next court date because the tenant has failed to pay any money into the escrow account, meaning that the repairs may not get done and nothing further will happen in the case. It also means that if there is an FTPR case against the tenant, that case will go forward, including the risk of eviction if the tenant fails to pay the rent due and a judgment issues against the tenant. It is an advantage to the tenant who is in arrears to pursue the rent escrow case, which can reduce the amount of money owed to the landlord in the FTPR case. If the tenant can't make the deposit of whatever amount is ordered by the court, the tenant will lose the opportunity to get any reduction for the conditions.

Retaliation

The law includes a provision designed to protect tenants from retaliation by the landlord for the exercise of rights under the rent escrow law. It generally prohibits landlords from increasing the rent, evicting the tenant, or reducing services for six months after the conclusion of a rent escrowcase.

However, this provision doesn't apply if the tenant brought the rent escrow case without a reasonable expectation that it would be successful. It is probably safe to say that if the housing inspection found any threats to LHS that the landlord unreasonably failed to repair, then the tenant had a reasonable expectation of success in bringing the case.

The provision against retaliation also doesn't apply if the tenant caused the conditions, the landlord seeks to recover the housing for personal use, the landlord is selling the property, any rental increase results from a substantial increase in the landlord's costs (separate from the cost of the repairs), or the landlord made a capital improvement (such as a renovation) unrelated to the repairs.

In general, this law means that if a landlord brings an FTPR case shortly *after* the tenant files an escrow case, the FTPR case seeking the tenant's eviction will be dismissed and can't filed again until after six months. (But unless the tenant brings up the fact that the landlord filed the FTPR after the rent escrow case, it's unlikely that this part of the law will get enforced.)

C. The Warranty of Habitability Law

The other law that matters to these cases comes from the statutes that establish the right of a tenant to sue a landlord for damages (monetary compensation) for bad housing conditions. This law came about originally as a result of court decisions in which judges concluded that there is an implied warranty, whenever a landlord leases a rental housing unit, that the unit will meet the law's standards for livable housing. Eventually, the Maryland General Assembly adopted statutory law for Baltimore City giving tenants rights to sue for damages under this warranty of habitability.

How the warranty arises

The statute says that wherever there is a residential lease, it will be assumed that the landlord is guaranteeing that the rental unit will be fit for human habitation, regardless of whether the lease or landlord actually says that such will be provided.

Suing the landlord for violating the warranty of habitability

If upon moving in, the tenant discovers that the housing is not fit for human habitation, the tenant can, within 30 days, sue under this statute to rescind (invalidate) the lease and get back any money paid to the landlord.

The statute states that there must be conditions present in the unit that would endanger the life, health, and safety of the tenant, and gives examples of such conditions that are similar to those set out in the rent escrow law.

Very few tenants are aware that they can get their leases rescinded using this law, and very few of them know the procedures for doing that. As a result, the cases you will see in court involving the warranty of habitability will usually be those involving tenants who have been living in their housing more than 30 days. (However, under the rent escrow law, it is still possible for the tenant to seek termination of the lease from the judge, long after the first 30 days.)

There is also another part of the warranty of habitability statute that says that the landlord has a continuing obligation to keep the rental unit fit for human habitation. The tenant has a right to sue the landlord under this part of the law for damages, and that type of claim is much more commonly seen in court.

As with the rent escrow cause of action, a tenant's claim based on the warranty of habitability can be asserted affirmatively in a lawsuit brought by the tenant or defensively where the landlord sues the tenant for nonpayment.

Relationship between rent escrow claim and warranty of habitability claim

The same petition that is filed in the rent escrow case can also be used by the tenant at the same time

to seek relief based on the warranty of habitability. A precedent, *Williams v. HABC*, 361 Md. 143 (2000), makes clear that a tenant's warranty of habitability claim can and should be joined with any related rent escrow claim, because both involve much the same factual situation about the conditions. Nonetheless, it isn't easy to get the judge to actually pay attention to a tenant's claim about the violation of the warranty of habitability that is joined to the rent escrow claim. When the judge doesn't pay attention to that claim, the tenant could find it difficult to get any or all of the financial compensation that the law theoretically entitles the tenant to receive.

