



Memo in Support

Addressing the COVID-19 Public Health, Eviction and Economic Crisis in our Justice System

Centralized Assignment Parts In Counties Outside of New York City

***Ensure Public Safety • Address the Digital Divide •
Enhance Legal Representation • Saving Court Resources •
Preserve Housing***

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Introduction

As the Governor, Judiciary, Legislature and the NYSBA consider new ways to address the ongoing and pending eviction crisis in New York State, the policy issues surrounding the systemic inequality of our justice system, and, specifically, the manner in which eviction proceedings are determined, we ask that a sharp focus be placed on ensuring access to procedural and substantive justice for individuals, families, communities and businesses in housing matters. This will require a robust judicial process that allows tenants a meaningful opportunity to preserve their housing by accessing counsel and financial resources, presenting evidence in their defense, and seeking mutual resolutions, which prevent evictions and preserve housing.

Moratorium

Nothing in this memo counters our view that a long-term eviction moratorium across New York State is the most essential policy for New York at this moment. A well-considered moratorium will ensure the preservation of housing, prevention of homelessness and provide economic security.

Background Centralized Assignment Parts for Eviction Proceedings

Although New York City is the epicenter of the COVID-19 crisis, the entire state is impacted and will continue to suffer from the public health and economic

crisis. To ensure meaningful opportunities to preserve housing in suburban and rural communities, we support utilizing centralized assignment parts for eviction proceedings in each county¹ outside of New York City to provide for an alternative to the use of over 1,300 justice courts. This alternative is an important way to address public health, equal justice, and economic uncertainty as well as begin to provide greater opportunities for counsel, data analysis, assessment and justice alternatives for people facing eviction across the entire state.

Public policy demands that we have the capacity to change, keep New Yorkers safe from COVID-19, and provide equal justice. It also requires we have the ability to witness and account for how all New York communities are impacted. “The lack of affordable housing sits at the root of a host of social problems, from poverty and homelessness to educational disparities and health care. That means understanding the eviction crisis is critical to effectively addressing these problems and reducing inequality.”² Currently, there appears to be no method, or at best a disjointed one, to assess the impact of evictions that occur in the 1300 justice courts across NYS; nor is there oversight, resources or means of determining how many evictions pass through our justice courts; whether justice courts are equipped with public health safety requirements; how technological, remote and digital systems work; how the digital divide is being addressed; whether due process and new laws are being followed; and whether training is occurring consistent with the NYS Constitution on all the Federal and State policy, regulatory and legal issues that have arisen and will continue to arise during this crisis.³

As discussions on the need for counsel persist, it is critical to enhance opportunities for tenants to secure counsel, especially during this continuing crisis. Centralized assignment parts are a means to enhance representation and present the legal community with greater efficiency in their practice. Centralized eviction proceedings can be beneficial to many landlords and the tenants throughout this state and can alleviate the burden on the more than 1,300 justice courts across the state, especially when local resources are depleted.

The COVID-19 pandemic has demonstrated that our court system has the capacity to change how it conducts court operations during a crisis. According to the Chief Judge, each operational iteration adopted during the crisis was

¹Anderson, Monica, and Madhumitha Kumar. “Digital Divide Persists Even as Lower-Income Americans Make Gains in Tech Adoption.” *Pew Research Center*, 7 May 2019, www.pewresearch.org/fact-tank/2019/05/07/digital-divide-persists-even-as-lower-income-americans-make-gains-in-tech-adoption/.<https://docs.fcc.gov/public/attachments/FCC-20-50A1.pdf>
<https://www.pewresearch.org/fact-tank/2019/05/07/digital-divide-persists-even-as-lower-income-americans-make-gains-in-tech-adoption/>

² Eviction Lab at Princeton University, <https://evictionlab.org/why-eviction-matters/#understanding-eviction>

³ See New York Legal Services Coalition. “Urgent Need for Comprehensive Eviction Moratorium and Plan for Backlog of Eviction Cases in Light of COVID-19.” Received by Chief Administrative Judge Marks, 23 Apr. 2020, <https://moderncourts.org/wp-content/uploads/2020/06/NYLSC-Letter-Re-Eviction-Moratorium-Final9.pdf>

“developed with the dual purpose of safety and service.”⁴ It is that dual purpose of safety and service combined with efficiency and justice that now drives the need to preserve the centralized parts to oversee eviction proceedings.

