

March 24, 2020

Christopher C. Krebs
Director
Cybersecurity and Infrastructure Security Agency (CISA)
U.S. Department of Homeland Security
Washington, D.C. 20528-0380
By email: christopher.krebs@hq.dhs.gov

Re: Access to Critical Legal Services during Coronavirus (COVID-19) Pandemic

Dear Mr. Krebs:

On behalf of the American Bar Association (ABA), the largest voluntary association of lawyers and legal professionals in the world, I write to you as head of the agency promulgating guidance to help state and local jurisdictions identify essential critical infrastructure workers during COVID-19 response efforts, while simultaneously advising executive branch leaders on potential federal actions.

The ABA recognizes the enormity of the challenges facing our country as a result of the COVID-19 pandemic and respects that our government needs to take necessary and important actions that protect all Americans and prevent the spread of the coronavirus. Individuals, families, employees, businesses, and governmental agencies are all being tested in unprecedented ways. Lawyers across the country are working hard to help them through this period by providing critical legal services, in many cases without disruption from the services provided before the current crisis.

People need access to essential legal services during an emergency. Lawyers help ensure that our nation's foundation of laws remains strong, especially as fast-changing orders, directives, and laws are issued. From advising families confronting child support or custody, housing, or employment challenges; to individuals who may be ill with critical estate planning needs; to families trying to carry out health care directives of loved ones; to businesses and financial institutions dealing with the economic impacts on owners, employees, and customers; to adults or children threatened by domestic violence; to people involved in our criminal and civil court systems, lawyers can help Americans as they address unexpected challenges and solve problems surfacing in the wake of the spread of the coronavirus.

As you well know, state and local jurisdictions have promulgated orders designed to reduce the spread of the COVID-19 virus and protect their residents and vulnerable populations. As of this writing, Governors in 17 states and numerous cities across the country have already issued executive orders and guidance requiring residents to stay at home and, if residents must leave, to stay at least six feet from others. These directives include exemptions that allow "essential services" to continue operations in support of critical infrastructure sectors in their geographic regions. State and local leaders have used their individual discretion to define who is included in their essential

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workforces. Many state-issued orders, among them Indiana, California, and Illinois, include professional or legal services as essential services in their directives; optimally, legal services should be deemed essential services in state directives.

During this national health emergency, America's lawyers and legal professionals are doing their part as they must to comply with stay at home orders and embracing available technologies to telework. Unfortunately, not all services can legally or practically be done remotely. In many states, in-person execution of instruments such as wills, powers of attorney, or health care directives is required. Even when not mandated, best practices may require that a lawyer observe the client or other person sign important personal or business documents to assure compliance with legal requirements. In criminal cases, defense counsel need access to detained or incarcerated clients to provide confidential legal advice and protect important constitutional rights. While technology can help, many clients do not have access to the internet or electronic devices, and some choose not to use technology for important transactions. Courts, prisons and jails are also not adequately equipped or resourced to provide the confidential video access that may be needed for legal advice or court proceedings when in-person options are curtailed.

If these and other challenges are not overcome, adverse consequences may fall on individuals and families unable to access estate planning, healthcare, housing, domestic violence, child custody and support and other time-sensitive advice, and businesses and other essential services may not be able to comply with laws to complete transactions. In criminal cases, denial of an individual's right to counsel or other constitutional rights are simply not acceptable in our Nation.

If your agency recommends a national "stay at home" order, we ask you to include legal services in any definition of "essential services" contained in that order. The American people and U.S. business community must have access to the legal services they need -- when they need them most, in this time of crisis.

Thank you for your leadership during this pandemic and for considering this request as you help make important decisions to protect this country. Should you have any questions or need more information, please contact ABA Governmental Affairs Director Holly Cook at 202-662-1860 or holly.cook@americanbar.org.

Sincerely,



Judy Perry Martinez
President, American Bar Association

cc: Peter Gaynor
Office of the Administrator
Federal Emergency Management Agency
By email: peter.gaynor@fema.dhs.gov