The way to think about the relationship between the rent escrow law and the warranty of habitability law is that rent escrow deals with how much rent the tenant will pay going forward, while the warranty of habitability deals with whether the tenant will get a refund or offset of any part of the rent going backward in time. *Williams* explains that "the rent escrow case focus[es] on the current situation and the breach of warranty action look[s] back for some period." *Id*. at 160.

```
                              Time T files the case
Date LL first learned                 *                                  End of case
of the need for repairs               *                                            *
\                                     \                                            \
*7!!!!!!!!!!!!!!!!!!!!!!!!!!!!!!!!!!!!!!!!!!!!!!!!!!!!!!!!!!!!!!!!!!!!!!!!!!!!!!!6*
Damages set off                       *Rent abatement of current         Disbursement
against rent owed or paid             *or future rent                    of escrow
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Different forms of relief are involved under the two laws. The rent escrow claim offers the tenant a number of forward-looking remedies from the court including rent abatement (rent reduction), deposit of rent as it comes due into escrow, and so forth. The warranty of habitability claim is concerned with the situation *before* the rent escrow case was filed, going back to the point the landlord first knew about the conditions. That gives rise to only one remedy, for damages, in the form of an offset against the amount of back rent claimed by the landlord or a refund of the amount or a portion of the amount already paid.

Preconditions for the warranty claim

The requirements for a tenant's claim based on the warranty of habitability are very similar to those involved in the rent escrow claim. For example, as with the rent escrow action, the landlord has to have had notice of the conditions, and the ways of the landlord receiving it are the same. As with rent escrow, the landlord still has to have had a reasonable amount of time to do the repairs, and there is even the same presumption that more than 30 days should be considered unreasonable. And the kinds of conditions that are the basis for the lawsuit are like those that are the basis for rent escrow, namely those that endanger life, health, or safety (LHS).

One difference is that the tenant isn't required to deposit rent as a condition of making a claim based on the warranty of habitability. There is also no limitation in filing the warranty of habitability case because of prior judgments, as there is with the rent escrow law.

The damages available to the tenant under the warranty of habitability law are supposed to be based on the "reasonable rental value of the dwelling in its deteriorated condition." (That is similar to the grounds for rent abatement or disbursement of escrow to the tenant based on "an amount equitable to represent conditions found by the court to exist" under the rent escrow law.) There is precedent that indicates that warranty of habitabilitydamages "are limited to the difference between the amount of rent paid or owed and the reasonable rental value of the dwelling in its deteriorated condition, commencing from the time that landlord acquired actual knowledge of the breach." See *Williams*, 361 Md. at 158. That indicates that the judge is supposed to figure out what the property is worth in its substandard condition.

D. Summary of the two laws

	Rent Escrow	**Warranty of Habitability**
Statute(s)	Public Local Law § 9-9	Public Local Law §§ 14.1-14.2
Coverage	Current conditions	Past conditions (up to the present)
How asserted	Affirmative or Defensive against FTPR	Affirmative or Defensive against FTPR
Preconditions	•notice to LL of conditions •failure to repair in reasonable time •payment of rent into escrow •limited prior FTPR judgments	•notice to LL of conditions •failure to repair in reasonable time
Remedies	•Escrow of rent •Abatement of amount of rent •Disbursement of escrow •Order to LL to correct •Order terminating lease, Etc.	•Monetary damages going back to date LL was first notified of the conditions, refunded or offset against rent arrears

E. Appeals

Ordinarily, a party who believes that the judge didn't correctly apply the law in making the final decision in a case can appeal it. Usually, a case that is appealed to a higher court is reviewed by a panel of judges who examine whether the lower court did or did not correctly follow the law. If the law was not followed correctly, the appellate court will reverse the decision and send the case back for a retrial that uses the correct application of the law. If the law was correctly followed, the result will be affirmed and will stand as it is.

A tenant who believes that the judge's decision in a rent escrow / warranty of habitability case is not legally correct can appeal. The tenant must act quickly, because the appeal in an affirmative rent escrow case has to be filed no later than 30 days from the time the judge makes a final decision in the case. However, if the tenant is using rent escrow as a defense to a landlord's FTPR case, the appeal time may be a mere 4 days (appeals from FTPR cases must be filed no later than 4 days after a final judgment in the case).

There are two different kinds of appeals that happen in these cases, depending on how much money is at stake.

Where the total amount of money at issue (the "amount in controversy") is $5000 or less, the tenant must "appeal" from the district court to the circuit court. This isn't an appeal in the usual sense, because the legal correctness of the result in the district court isn't reviewed. Instead, the circuit court tries the case over again, called a "trial de novo," as if the first case didn't happen. The circuit court "receive[s] evidence and make[s] determinations of facts as though no prior proceeding had occurred." *In re Marcus J.*, 405 Md. 221, 234-35 (2008).

Where the amount in controversy is more than $5000, the tenant can get a real appeal, to the court of special appeals. A panel of judges reviews the record (including the transcript) of the district court case and determines whether the law was correctly applied by the trial court. This is called a "record" appeal. The tenant doesn't have to go through a second trial.

The way that the $5000 amount in controversy figure is calculated, to determine which type of appeal the tenant can get, is complicated. You might think to yourself that if there is $5000 in a rent escrow account at the end of the case, that would be the amount in controversy. But it isn't. The amount in controversy is the amount that is actually disputed. So if the judge awards the tenant $1000 of the escrow account and the landlord $4000, the amount in controversy for the tenant's appeal is $4000, which wouldn't be enough to entitle the tenant to a record appeal.

But in any event you shouldn't just look at the amount involved in the distribution of the escrow account to come up with the amount in controversy. For example, if the tenant asked for an abatement of $500 for each of 12 months that the landlord knew about the conditions and failed to make the repairs, that would add up to $6000. If the judge declined to give the tenant any abatement for that period (or an abatement that added up to less than $1000), that would be enough by itself for the tenant to do a record appeal. Note that if there is a connected FTPR case, that can affect the amount in controversy as well, making the calculation even more complicated.

