



NEW YORK
CITY BAR

June 19, 2020

Via email

Honorable Janet DiFiore
Chief Judge of the State of New York
New York State Unified Court System
25 Beaver Street
New York, NY 10004

Honorable Lawrence K. Marks
Chief Administrative Judge
New York Unified Court System
25 Beaver Street
New York, NY 10004

Honorable Anthony Cannataro
Citywide Administrative Judge
Civil Court of the City of New York
111 Centre Street, Room 838
New York, NY 10013

Re: Affirming Principles for Expanding Operations in the New York City Housing Courts During the COVID-19 Crisis

Dear Chief Judge DiFiore, Chief Administrative Judge Marks, and Administrative Judge Cannataro:

We hope this letter finds you and your families safe and well. Thank you for your service to New Yorkers during these extraordinarily challenging times. We write in consideration of the many thousands of New Yorkers who rely on New York City's housing courts to access justice, remain secure in their homes, and avoid homelessness -- all of which have taken on even greater importance during COVID-19. We also write on behalf of those who routinely appear in New York City's housing courts, including lawyers, litigants and court personnel.

To that end, on behalf of the New York City Bar Association Task Force on the Civil Right to Counsel and its Housing Court Committee, we are writing to (1) support, as they apply to residential cases, the attached "Principles for Expanding Operations in the New York City Housing Courts During the COVID-19 Crisis," drafted by multiple civil legal services providers; and (2) urge that the Office of Court Administration suspend the reopening of the New York City housing courts until there is a thorough safety plan for reopening, informed by health experts, legal advocates, and other key stakeholders.¹

¹ We are aware of the memorandum issued by Judge Marks yesterday and appreciate the intent to, in conjunction with the Governor's executive orders, temporarily stay certain eviction proceedings after they are commenced. However, we remain concerned that, among other issues identified in the Principles, tenants who are purportedly served with eviction petitions will not have adequate information to fully understand their rights, will not be served in a manner that satisfies due process, will not have the technological capacity to respond remotely and/or will travel to the courts in order to respond and will jeopardize their health.

Thank you for your consideration. As always, we stand ready to assist.

Respectfully,

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**Principles for Expanding Operations in the
New York City Housing Courts During the COVID-19 Crisis**

Prioritizing Public Health

- Until the City and State are fully reopened and schools are fully reopened, no New Yorker should be evicted, and the Housing Court should remain closed for non-essential matters.
- No defaults should be taken until the City and State are fully reopened and schools are fully reopened.
- The Housing Court should not physically reopen until plans have been approved by a health/OSHA expert.
- All existing judgments and warrants should be vacated and restored by notice of motion only when the City and State are fully reopened and schools are fully reopened.

If and when the Housing Courts do reopen, the following principles should be implemented.

The Need for a New Housing Court Paradigm

- Returning to pre-3/16 levels of traffic in the housing courts is inconceivable as long as the coronavirus circulates in our communities. Pre-3/16 levels of traffic would pose a risk to the health and lives of everyone who uses those buildings and everyone who comes into contact with people who use those buildings. While every precaution must be taken for those who have no choice but to work or appear in housing court buildings, public health considerations demand that nearly all housing court business be conducted virtually.

Right to Counsel

- In order to ensure that no litigant's access to court is limited by a lack of access to technology or a lack of comfort with technology and to ensure that no one is faced with the life-threatening consequences of homelessness during the COVID-19 emergency because they are unable to assert defenses, the housing court must not allow cases to progress against unrepresented tenants.
- The housing court should immediately refer all new cases to HRA to refer to legal services providers before the cases are allowed to move forward. Adjournments should be granted when they are necessary to allow tenants to connect with attorneys. Calendar numbers should be strictly controlled to ensure no cases move forward when tenants do not have attorneys.

June 19, 2020 Letter from the New York City Bar Association - Attachment

- The court should refer all applications to execute warrants to legal services providers.
- No default judgments should be entered by the court without a finding by a housing court judge that all feasible efforts have been made to connect the respondent with counsel.
- The housing court should require petitioners in non-payments and holdovers to provide notice to respondents about the availability of free legal services, how to respond to the petition or motion in person or remotely, and provide contact numbers, email addresses, and web links through which the tenant can access information in their primary language and to provide the court with phone numbers and email addresses of respondents when petitioners have that information.
- The housing court should not accept more filings or issue more warrants than can be handled by legal services providers.

Due Process

- Providing due process to all litigants must be the paramount consideration as OCA expands virtual housing court operations, as must be the provision of language access and accommodations for litigants with disabilities.
- To the extent that the court permits new non-payments to be initiated, it should provide all respondents with methods of answering that do not require appearing at the courthouse.
- In light of the long history of sewer service in housing court proceedings, the court should not permit cases to be commenced by service that does not conform to RPAPL 735.
- No default should be taken on any proceeding or motion until the petitioner has demonstrated that they properly served the respondent.
- A system must be created to permit litigants to access court files in advance of and during court proceedings.
- No cases should be allowed to proceed when documents or witnesses relevant to a tenant's legal defense are unavailable due to the COVID-19 crisis.
- No case where the lack of repairs is a defense should be permitted to proceed if HPD or another government agency has been unable to inspect the premises due to the COVID-19 crisis.

Virtual Proceedings

- Virtual conferences should be scheduled only on request of a party on notice to opposing counsel, after a good faith attempt to meet and confer. Conferences should be scheduled with sufficient notice for attorneys to prepare and confer with their clients.
- The court should make provision for client participation in all proceedings, with interpretation as needed. GALs and APS must be included in cases where they are involved.
- All virtual proceedings should be recorded.

Emergency Applications

- The court should ensure that applications by order to show cause to stay evictions are expeditiously processed, whether submitted in person or by EDDS, and that there is sufficient staffing and flagging of such applications to insure such expeditious processing.
- The court should establish a process for the filing of emergency applications by respondents who have not yet been connected with counsel that does not require them to appear in court or, if appearing court is unavoidable, allows for the application to be made in a safe and socially-distanced manner.

Court Procedures and Forms

- The court should supplement DRP 209 and DRP 210 to provide for court-imposed penalties for filing false affidavits regarding a tenant's COVID-related status, up to and including barring filers of false affidavits from filing affidavits in future cases.
- DRP 211 should be modified to require that petitioners seek and obtain court permission before executing all warrants issued prior to March 20, 2020.
- The court should work with the Department of Investigations and city marshals to ensure that all marshals are aware that, pursuant to DRP 211, they cannot execute warrants issued prior to March 20, 2020, without documentation of a court order permitting execution.
- Notices of petition should be amended to include notice of remote access and other due process protections including how to access legal services providers and HRA.
- Pro se answer forms should be amended to include a COVID-related financial hardship defense.
- OCA should issue directives and procedures establishing best practices and technology use guidelines for virtual conferences.

Housing Court Buildings

- The court must adopt clear, public health and safety standards regarding social distancing, air quality and air circulation, and cleaning for all parts of the buildings.
- To the extent that any litigants need to be present in court to access virtual proceedings, they should be provided by the court with access to a device by which to access their proceeding and a sanitary, socially distant, and private place to use it.
- PPE should be provided to any litigants who need to be in the courthouse and who do not have it.
- The courthouse public service video and court website and materials should be updated to include information on Covid-19 and rights to virtual proceedings.
- There should be conspicuous postings outside of housing court buildings that inform litigants of the current status of housing court operations, phone numbers for housing court clerks, and ways to access legal services.
- If the court resumes more than minimal in-person operations at a future date, there should be strict limits on the number of cases permitted in a courtroom and staggered calendars.