

# **MARK D. STERN, P.C.**

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## Testimony of Mark D. Stern

In this widely-reputedly liberal state (Massachusetts) that to its great credit, among other things, recently elected an upper-middle class African American as Governor and recognized gay marriage as a constitutional right, the institutions specifically charged with enforcement of fair housing laws have failed to affirmatively act to eradicate the continuing problem of housing discrimination against poor people of color.

A case I handled over the past five years illustrates the extent to which the various governmental agencies (including levels of the court system) so mandated have prioritized protecting each other's reputations, especially reputations relating to matters of race, over consistency in enforcement of fair housing. In that case, in a series of decisions, three levels of the courts of the Commonwealth have held that stipulated facts, which established that a white, Harvard-educated, upper class landlord's charged all identified persons of color hundreds of dollars more in rent than he charged all identified white people in his buildings for identical or superior apartments, did not constitute even a prima facie case of housing discrimination; and two of the state's fair housing enforcement agencies declined to intervene to encourage Court to rule otherwise. Each of these courts either ignored or misreported the facts of the case, thus obscuring from public scrutiny the blatant discrimination which they were enabling to continue; one Court designated its decision as "unpublished."<sup>1</sup>

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<sup>1</sup> A short history of the case, described in more detail in the Massachusetts Lawyers Weekly article and Boston Globe column appended, follows. The Petition to the Court and supporting Motions of Amicus Curiae have been submitted to the Commission, are a part of its Record, and are also available on request at [markdsterncpc@rcn.com](mailto:markdsterncpc@rcn.com).

After a District Court judge found in favor of the white landlord in this case, despite the stipulated facts which established his discriminatory actions, three white judges of the Appeals Court upheld the Trial Judge's decision, failing to ever mention either the stipulated facts or the word "discrimination." Instead this Court misreported as fact that the complaining tenant had the lowest rent in the building before her rent was increased, when both the stipulated facts of the case and the totality of evidence indicated entirely otherwise.<sup>2</sup>

The Bay State Banner editorialized that this decision was a reversal of a judicial trend of prohibiting housing discrimination going back 60 years (to Shelley v. Kraemer), and ten well-respected fair housing and civil rights non-governmental organizations<sup>3</sup> thereafter urged the Supreme Judicial Court to take further appellate review.<sup>4</sup> Notwithstanding the entreaty from the non-governmental community, at least six of the seven members of the Supreme Judicial Court declined to do so, thus leaving open the door for other landlords to engage in similar discrimination.

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2 A staff member of the Commission on Judicial Conduct declined to docket the complaining tenant's complaints against the three Appeals Court Judges regarding their apparent violation of the Canons of Judicial Ethics 2, ¶¶ A & B, and Canon 2, ¶¶ A & B(2), (5) & (8) when they considered and apparently relied on evidence outside the record of the case to arrive at a factual determination contradictory to the record and in particular to the stipulated facts therein. As a consequence, presumably, the complaints were never even considered by any of the Commissioners.

3 The Cambridge Branch of the National Association for the Advancement of Colored People ("NAACP"), the Charles Houston Hamilton Institute, the National Fair Housing Alliance, the Fair Housing Center of Greater Boston, Inc., the Lawyers' Committee for Civil Rights under Law of the Boston Bar Association, the Charles Hamilton Houston Institute for Race and Justice ("CHHIRJ"), the Jewish Alliance for Law and Social Action ("JALSA"), the Legal Assistance Corporation of Central Massachusetts ("LACCM"), the Union of Minority Neighborhoods ("UMN") and the Somerville Fair Housing Commission.

4 Among the governmental organizations requested to join with them, but declining to do so, were the Massachusetts Attorney General's Civil Rights Division and the Massachusetts Commission Against Discrimination. The latter subsequently also decided not to investigate a complaint about the matter.