Record appeals are important to the uniformity and clarity of the law, because they provide the courts with the opportunity to set precedents about what is legally required. Rent escrow cases are hard to get record appeals on, which means that there isn't much guidance about how the law should be applied, which leads to quite a bit of variation among judges in how they adjudicate these cases.

Lesson III Exercise

Consider the following scenarios and which answer you would choose. Then look at the answers that follow to see how you did and what is the best answer and why. These scenarios, and the ones in the quiz for this lesson, should help you see how to put together what you are learning about the law with the limitations there are on how to use this knowledge to assist tenants (without engaging in UPL).

1. A tenant has been sued for failure to pay rent. She makes a defense based on the housing conditions and the judge sends her to file a rent escrow case. You inform the tenant that she should bring as much of the money claimed by the landlord as she can to the next court date, because the judge may ask her to deposit it. The tenant says that she probably shouldn't bother with this rent escrow case then, because there's no way she can get all the money the landlord says she owes. What do you say?

A. You tell her that she shouldn't drop the lawsuit, because the judge may allow her to deposit less than the amount the landlord says she owes.
B. You tell her that she needs to go ahead with the case, because she should do whatever she can to reduce the amount being sought by the landlord in the FTPR case in order to reduce the risk of eviction.
C. You tell her that it's possible that the judge may reduce the amount to be deposited, based on the conditions.

2. The landlord has sued the tenant for FTPR. On the first hearing in the case, the tenant tells the judge that she has a defense based on the conditions, including the collapse of her kitchen ceiling due to leaks, and the judge sends her to file a rent escrow action. But the landlord tells her in the hallway before the first hearing in the rent escrow case that she can't use the conditions as a defense anymore because they were cleared up after the inspection. What do you say?

A. Nothing. You can't make any statements during the hallway discussion between tenant and landlord. But you can give the tenant the information that the warranty of habitability law may permit a tenant to get damages for conditions that have been repaired.
B. Nothing. You can't make any statements during the hallway negotiations. You also can't bring up the potential warranty of habitability claim because that would be applying the law to the tenant's specific facts.
C. You interrupt the discussion and inform the landlord that he is misrepresenting the law because the tenant has a potential warranty of habitability claim.

3. You're assisting a tenant in a case where over $3500 has built up in the rent escrow account. The tenant went without adequate heat for nearly two months, and the landlord has finally repaired the furnace and restored heat to the apartment. You're about to go into the hearing, where you expect that the inspector will testify that the condition has been fixed and where the judge will bring up the question of what to do with the escrow account. What do you tell the tenant before going into

the hearing?

A. You tell the tenant that the judge will probably give her a portion of the rent escrow account because of the conditions.
B. You tell the tenant to make sure and tell the judge what she wants done with the escrow account and why.
C. You tell her that she should make sure and tell the judge that she is entitled to a portion of that escrow account.

4. The tenant asks you how the judge calculates the amount for a rent abatement. What do you say?

A. You tell her that you can't answer that question and that she would have to speak to a lawyer to get an answer.
B. You say that it is based on the conditions and all the evidence presented by the tenant about the conditions.
C. You say that it is based on subtracting the value of the housing in its deteriorated condition from the amount of the rent charged in the lease.

5. The tenant tells you that the landlord promised to let her move to another unit in the building but so far hasn't kept that promise. She really wants to move to an apartment located on a higher floor, because she thinks it will help with the rodent problem she has been experiencing. Sheasks you if she should ask the judge to order the landlord to give her another apartment. What do you say?

A. You tell her that the law allows the judge to give the tenant whatever relief justice may require, but that this would be an unusual thing for the judge to do.
B. You tell her she shouldn't ask the judge for this, because the case is about theconditions.
C. You can't answer that question (because it would be UPL).

The answers are on the next page.

Lesson III Exercise answers:

1. The best answer is C. The other two answers could be considered UPL because you would be advising the tenant based on the application of the law to that tenant's situation (i.e., based on what you think the judge will do under the law). Both A and B are based on reasonable deductions, but you don't want to push the tenant toward taking any particular action because of the likely legal consequences.

2. The best answer is A. You can't talk during the hallway discussions with the landlord or landlord's agent. But you can inform the tenant that just because a hazardous condition has been repaired doesn't mean that the tenant has no legal claims based on that condition. You can't say that the tenant has a valid case under the warranty of habitability, but you can say that such a claim is possible to make. B is not a good answer because it incorrectly states that in answering the question you would be applying the law to the tenant's facts, when you haven't actually suggested that the tenant has grounds for the defense. And C is not a good answer, because you shouldn't be advocating for the tenant in hallway discussions (or otherwise).

3. The best answer is B. You are not giving the tenant legal advice but only reminding her to pursue what she has identified as her legal objectives. The other two answers are not appropriate, because they apply the law to the facts to make a legal prediction (A) or imply a legal analysis of what the tenant is entitled to (C).

4. The best answer is B. That answer gives basic and general information. Answer C might go too far into the technical detail involved in calculating the rent abatement, which could be considered UPL.

5. The best answer is A. That answer informs the tenant that the judge has the power to grant the request but also gives the tenant the factual information that such relief would be unusual. That wouldn't be UPL because it's based on fact, not law. Answer B makes a prediction based on the application of law, and so could be considered UPL.

Now take the quiz to see how you're doing.

IV. Section IV Intentionally Omitted

V. Navigator Protocol

