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The People's Court

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The People's Court

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Cleveland housing court Judge Raymond Pianka uses innovative legal tactics to achieve code compliance, but is it enough to stabilize neighborhoods? By [Kermit Lind](#)



(Cleveland Municipal Housing Court)

It isn't every day that a municipal court judge smacks a convicted criminal with a fine of more than \$10 million. After all, municipal courts typically hear misdemeanors, not big time felonies or organized crime cases. Equally unusual is for the judge to tell the criminal how to avoid paying a substantial amount of the fine. But that is exactly what Judge Raymond L. Pianka, the housing court judge in Cleveland, did in June 2010.

Two South Carolina-based firms, Interstate Investment Group and Paramount Land Holdings, had neglected 13 properties they owned until they were so dilapidated that the City of Cleveland had to have them demolished to protect public safety. After the firms were summoned to court and failed to appear, they eventually pled "no contest" in all cases, and Pianka levied a total of \$13 million in fines.

Pianka's attempts to bring far-flung speculators to account for their effects on Cleveland's neighborhoods are bucking conventional legal practice on several fronts. How and why has [Cleveland's Housing Court](#) become, in the words of Alex Kotlowitz in a 2009 *New York Times Magazine* article, "one of the most powerful instruments in the city's fight for survival"?

The Court

Ohio's enabling statute authorizes the Cleveland Housing Court to have special personnel and powers to be a problem solving and remedial court. It connects people with resources to ease post-eviction transitions or achieve housing code compliance, and emphasizes mediation and compliance plans over punitive approaches. Nine Housing Court specialists are on deck to help carry out these non-trial remedies.

The tone and strategy of Housing Court is set by the elected judge, who has been Raymond Pianka for the past 16 years. Pianka was born, raised, and educated in the

Detroit Shoreway neighborhood of Cleveland, where he went on to found the [Detroit Shoreway Community Development Corporation](#), one of the first neighborhood-based CDCs in Cleveland. He became executive director of the CDC in 1974 and through it all he attended [Cleveland-Marshall College of Law](#), graduating in 1977. He was also a founder and the first president of the [Cleveland Neighborhood Development Corporation](#), a trade association for neighborhood-based community development corporations.

From 1985 to 1995 Pianka represented Cleveland's 17th ward on city council where he served as chair of the council's Community and Economic Development Committee and the Legislative Committee. This perspective certainly influenced him as he crafted a more proactive court response to the dangerous wave of speculation and neglect facing the city.

The Problem

By 2005, community leaders in public interest agencies in Cleveland realized that they were losing the battle for neighborhood stabilization. A 2005 study, *Cleveland at the Crossroads*, by the [National Vacant Property Campaign](#) and [Neighborhood Progress, Inc.](#), showed that it was cheap and easy to speculate in blighted houses in Cleveland, since speculators could transfer distressed housing without paying taxes or complying with housing and safety laws. As a result, Cleveland was spending millions on nuisance abatement and demolition of abandoned investor-owned houses. Meanwhile efforts by government and neighborhood organizations to deal with abandoned vacant houses were fragmented, uncoordinated, and inadequate.

On top of this situation, the mortgage crisis that escalated a few years later created new problems for the Housing Court. Banks sold off their low-value houses in bulk sales to speculators who did not record the deeds until the house was sold to someone else months later, making it difficult and time-consuming to track ownership of blighted, vacant houses. People from other states and other continents were buying houses in severely blighted condition on the Internet with no means or intention of coming to Cleveland to fix up their property. Wall Street owners, shielded by unidentified servicing companies, evaded or ignored official communication from the court. And yet, unless absentee owners charged in code compliance cases actually appeared in court, legally they could not be arraigned, tried, found guilty, or sentenced for failure to comply with violation notices.

Getting Owners to Court

The first step was getting defendants to show up so cases could be prosecuted. Beginning in 2007, Pianka conducted special hearings for corporations that did not respond to summonses. When the corporations failed to appear, a plea of not guilty was entered for them. Then the court proceeded to a trial that was conducted without the corporate defendant present. The court heard 47 trials *in absentia* and sentenced the missing defendants to a total of \$1.37 million in criminal fines and costs. The Housing Court had

to suspend trials *in absentia*, however, when the Ohio Supreme Court found that the procedure was not authorized by statute for municipal court.

So the court found a new way to deal with defiant absentee corporate property owners. When corporations served with a criminal complaint fail to appear, the court places them on a special, designated docket. They are again ordered to appear, with courtesy copies of the notice sent to corporate officers' personal addresses. Those that *still* fail to appear are ordered to a hearing to explain why they should not be held in contempt. If the entity does not appear at this hearing, the court issues sanctions in the amount of \$1,000 per day, in accord with an Ohio law that gives judges the authority to enforce the lawful writs, orders, processes, rules, judgments, or commands of a court. These sanctions are levied until the entity appears and enters a plea. As of July 2010, more than \$15 million in sanctions for contempt of court had been issued by the court and converted into civil judgments. This puts bank accounts and other corporate property at risk of seizure to satisfy the judgment debt owed. The court reports that this measure is producing good results.

Another approach is to employ the “clean hands” doctrine. This is a longstanding rule of law that says a person in court seeking a judgment must be free of bad conduct in relation to the matter. Court personnel routinely examine the civil eviction docket to see if landlords seeking to evict tenants are also on the list of owners refusing to answer criminal charges in Housing Court. If so, the court refuses to process or support the evictions.