All three branches of government and the NYSBA continue to advocate for taking a smart and effective approach to public safety, the justice system and economic impacts of this crisis.⁵ Across this state and country we must pause and consider the best ways to create a justice system that recognizes our strengths and weaknesses – the crisis demands that we create a justice system that is equitable and safe.

Maintaining the status quo, especially in rural New York, of having over 1300 small courts evicting people does not meet the needs of the people of the State.

Policy and Legal Reasons for Centralized Assignment Parts

- Consolidating the predicted increase in eviction cases to courts where the strict health and safety requirements have been implemented
- Targeting technological resource disparities
- Offering tenants greater access to representation which in turn provides greater access to justice
- Guaranteeing that eviction cases are heard by judges admitted to practice law in the State of New York

Public Health and Safety

Centralized eviction proceedings will help ensure that the reopening of courts will not jeopardize the state’s ongoing efforts to mitigate the effects of the ongoing health crisis. Over 1,300 town and village courts, spread across New York State, preside over large numbers of eviction proceedings.⁶ The designated assigned parts already in place will alleviate unnecessary traffic in these court

⁴ The legislature is authorized to prescribe the jurisdiction of the Town and Village Courts. That jurisdiction cannot be more expansive than that of the District Courts and New York City Criminal and Civil Courts. The justice courts have concurrent jurisdiction over proceedings with County Courts, City Courts with civil jurisdiction, and District Courts where they exist. *See N.Y. CONST. art. VI, § 17(a); N.Y. CONST. art. VI, § 16; N.Y. CONST. art. VI, § 15(a); RPAPL § 701.*

⁵ (1) Recognizing that the emergency still exists, as articulated by Governor Cuomo and followed by Chief Judge DiFiore, even as we begin to phase-in opening of businesses and courts.

(2) Addressing the crisis, as the Legislature is doing by passing new laws that will impact evictions.

(3) Respecting the rule of law, as announced by the new NYSBA President and his predecessor establishing a serious review of the eviction crisis

⁶“Town and Village Courts.” *The Fund for Modern Courts*, Apr. 2019, <https://moderncourts.org/town-and-village-courts/>

locations, which will ensure the safety of the employees and visitors of these courts.⁷

Furthermore, judges and court personnel are now returning to courthouses to gradually resume in-person operations, and accordingly must abide by the very strict requirements as established by Governor Cuomo and utilized by the Chief Judge. The heightened health measures include (non-exhaustively) the following: deep cleaning of facilities; providing PPE, including gloves, masks, and sanitizing agents for visitors; placing tape to ensure physical distancing; and installing Plexiglas barriers in strategic courthouse locations.⁸ Many justice courts, all of which are locally funded, may not have the resources to implement such procedures.⁹ It also understandably will be exceedingly difficult to ensure that the indeterminate number of justice courts follow these strict and necessary protocols.

While the courts in these regions are cleared to be open, the Chief Judge nonetheless stresses the need to be “prudent and incremental in expanding our in-person services” because the number one priority is health and safety.¹⁰ It is that judiciousness that should instruct the continued use of centralized summary eviction proceedings during this crisis.

The Use of Remote and Virtual Proceedings

Significant barriers to justice exist when virtual technology is used, including a digital divide, the capacity to use technology, and due process impacts, especially for unrepresented individuals. These barriers are particularly impactful when the issue is whether individuals will lose their housing. For example, in eviction proceedings, the complications for an unrepresented individual include: how to secure a witness or offer documentary evidence on a virtual platform. According to the Brennan Center for Justice, effective virtual technology has the potential to advance transparency in the court system and create greater access to justice in general. However, even mundane technological glitches, such as poor video and audio connections, can potentially undermine the fairness of video proceedings and may create due process issues.¹¹

⁷ See Goldberg, Noah, et al. “Coronavirus Leaves Trail of Illness and Death in NYC Courthouses.” *Nydailynews.com*, 26 May 2020, www.nydailynews.com/coronavirus/ny-coronavirus-pandemic-unprepared-nyc-courts-20200526-fe2zknj7cbgutpjd3vtfruiiq-story.html.