There are many things navigators can and should do to try to help level the playing field between landlord and tenant, and also some things navigators can't and shouldn't do (in particular, UPL). This protocol gives a general plan for providing appropriate service to unrepresented tenants who have claims of unsafe and unhealthy housing conditions. There are many times you will have to use your knowledge, skill, and judgment in ways that this protocol can't anticipate, but you should strive to follow it for the most part and use it as a guide for assisting tenants.

A. Making yourself available to assist

There are three main ways for court navigators to find tenants in need of assistance:

Courtroom 2 (1st (main) floor). When rent court is in session – which is pretty often – navigators can go to Courtroom 2, where rent cases are usually heard, as that is likely to be a good place to meet up with tenants in need of assistance. Since rent escrow and the warranty of habitability are defenses in failure to pay rent (FTPR) cases, tenants are likely, when they raise issues about conditions in that court, to be directed by the judge to go to the clerk's office to file their defensive rent escrow claims. Navigators can sit in the courtroom and then go speak with such tenants as they leave, and take them to the clerk's office to assist them.

Clerk's Office (1st (main) floor). Tenants with affirmative rent escrow cases often just go directly to the clerk's office. Navigators can sit on the benches outside the clerk's office and look to see when the rent escrow clerks (whom you will come to recognize) get up to assist tenants with rent escrow paperwork. A navigator can approach a tenant who is standing with the rent escrow clerk, and offer assistance with the rent escrow process. There is a clipboard for sign up for assistance from the rent escrow clerks; a tenant signing that clipboard is someone a navigator can approach and offer assistance to.

Afternoon Rent Escrow Docket. On Monday, Tuesday, Thursday, and Friday afternoons, hearings are held in rent escrow cases that have been filed. You can go to the second floor bulletin board to look for which courtroom has those cases (they're the ones with the RESC code listed on the right hand side of the docket sheet). Before that court opens for the afternoon, the tenants will be sitting outside the courtroom, and you can offer your help to anyone there who wants it. You can also sit in on the hearings and help tenants who have left the courtroom who seem as if they need help with followup. While you're in the courtroom, if you don't have anything else to do, you can try to spot good rent escrow cases for appeal, and let me or the Public Justice Center know about those cases (see section N below about appeals).

Referrals. Remember that if you run into a tenant with a particularly complicated situation who needs legal advice, the best thing to do is to refer that tenant to the volunteer attorney standing outside Courtroom 2, the Public Justice Center paralegal or attorneys in the office on the second floor, or the Self-help Center attorneys on the third floor (which is always staffed). Get to know these collaborators when you have time, as they can also be a source of referrals to you of tenants in need of help with rent escrow.

B. What to bring with you to court

You should be wearing your **navigator lanyard** identifying you as a court navigator.

You should also have multiple copies of:

- **Tenant tip sheets**
- **Navigator log forms**
- **Disclosure forms**

You should print out these items from Sakai using your UB account. These are found in your Navigator Handbook / Toolkit.

You can bring **rent escrow forms** with you as well, but the court clerks have those so it isn't essential to have them. The advantage of having some copies of those with you is that you can get a jump on helping tenants fill out the forms if you already have the forms and don't have to wait for the rent escrow clerk to supply them.

It's also best to bring your **Navigator Handbook/Toolkit**.

Don't forget to bring **a pen, or two or three**!

C. Introducing yourself to tenants who may need help

When you find a tenant in need of assistance, you should start by introducing yourself and giving an oral explanation of what you can do for the tenant.

Example: "Hi, I'm a court navigator. My name is_____. I can provide free help with your court case. I can help you fill out court forms, answer some questions about the process, and even go with you into courtroom, if you want me to. Would you like my help?"

If the tenant declines your help, tell them that if they change their mind, they should feel free to seek out your help or that of another court navigator at any time. (We have a brochure we give such tenants, and I'll supply you with some of those.)

If the tenant needs an interpreter, refer to the Navigator Handbook/Toolkit for more information on that. In general, to obtain a free interpreter for court proceedings, the tenant will need to go to the clerk's office. There is a phone line there for assistance, and navigators can help with that. You should also help the tenant fill out and submit a Request for Spoken Language Interpreter form, or, for a sign language interpreter, a Request for Accommodation for Person with Disability form. These forms are available from the court clerks' office.

D. First steps in helping: tip sheet and disclosure form

Start by giving the tenant the "tip sheet." You can say something like, "Here is a list of things this court can do for tenants who have bad housing conditions, along with some basic information about how the court process works. I can go over it with you if you'd like."

Then give the tenant the disclosure statement and ask them to read it and sign it. Say something like, "Let me make sure it's clear what I can help with. I can help with the whole process from start to finish, but I can't give you legal advice or speak for you in the court the way a lawyercan."

Answer any questions the tenant has about what the disclosure statement says. Keep the tenant-signed copy for our records and give the tenant a copy signed by you.

Note that you don't need the tenant to sign a disclosure statement if you only answer a single question or direct the tenant somewhere else for assistance – the disclosure form is for tenants you provide a significant amount of assistance to. But note what you did on your navigator log sheet.

E. Helping the tenant fill out the rent escrow form and other court forms

After that, take the tenant to the clerk's office on the first floor and ask for the rent escrow clerk (or sign up for the rent escrow clerk on the clipboard).

Offer to help the tenant fill out the rent escrow petition, or, if the tenant has a defensive rent escrow, to fill out whatever forms the judge has asked to be completed.

Start by suggesting the tenant look at the tip sheet for the things the judge at the rent escrow hearing can do, and ask the tenant what their goals are from the list. Don't hurry this part of the process, because the tenant needs to pay attention to the list of things the judge can do in order to figure out their objectives in the court case. Suggest the tenant check off the items on the tip sheet for their own reference and jot them down yourself on the navigator log sheet – you want to have a sense of the tenant's objectives so that you can help the tenant achieve them. If the tenant is having trouble understanding the form or filling it out, offer to read it to the tenant or fill it out for the tenant (filling it out exactly how the tenant tells you to fill it out).

