

July 21, 2020

BY ELECTRONIC MAIL

Hon. Anthony Cannataro
Administrative Judge
Civil Court of the City of New York
111 Centre Street, Room 490
New York, New York 10013
acannata@nycourts.gov

Re: Objection to OCA's Resumption of Housing Court Trials

Dear Judge Cannataro,

We, the undersigned, are attorneys in private practice who represent tenants throughout the New York City housing court. We write in solidarity with the City's legal services organizations, united with them in opposition to the Office of Court Administration's decision to re-open the Housing Courts for in-person appearances and advance eviction proceedings during the COVID-19 global pandemic.

We recognize that OCA has been presented with an unprecedented dilemma: finding a way to reopen and operate the courts safely in the current environment; and we appreciate OCA's efforts to make its operations safe. However, we firmly believe that, at this time, resuming court functions beyond those necessary for emergencies is premature and poses a serious threat, to litigants, attorneys and court personnel alike. It will, therefore, aggravate the problem that caused the courts to close in the first place and further delay reopening. Most concerning is that, as stated further below, resumption of eviction proceedings compels parties to make the irreconcilable and, arguably, immoral choice between preserving either their health and safety or their due process rights and homes. Accordingly, we cannot, in good conscience, support OCA's plan.

That COVID-19 primarily spreads by inhaling respiratory droplets from both symptomatic and asymptomatic infected persons is well documented. It is also well-documented that failure to maintain proper social distancing, especially in enclosed, populated spaces like public transportation and public gathering places, greatly increases the risk and prevalence of transmission. Inasmuch as resuming physical court proceedings exposes parties and their attorneys to such public places – no matter the efforts made to maintain social distancing and keep courtrooms, lobbies, hallways, elevators and bathrooms sanitary – it necessarily results in dramatically increased risks of COVID-19 transmission.

OCA's decision to force parties and their attorneys into this position appears to be based upon an institutional determination that the risk to parties and the public is less significant than the need to clear the Housing Court's "inventory" – an unfortunate characterization OCA has given to proceedings to evict people from their homes in the midst of a global pandemic.

As the legal services organizations have already communicated to you, it is well documented that COVID-19 has disproportionately impacted low-income people of color, elderly and individuals with pre-existing health conditions throughout this country, particularly in New York City. Reopening Housing Court requires these individuals to put their lives at risk against their will, in a climate where COVID-19 continues to be a national health crisis. Today people from all over the country are demanding the end to state-sanctioned violence against Black lives. Yet, OCA's decision will result in the eviction of thousands of tenants, most of whom are people of color. This is a time when New Yorkers' lives should be prioritized over property and profit. We believe there is no justifiable reason to require any matters to proceed in person while this pandemic continues. It is completely unacceptable to force tenants to choose between their health and their homes. It is clear that OCA is not prepared to provide sufficient protective measures to ensure safe participation in the courthouse.

We recognize that OCA has sought to ameliorate some of the concerns around in-person court appearances by offering a virtual appearance alternative. While OCA's resort to virtual appearances is, itself, a tacit acknowledgment that physical appearances pose too great a risk to the parties, their lawyers, and the public, in certain contexts, virtual appearances are not consistent with the fundamental need to preserve parties' due process rights in eviction proceedings. Given that the increased risk of COVID-19 transmission renders physical court proceedings largely impractical and invariably perilous depending, in part, on the pre-existing condition of those physically present, a redirected focus on virtual proceedings is understandably desirable.

However, although virtual proceedings have, to a degree, proven fruitful in the context of settlement conferences and motion arguments, they are a woefully inadequate substitute for their live counterparts in a fact-finding context for various reasons. Attorneys who have closed their offices and restricted in-person meetings will be unable to properly prepare their clients and witnesses for trial. Indeed, many elderly and low-income tenants lack the resources and electronic equipment to participate virtually in either trial preparation or at the trial itself. Not only are there many tenants who do not have access to technologies that allow for virtual hearings and trials, but the dubious quality of hearings and trials held out of the sight of the judges and litigants provides for the potential for manipulation and fraud. Non-party witnesses, who are frequently needed in Housing Court trials, will likely be reluctant to attend in person. Yet, even assuming a non-party witness would willingly participate virtually, there is no means for a lawyer who is taking that person's testimony to assume that such remote witnesses are not in a compromised setting. The taking of testimony through direct and cross examination, and the fact-finder's determination of witness credibility, are necessarily and unreasonably undermined in a virtual proceeding. Due process is the fundamental underpinning of the judicial system and, therefore, any resumption of court proceedings must adequately protect parties' rights and give them a full and fair opportunity to be heard. We do not see how virtual trials can satisfy that standard.

Resuming eviction proceedings will leave those defending their right to remain in their homes or businesses in a unique and truly modern dilemma – go to court to receive their full and fair opportunity to be heard while placing themselves, their loved ones and the public at risk, or stay home and sacrifice their due process rights through virtual appearances that represent a poor facsimile of live proceedings. This problem is, as others have stated and as restated here, significantly aggravated by the grossly disproportionate impact that reopening the Housing Court will have on minority communities, the elderly, the disabled, and those who are high-risk; impacts that OCA’s decisions have shockingly disregarded. Accordingly, we ask that OCA rescind its decision to resume Housing Court trials, both virtual and in-person.

Sincerely,

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