⁸ See “Message from Chief Judge DiFiore,” 25 May 2020, <http://courts.state.ny.us/whatsnew/pdf/May25MessagefromCJ.pdf>

⁹ Starr, Amelia T.R. “Proceedings in New York’s Town and Village Courts: Ideas for Improvement.” *Fund for Modern Courts*, 25 Nov. 2012, <http://moderncourts.org/wp-content/uploads/2013/10/-Proceedings-in-New-York-Town-and-Village-Justice-Courts-Ideas-for-Improvement.pdf>

¹⁰ See “Message from Chief Judge DiFiore,” 1 June 2020, <http://www.nycourts.gov/whatsnew/pdf/June1-CJ-Message.pdf>

¹¹ Keith, Douglas, and Alicia Bannon. “Promise and Peril as Courts Go Virtual Amid Covid-19.” *Brennan Center for Justice*, 20 May 2020, www.brennancenter.org/our-work/analysis-opinion/promise-and-peril-courts-go-virtual-amid-covid-19.

Centralized summary eviction proceedings will not address all the resource disparities – like the existence or quality of a participant’s Internet speed or access to compatible operating systems – that will present challenges to the fairness of video proceedings. The digital divide cannot be addressed in over 1,300 justice courts functioning independently. Any guarantee of the availability of reliable and efficient technology that meets litigants’ rights under the law, addresses the digital divide, provides certainty of proper virtual proceedings, or best practices of the use of technology can never be assessed. It is unrealistic to think otherwise.

As virtual technology is implemented by the courts in order to conduct as much business as possible while limiting the public density in buildings and thus minimizing the risk of community transmission, centralized eviction proceedings would provide a more efficient and accountable method if a moratorium on evictions ends place during this crisis.

Beyond the expanded use of virtual hearings, the Chief Administrative Judge implemented new e-filing procedures – consistent with the Governor’s determinations – in part to “minimize the foot traffic during the crisis.”¹² However, because justice courts do not appear to utilize any form of e-filing,¹³ all filing in these courts– both by represented and unrepresented litigants – must be done in person or through the mail. Attorneys and litigants will have no other choice but to increase physical exposure in courthouses, despite the existence of a system that allows for fast and efficient filing from the safety of one’s own home.

Enhancing Opportunities for Legal Representation

In the post-COVID era, all tenants will need access to counsel in order to have a meaningful opportunity to preserve their housing. Centralized assignment parts for summary proceedings will provide greater opportunity for tenant representation. Whether it is civil legal service providers or pro bono counsel supported by civil legal service providers, a centralized location simply saves time and resources. Typically, in every county, counsel has to juggle multiple court appearances in multiple courts on often conflicting days and times. This is true for landlords’ attorneys, as well. If we must rely on virtual proceedings, uniform technology and support would streamline communication, training and scheduling.

¹² Currently, all essential and non-essential matters must be filed by represented litigants through the New York State Courts Electronic Filing System (NYSCEF) system. In counties where NYSCEF is unavailable, litigants may file through the mail or through the newly formed Electronic Document Delivery System (EDDS), which allows for the remote and immediate delivery of digital documents through the UCS. *See* Administrative Order 114, 20 May 2020, <https://iappscontent.courts.state.ny.us/NYSCEF/live/legislation/AO.114.20.pdf>

¹³ The [list of courts](#) that are authorized for NYSCEF filing does not list town and village courts and it does not appear from the [UCS website](#) that EDDS has been implemented in town and village courts, either.

This will allow a more efficient system of ensuring that counsel is available to all litigants, including tenants who cannot afford counsel.