The rent escrow petition form you will be helping tenants with is much easier to fill out than it used to be, because UB faculty and students worked hard for over three years to get it improved. It's now mostly self-explanatory (there is a copy of it with your NavigatorHandbook/Toolkit).

You should answer basic questions the tenant asks about filling out the petition form, such as, "Can I check more than one box for what I want the judge to do?" (The answer is "yes," and the form does indicate that, but help tenants with understanding the form even where it appears that the answer is self-evident.) And you can explain other things that are on the form, such as what a "judgment of possession" is (using the legal terms definitions pages in your Handbook/Toolkit).

Another question that might come up is what is supposed to be filled in where the tenant asks the judge to:

> reduce my rent, paid or owed, starting from when my Landlord was first told about these problems, in the **total amount** of $_____

What is supposed to go in that blank is the total of all the reductions in rent the tenant is asking for. So if the tenant says she wants an abatement of $200 per month for the 3 months she has had a rodent infestation and has been unable to get the landlord to do anything about it, the total amount that would go in that blank would be $600. The idea is for the landlord to be informed about <u>all</u> of the monetary compensation that is being sought by the tenant.

If the tenant asks a question that calls for legal expertise or knowledge, such as "how much should I ask for my rent to be reduced by?", you should say that the tenant has to come up with that on their own, or ask for legal advice from the attorneys at the third-floor Self-Help Center, the Volunteer Lawyer of the Day, or Public Justice Center.

You should not make any specific recommendations about what the tenant should put on the form, beyond pointing out where the things go that the tenant wants to include. If the tenant says, "Where do I put that I want my rent reduced?", you can point out where that is on the form. You can also point out if the tenant has left something blank on the form, just to help the tenant avoid overlooking anything. You can also offer to read the form out loud to the tenant if the tenant seems to have trouble with reading it, and to write down on the form whatever the tenant wants written if they have trouble filling out the form.

The rent escrow petition is accompanied by a sheet for the inspector where the tenant indicates all the problems in the housing and which rooms those problems affect. Emphasize to the tenant that it's important not to leave anything out that she wants to be fixed and to be clear about the problem(s), because the housing inspector will use that sheet to guide the inspection process. It's also important that the tenant follow the instructions for contacting the inspector and to be present to let the inspector into the unit for the inspection. If for some reason the inspection doesn't take place, the judge may arrange for a second attempt, but the tenant doesn't want to be at fault, because the judge might decide that there will be no second attempt. If the tenant has an unusually serious problem, such as lack of heat in winter or sewage disposal problems, ask the clerk whether the tenant can fill out the form for an expedited inspection and hearing.

While the tenant is filling out the rent escrow petition and inspection forms, you should be entering the case number(s) and tenant name and address on the navigator log sheet and jot down any notes you have relevant to the case, such as what relief the tenant is asking for.

Where the tenant is filing an affirmative rent escrow, once the tenant has completed the forms, you can go with the clerk and the tenant to the cashier's office on the basement level to pay the filing fee of $36, or help the tenant fill out the waiver form if they can't afford the filing fee. If the tenant has

an affirmative case, you can get the case number for the rent escrow case after the tenant has paid the fee. You can even get copies of the paperwork from the clerk for yourself, if you either plan to assist the tenant at the hearing or want to pass along that paperwork to another navigator on the return date.

If the tenant has a defensive rent escrow to an FTPR case, the tenant won't be paying a fee, and you can get the information about the case number and return date from the clerk when the paperwork is completed.

Don't forget to warn the tenant that the judge might ask them to deposit the rent due the next time they come to court, and to be sure to come to court with all of it or as much of it as they can – in the form of a money order, cashier's check, or cash. (The court won't accept personal checks or credit cards for escrow deposits.)

F. Answering tenant questions in general

You may answer any questions from the tenant that involve ordinary knowledge of how the court works. For example, if the tenant asks, "Do I need to bring the receipts for the space heaters I bought when I didn't have heat?", you can say, "It's a good idea to bring all the paperwork you have that the judge might ask for. Your tip sheet has a list of things that you should bring." But don't advise the tenant about what materials the tenant should show the judge to establish any particular legal claims.

Navigators may also answer questions that are based on fact rather than law. For example, if the tenant asks if it's really possible to get a rent reduction because of bad conditions, the navigator can answer, based on factual knowledge: "Judges sometimes do that." If the tenant asks a question that requires legal expertise, such as whether they are legallyentitled to get a rent reduction, the navigator should say, "I don't know. A lawyer can answer that kind of question, but I can't."

Most of the tenant's questions should be covered by the tip sheet that you give the tenant, and you may answer most questions by simply pointing out what that sheet indicates. You can refer to your legal term definitions pages in the Navigator Handbook / Toolkit for words/terms that the tenant might not understand and use it to offer explanations as needed.

G. Gathering information

Your main task most of the time is to listen and to respond to the tenant with information, assistance, and support. Also take notes on the navigator log sheets about anything that is important so that you will have them for reference. You may need to have that information to answer questions about the case asked by the judge, a collaborating attorney, or the instructor.

If the tenant wants to tell you all about the conditions or the problems with the landlord, listen and make comments that are supportive but not advisory. For example, you could say, "That does sound like a difficult situation" or "I understand why you would want the court's assistance." Pay

particular attention to what the tenant says they would like to accomplish, since you should be guided by the tenant's goals for the lawsuit.

If there are indicators that the case is particularly complicated, you should make special efforts to try to obtain legal representation or assistance for the tenant. The kinds of cases that call for special efforts to get attorney assistance include those where:

•the tenant has subsidized housing (as where the tenant has a Section 8 voucher)
•there are a lot of months of rent in arrears
•there is an outstanding water or utility bill that is being counted against the tenant asrent