Compliance Above All

Judge Pianka believes that Housing Court's goal is getting real property into compliance with Cleveland's building, housing, or other applicable codes, not necessarily punishing guilty defendants. He sees his sentences as means to secure repairs and rid neighborhoods of harmful conditions. Therefore, they are often handed down with an invitation to mitigate or reduce the sentence through post-sentencing compliance, even for the most egregious offenders.

The judgment against South Carolina's Interstate Investment Group, for example, concluded with the following statement:

Despite Defendant's complete and total disregard for the laws—and the citizens—of the City of Cleveland, the Court remains committed to its problem-solving mission. Should Defendant change its behavior and resolve the aforementioned violations, the Court may consider mitigation. Using the mitigating factors discussed in this entry as a guide, Defendant may formulate a plan and execute it. Should Defendant make real and demonstrable progress toward abating the nuisance posed by its properties, Defendant may file a motion to mitigate its sentence.

The court also aims for comprehensive compliance. It may, for example, mitigate sentences when a guilty defendant commits to a comprehensive compliance plan for its

entire inventory of houses. Similarly, defendants who appear in Housing Court for other reasons who owe the City of Cleveland for grass cutting, board-ups, demolition, or water bills may be required to pay those bills before their plea agreements or mitigation applications can be considered.

Stabilizing Neighborhoods

While Judge Pianka's innovations are having a positive effect, the question remains if they will be enough to stabilize devastated neighborhoods.

The answer, unfortunately, is no. The role of a municipal housing court is too limited. For example, courts can try only those cases filed by prosecutors or civil litigants. Unless city prosecutors have the motivation and the resources to bring flagrant violators into court, lawlessness will prevail.

The justice system itself has also put limitations on law enforcement by local housing courts. Take, for instance, the civil cases brought in the Cleveland Housing Court against Deutsche Bank and Wells Fargo by a subsidiary of the nonprofit Neighborhood Progress Inc. in December 2008. The Center on Urban Poverty and Community Development at Case Western Reserve University had documented that Deutsche Bank and Wells Fargo owned hundreds of houses in Cleveland that they purchased at sheriff sales after getting foreclosure judgments. The Center concluded that 75 percent of the bank-owned houses on Cleveland's east side were being sold for less than \$10,000 and were in a public nuisance condition best described as "solid waste." The nuisance abatement suits also claimed that the business practice of owning defective houses without complying with local housing codes was itself a public nuisance and asked the Housing Court to declare that practice illegal and order the banks to stop it.

Both banks applied to the federal court to have the cases removed from the housing court. In their briefs, the banks complained about Pianka's advocacy for lawful behavior by banks and his court's reputation in the media for demanding compliance with local laws. The late U.S. District Judge Ann Aldrich remanded the Wells Fargo case back to Pianka's court, which subsequently heard evidence that Wells Fargo was selling dilapidated and condemned houses at give-away prices to out-of-state wholesalers who also ignored local property maintenance codes. The court issued a preliminary injunction to prohibit the selling of defective low-value houses without the court's authorization for each sale. This injunction was appealed and the Eighth District Court of Appeals struck it down. The case was then dismissed after all of the specifically identified houses belonging to Wells Fargo were demolished at the bank's expense.

The Deutsche Bank case went to a different federal judge, U.S. District Judge James Gwinn, who sent it back to Judge Pianka's court, but did so using a different legal reason than was used in the Wells Fargo case—a reason that could be appealed. Deutsche Bank did so, and the Federal Court of Appeals for the Sixth Circuit overturned Judge Gwinn. Judge David McTeague, writing the opinion for the Sixth Circuit, gave the following reason why the case should not be in state and local courts:

In our opinion, the importance of diversity jurisdiction is particularly strong in this case, where the state law claims (a) are of intense local concern, (b) are asserted against not just citizens of different states, but affiliates of manifestly “foreign” (i.e., German) corporations, and © would otherwise be adjudicated by a locally-elected municipal judge.

This is a stinging disparagement of municipal law, municipal courts, elected judges, and the ordinary people and municipalities that lack the resources to protect themselves and their property rights in federal court against the misconduct of “manifestly ‘foreign’ corporations.” The unfairness of it is amplified by the fact that absentee financial institutions buy, and unlawfully maintain, houses in a condition that threatens the health, safety, and welfare of neighbors whose property values are destroyed all in order to add profits to corporations too big to fail and too privileged to jail. This kind of institutional opposition, not only to the Cleveland Housing Court, but also to the entire system of local government and law enforcement, sends a chilling message to those who would place their confidence in the rule of law.

The Cleveland Housing Court adjudicates only one house and one owner at a time, while the investors and speculators in blighted properties operate in secret at high volume from a distance. However, the court’s focus on housing code compliance and its (when needed) willingness to hand down strong measures is powerful. Even now, the City of Cleveland is implementing new strategic code compliance measures in partnership with neighborhood-based community development corporations, to the point where there is less profit in owning worthless houses in Cleveland, and the court is redirecting the disposal of low-value foreclosed houses to local land banks and experimenting with other lawful ways to dispose of wasted loan collateral.

While there’s still much to be done in the way of stabilizing neighborhoods, particularly in Cleveland, the Cleveland Housing Court is a beacon to others fighting for stable neighborhoods, and all those who believe that protecting people and property and the rule of local law do matter.

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