Efficient Use of Judicial Resources

Centralized summary eviction proceedings will allow the courts to handle - as predicted by the Chief Judge in her May 25th message – an influx of new eviction cases¹⁴ and ensure a more efficient and organized method of processing cases. The Chief Administrative Judge has encouraged courts to use virtual technology to eliminate the backlog of pending matters in order to mitigate the effects of the inevitable “surge of new litigation” once the courts resume operations. Courts outside of New York City have almost entirely cleared their backlog of pending motions in non-summary proceeding cases through the use of technology that is not currently accessible in justice courts.¹⁵ While virtual appearances may not afford sufficient procedural protections in housing matters, electronic filing will make submitting and accessing papers far more efficient, preserving scarce judicial and attorney resources.

Justice courts, as outlined above, currently do not utilize the e-filing technology that will allow for efficient filing and data collection after the moratorium on evictions is lifted. It also is unclear, from a survey of the UCS website, what types of virtual hearings the justice courts have been conducting thus far. Even if the justice courts do begin to adopt these virtual and digitized procedures, there will be an inevitable adjustment period where judges and staff will have to be trained. To best respond during this critical time following the end of the moratorium, the presently established centralized system should continue to oversee summary eviction proceedings.

Lawyer Judges, Centralized Parts and Summary Proceedings

Centralized summary eviction proceedings will guarantee that judges who are admitted to practice law in New York State preside over eviction proceedings. The complexity of the recent Federal and State laws, executive orders and policy¹⁶ require that those who are judging cases in New York State do so by analyzing,

¹⁴ See also See New York Legal Services Coalition. “Urgent Need for Comprehensive Eviction Moratorium and Plan for Backlog of Eviction Cases in Light of COVID-19.” Received by Chief Administrative Judge Marks, 23 Apr. 2020, <https://moderncourts.org/wp-content/uploads/2020/06/NYLSC-Letter-Re-Eviction-Moratorium-Final9.pdf> (predicting that there will undoubtedly be a “flood of proceedings filed in far apart courts with overlapping schedules” when the courts start reopening and going back to business as usual).

¹⁵ See “Message from Chief Judge DiFiore,” 25 May 2020,

<http://courts.state.ny.us/whatsnew/pdf/May25MessagefromCJ.pdf>

¹⁶ “Summary and Analysis of Federal CARES Act Eviction Moratorium.” *National Housing Law Project*, 28 Mar. 2020, www.nhlp.org/wp-content/uploads/2020.03.27-NHLP-CARES-Act-Eviction-Moratorium-Summary.pdf; Executive Order. No. 202.28, 2020, <https://www.governor.ny.gov/news/no-20228-continuing-temporary-suspension-and-modification-laws-relating-disaster-emergency>

applying and understanding the integration of all applicable laws. Moreover, it is not only better to have judges with an understanding and a depth of knowledge of the law presiding over eviction proceedings; it would meet the Constitutional requirements without furthering expense. Approximately seventy percent of Town and Village Court justices are subject to Article 6, section 20(c) of the Constitution. Education and training are required and cannot reasonably be accomplished in a timely or thorough manner that would meet the requirements of the NYS Constitution.

Article 6, section 20(c) of the New York constitution,

c. Qualifications for and restrictions upon the judges of district, town, village or city courts outside the city of New York, other than such qualifications and restrictions specifically set forth in subdivision a of this section, shall be prescribed by the legislature, provided, *however, that the legislature shall require a course of training and education to be completed by justices of town and village courts* selected after the effective date of this article who have not been admitted to practice law in this state. Judges of such courts shall also be subject to such rules of conduct not inconsistent with laws as may be promulgated by the chief administrator of the courts with the approval of the court of appeals. (Amended by vote of the people November 8, 1977; November 6, 2001.) (*Italics added*)

Conclusion

The public health crisis forced the closure of the courts, generated rules for emergency and essential proceedings, and utilized technology to ensure courts were still operational during the sudden quarantine and pause we had to follow to avert a more significant tragedy than was already before us. Each judicial district in the counties across the state determined that justice courts would not hear emergency proceedings. And, each judicial district created a centralized part for emergency cases involving lockouts, constructive evictions and bad conditions, as well as orders of protection in domestic violence matters.

Maintaining eviction proceedings in over 1,300 justice courts, would not serve justice. The alternative suggested in this memo is the better course to take at this critical moment in history.

July 2020