•the tenant has a lead paint complaint
•the tenant expresses a fear of retaliation from the landlord

You should also make a special effort to find an attorney to assist the tenant where the tenant is seeking to appeal a decision that was made in their rent escrow / warranty of habitability case (see section N below for more information).

H. Before the tenant leaves the courthouse …

After the tenant has filed the rent escrow petition, remind the tenant to be sure to be present for the housing inspection and to come to court on the return date.

Also remind the tenant to look at the tip sheet to see what kinds of documents should be brought to court for the first hearing (and every hearing in the case). Printed-out copies of any documentation are best, as many judges don't allow the use of electronic devices in the courtroom.

You should also tell the tenant that the judge may place them under oath and ask questions about the conditions and about the contacts with the landlord about the conditions. Such testimony is valid evidence to support the tenant's case, so even if the tenant doesn't have documentation or much documentation.

Also inform the tenant that they may be asked by the judge to deposit rent money into escrow with the court if back rent is owed. The tenant should try to set aside or get together the money to cover that amount or as much of it as possible, in the form of a money order, cashier's check, or cash (not personal check or credit card). The judge may reduce the amount of rent the tenant has to pay into escrow if the conditions are bad enough, but that's not something the tenant can count on. The tenant needs to be ready with a plan for how to get the money quickly if they don't have it by the court date.

Based on our research, one of the biggest obstacles to tenants getting repairs is coming up with the money for the rent escrow account that the judge is likely to set up in connection with the case. You can help the tenant figure out a timetable for coming up with the money. Sometimes judges will be flexible about the timing of the rent deposit into escrow, but the tenant needs to have a realistic plan

and to make diligent efforts to do what is ordered by the judge.

Before the tenant leaves, make arrangements for what the tenant will do on the return date for coming back to court given by the clerk. You can either arrange to meet with the tenant at that time if it works for your schedule or tell the tenant to meet up with another navigator, who will help the tenant through the rest of the process.

I. Hallway discussions

If there are any discussions the tenant has with the landlord (or landlord's agent or landlord's attorney), you may go with the tenant to such discussions if the tenant wishes. You can also take notes for the tenant's benefit during such discussions. You may also take the tenant aside and remind them of anything the tenant said they wanted to cover in the case, if it isn't being brought up in the discussion with the landlord. However, you may not advocate on the tenant's behalf with the landlord. In general, you should be quiet during any negotiations.

J. The first hearing

About two weeks after the rent escrow paperwork is filed, the tenant will be attending the first rent escrow hearing. Those hearings are held on Monday, Tuesday, Thursday, and Friday afternoons. Before the court is in session, tenants with rent escrow cases will be sitting outside the courtroom (which courtroom you can find out from the bulletin board on the second floor, or ask a rent escrow clerk for a copy of the rent escrow docket). You can meet with tenants there to help them prepare for their hearings, by focusing on what they want to cover in the hearing and generally helping them get organized. You can also answer any general questions tenants might have about the hearing process and give them an overview of what usually happens.

When the case is called before the judge, the tenant should go sit at the designated table in the courtroom. If you have a specific tenant you've helping, you should sit as close to the tenant as you can in the rows directly behind the table where the tenant is sitting so that you can discreetly tap on the tenant's shoulder if necessary.

If the landlord isn't present, the judge will look into the court file to try to find out if the landlord was served with the rent escrow petition by the sheriff. Before a court can exercise jurisdiction over a defendant, that party had to have been served with the necessary paperwork to give them proper notice of what the case involves. If the landlord wasn't served, the judge will postpone the case to allow the sheriff to try again to serve the petition. That means the tenant will get another return date to come to court again. In addition, if the inspection wasn't done, the judge may postpone the case to allow for another inspection attempt (less likely if the reason the inspection wasn't done was because the tenant wasn't there when the inspector came).

If both parties are present, and the inspection has been done, the first thing the judge will usually do is to ask for the inspector to testify about the inspection report. The inspector will testify to how

many housing code violations were found and which ones are a threat to life, health, or safety (LHS).

Some judges will immediately start asking the tenant (or landlord) about how much rent is due, and about having the tenant deposit it all before going forward with the case.

Ideally, the inspection report should provide evidence supporting a rent abatement for the tenant, which should reduce the amount to be deposited. But some judges don't really enforce that part of the law.

And, unfortunately, our research shows that many judges treat the housing inspection report as the first notice to the landlord about the need for repairs and often give the landlord 30 days from the date of the inspection to make repairs, without ever asking the tenant (or the landlord) when the landlord first learned about the conditions.

One significant problem with such an approach is that landlords don't have an incentive to make repairs until they are sued if there is no consequence for not having made repairs in a timely manner. Another problem is that tenants lose the opportunity for financial compensation going back to the date the landlord was notified about the conditions and failed to make the repairs, if the judge never asks for that date. The tenant should try to establish when they first told the landlord about the need for repairs. You can't tell the tenant that – that's legal advice. But you can ask the tenant when the landlord was first told about the problems, and ask about it more than once to help the tenant keep it firmly in mind, increasing the chances that the tenant will volunteer that information to the judge.

When the hearing is going on, the tenant should speak directly to the judge and not to the landlord (or the landlord's agent or attorney).

Judges often get irritated if the tenant gets into a long, rambling story or gets sidetracked onto issues that aren't relevant to the case. Of course, tenants want the judge to understand the situation, which is why they go into extensive detail. And tenants don't really know what's relevant to the case, so it's not surprising when they head in some direction that doesn't matter to the law, but that seems to them ought to matter or that could matter. You can help the tenant by encouraging them to answer the exact question asked by the judge and not to go into a lot of detail unless the judge asks for it. (This is common sense advice, not UPL.)

And encourage the tenant to feel free to ask the judge, in a respectful way, to pay attention to whatever claims the tenant has identified to you as the relief they want. The rent escrow petition often has that information on it, but our research indicates that judges don't always pay attention to the petition and may need to be reminded during the hearing. The tenant isn't guaranteed to get the result they want or even the result that the law justifies, but the tenant definitely won't get the desired result if they don't get the judge to pay attention to their claims.

During the hearing, you can tap on the tenant's shoulder and quietly remind them of anything they appear to have forgotten to tell the judge (based on what the tenant told you they wanted from the

court). If the judge asks what you're doing, you can just say that you're reminding the tenant of something they said they wanted to cover in the case. (If it would be interrupting things to convey this information to the tenant, and it's important to do so, respectfully ask the judge's permission before speaking to the tenant.)

If the judge addresses you directly, you can answer the judge's questions – with the tenant's permission. (You can just ask the tenant, "Is it okay if I answer?") The most likely reason that the judge would ask you questions is because the judge is having difficulty eliciting the information from the tenant and is hoping you can "cut to the chase." Be cautious about answering the judge's questions, as you should just be helping expedite the process, not displacing the tenant.

At the end of any court hearing, you should help the tenant understand next steps (such as making sure the tenant is aware of any future court date and of anything the court has asked the tenant to do before that date). If the judge has told the tenant to be present for a housing reinspection or to provide access for the landlord to do repairs, you should remind the tenant of these expectations and the dates/times. And remind the tenant how to get further navigator assistance on the next court date.

If the case is dismissed or other bad things happen, you can give the tenant information about appeals (see section N below).

K. Additional hearings

If there are later court proceedings, and there often are, navigators may help with those as well. One of the improvements that may come with navigator assistance is that the number of hearings needed to get a case resolved may decrease. Some postponements occur because of mistakes that tenants make or things they forget, and navigators could help reduce such mistakes and oversights, saving the tenant and the court time and money.

You may notice that some judges can be quite liberal about giving landlords postponements to make repairs, with reinspection to determine whether the repairs were done. Unfortunately, that means more days when the tenant has to be present for the reinspection and the next court date, perhaps leading to more missed days of work or other inconveniences or expenses.

The end of the case may involve disbursement of any escrow account the tenant has paid into, after the landlord has completed the repairs. You can tell the tenant that the judge will have to decide what to do with the money in the escrow account and ask the tenant what they want to be done with it. Because abatements of the amount going into the escrow account are infrequent, this part of the case is often the only chance for tenants to seek financial compensation. Help the tenant be prepared to assist the judge with the decision about the escrow account by reminding the tenant to bring any and all documentation (encourage the tenant to consult the tip sheet about what documents could be helpful – and give the tenant another copy of the tip sheet if the tenant doesn't have it withthem).

You should also go over with the tenant the date of the first notice to the landlord about the problems and ask the tenant if they had any unusual expenses because of the conditions, but *don't* advise the tenant to give that information to the judge (as that would be UPL). However, having the tenant go over the information can be helpful to the ability of the tenant to remember it under the pressure of the court hearing.

Sometimes at the end of a case, the judge may tell the tenant that signing the paperwork to release the escrowed funds and waiving the right to appeal will make the money come back quicker (otherwise, the funds will not be released until after the 30-day period for appeal expires). Tenants need to be aware that in signing an agreement to release the funds sooner, they may be giving up the right to have anything that went wrong corrected through an appeal.

The navigator should help the tenant follow up with any orders made by the judge or any other followup the tenant is interested in, including appeal (see section N below).

L. Motions

District court is not a paperwork-intensive court. But it is possible for tenants to file motions when necessary, on a motion form that can be obtained from the court clerk. A motion is a request to the judge in the case to do something.

The kinds of situations where a tenant might want to try a motion include where the tenant missed a court date, has an emergency situation that needs the court's attention, or has some other reason for restoring the case to the court calendar, or if the tenant needs an extension of time to deposit the money into escrow as ordered by the court, or seeks some change in an order issued by the court. Motions can be used for many purposes. Don't try to determine whether the tenant should or should not file a motion (that would be UPL). But do let the tenant know that they can file a motion when they are seeking for the court do something, or undo something.

The navigator may provide the same kind of basic assistance and information as with the other court forms in helping the tenant fill out the motion form. And the navigator can explain what a motion is and the basics of the process that goes with a motion.

As with the rent escrow paperwork, you shouldn't be telling the tenant what to say in a motion. But you can tell them that motions don't require any fancy legal language. They just need to explain what they need and why the court should grant their request. The "why" is important – the tenant needs to give the court some basis for granting the request.

M. Court orders

When a court makes any decision about what is to be done in a case, that decision is generally memorialized in the form of a court order that is put in the case file. Unfortunately, tenants may not be handed a copy of any order made in their case (although the case file can later berequisitioned

for the tenant to look at any order about which some question has arisen – see your Navigator Handbook/Toolkit for how to requisition a case file). It makes sense to take notes about any orders the judge makes in a tenant's case – they will usually be described to the tenant by the judge in the court hearing – and make sure the tenant has that information and understands it.

Court orders are important because they are what they say they are: orders. If a court orders a tenant to deposit money into an escrow account, and the tenant doesn't do it, the case will usually be dismissed. If for some reason a tenant can't do what the order requires, the tenant should ask the court to grant an extension or make a change in the order, by filing a motion (see section L for how to do that).

N. Appeals

At the end of the case, you can remind tenants that they have the right to an appeal if they think that what the court did was wrong.

You should also give the information that if they want to appeal, it has to be done quickly. A tenant who has brought an affirmative case has only 30 days from the time the judge makes a final decision to get all the paperwork done and filed to start the appeal process. And if there is a connected FTPR case, the time to appeal may only be 4 days.

You can be on the lookout for good cases to refer for appeal to the Public Justice Center. Cases that don't go well for tenants but that involve

(1) large amounts in controversy
(2) conditions that haven't been repaired for a long time even though the landlord knew about them, or
(3) a lot of bad conditions but the case was dismissed because the tenant didn't deposit money into escrow

are all cases that could be good appeals. You can approach tenants with such cases outside the courtroom and ask if they're interested in appealing. If the tenant is, let them know we will make a special effort to find them an attorney to take their appeal. Get their case number and contact information and email it to me or directly approach one of the attorneys from the Public Justice Center, who sometimes handle appeals of cases that we refer to them.

Lesson V Exercise

Consider the following scenarios and which answer you would choose, using what you know about UPL, the relevant law, what happens in court, navigator ethics, and the navigator protocol. Then look at the answers that follow to see how you did and what is the best answer and why.

1. The tenant tells you that she informed the landlord five months ago about the leak in the ceiling that is causing mold to form on the ceiling and walls. You ask the tenant what she wants the court to do and refer her to the tip sheet. The tenant looks at it and says that she just wants the landlord to repair the conditions. What do you say?

A. You tell the tenant that if she's sure that that's everything she wants to happen, you will go with her through the process and assist as she tries to get that result.
B. You tell her that it's up to her what she wants to happen, but she should double-check the list on the tip sheet to be sure that she doesn't want any of the other relief for which she might be eligible.
C. You tell her that she is entitled to receive a rent abatement for the conditions and shouldn't just ask for repairs.

2. The tenant asks you whether she should ask the judge to order the landlord to give her a refund of the rent she paid for the previous two months, since the conditions found by the housing inspector were also there two months ago. What do you say?

A. You refer her to the tip sheet and its list of things the judge can do, and point out that the judge has the power to order such a refund, but tell her that it's up to her to decide whether she wants to ask the judge to do that.
B. You tell the tenant she should ask for such a refund, as long as the landlord was informed about the conditions and failed to fix them.
C. You tell the tenant you can't answer that question (because it would be UPL).

3. The judge asks the tenant during the hearing when it was that she first told the landlord about the conditions, and the tenant says that she has copies of all the emails her daughter sent to the landlord about it. The judge asks her when the earliest of those emails was, and the tenant looks confused. The judge then asks you, "Do you know the date of the first of those emails?" What do you do?

A. You tell the judge, based on helping then tenant organize her materials, that the earliest email to the landlord from the daughter was October 21st.
B. You tell the judge that you can't answer that question.
C. You ask the tenant for permission to answer and then tell the judge that based on what you saw, the earliest of those emails was October 21st.

4. Near the end of the hearing, the judge tells the tenant to deposit $800 in the escrow account by

Friday and then another $800 by the 5th of the next month. When you get out in the hallway to go over your notes about the judge's orders with the tenant, the tenant tells you that there is no way she can get the $800 by Friday. What do you say?

A. You tell the tenant that you wish you had been given this information earlier, because you would have tried to help the tenant give the judge the most accurate information about what the tenant could pay and when.
B. Nothing. The tenant made the decision about what to tell the judge, and it's not your place to say anything to her about it.
C. You tell the tenant that if she can't get the money in time, she could try to seek an extension from the judge by filing a motion prior to Friday.

5. You are sitting in the courtroom with a tenant who has asked the judge for a rent abatement. The judge says, "Let's worry about any abatement later, and let's focus on getting the landlord access for repairs." What do you do?

A. You realize that the judge is avoiding decision on a legal claim made by the tenant but you say and do nothing.
B. You respectfully point out to the judge that the tenant is entitled to a decision on her rent abatement claim.
C. You tell the tenant afterward that the judge's failure to grant the abatement is grounds for an appeal.

The answers are on the next page.

Lesson V Exercise answers:

1. The best answer is B. The tenant is supposed to be in charge of her own case, but you are also supposed to make sure the tenant has the necessary information to make decisions. A double-check about this important decision helps ensure that the tenant is truly doing what she wants (unlike A, which takes it for granted). C is not a good answer because it would be UPL to apply the law to the facts to reach a conclusion about what the tenant is legally entitled to, and it is also UPL to give the tenant advice about what she should do to pursue her case.

2. The best answer is A. This is giving the tenant legal information that could be helpful while making clear that you're not going to give her advice about what to do. Answer B is UPL, because it is advising the tenant what course of action to pursue, based on the applicable law.

3. The best answer is C. You can answer questions from the judge that are merely clerical in nature, but you should also get the permission of the tenant (consistent with your navigator ethics).

4. The best answer is C. It's certainly true that you could have been more helpful to the tenant if you had had this information sooner, but answer A isn't really respectful to the tenant (and thus is inconsistent with navigator ethics). Answer B is also not very helpful, as it doesn't give the tenant the information to help her protect her own interests.

5. The best answer is A. It's not always possible for the navigator to do anything when the judge doesn't follow the law. Answer B is not appropriate, as it would be UPL for you to advocate on the tenant's behalf in this manner. It would also be UPL for you to advise the tenant to appeal on the grounds of the judge's mistake, as in Answer C. You certainly can and should advise the tenant of the right to an appeal, but you shouldn't give an opinion about whether the tenant has grounds for an appeal, as that would be UPL.

Now take the quiz to see how you're doing.