



CHIEF DEFENDERS ASSOCIATION OF NEW YORK

September 8, 2020

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Honorable Lawrence K. Marks
Chief Administrative Judge of the Courts
25 Beaver Street
New York, New York 10004

RE: Court Reopening Issues

Dear Judge Marks:

When it appeared that the courts of New York would be moving toward a return to live appearances, the Chief Defenders Association of New York established a reopening committee to examine the issues our members foresaw in returning to court amidst a pandemic, with an eye toward making recommendations to stakeholders in the justice system on behalf of our clients and staffs. The Committee members watched with interest the Joint Public Hearing to Examine the Reopening and Operation of New York's Courts During the COVID-19 Pandemic conducted on August 21, 2020.

We applaud you for your efforts to reopen courts in an informed manner that is safe for all of those present; with this letter, we offer you our perspective on many issues that were raised at the hearing in both oral and written testimony.

The membership of CDANY includes an array of mandated representation providers that are diverse in their program type, size, and the geographic location they serve. As a result, we face differing issues, particularly as related to the degree of impact of the COVID-19 pandemic on our local populations, and the corresponding degree of safety concerns for reopening courts. To ensure that our committee represented the interests of our association, we conducted a survey of our membership in an effort to get a "boots on the ground" perspective of what is currently

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transpiring in superior, family, city, and local courts throughout the state. Forty-nine members responded, and the results of this survey are annexed to this letter for your review. The contributions of our members to this survey, together with issues raised in membership meetings, generated the following series of recommendations that we ask you to consider in your capacity as Chief Administrative Judge of the Courts.

Issue Minimum Safety Guidelines for all of the Courts in New York State. As our survey makes clear, written reopening plans either do not exist in many courts, or were not provided to defense providers. Nearly half of our members did not receive a reopening plan from any town or village court. Half of those who did receive written plans did so from less than 10% of the courts in their counties. These numbers were nearly the same in superior courts and only slightly better in city courts, with 40% of our members receiving written plans. It is particularly troubling that family court providers failed to receive plans from 60% of their courts.

The lack of written plans necessarily leads to a lack of uniformity in safety measures in the courts of New York State. Ten percent of city courts do not require temperature checks, while the others do. Nearly 30% of superior courts do not require court staff to wear a mask in court. There is no consistent policy for how to address litigants who appear without masks.

We are cognizant of the enormous diversity in types of courts in New York; we see a similar diversity among our member programs. However, we believe that there are some basic guidelines that should apply to any court, whether it is a justice court in the Adirondacks or a busy court in a metropolitan center. We ask that you, in conjunction with other stakeholders, issue a series of minimum safety guidelines that all courts are expected to follow, regardless of their size or location. Courts can be granted discretion to add to these minimum requirements in a manner that suits particular circumstances. This would lead to clearer expectations for all, and would likewise assuage some of the concerns litigants, attorneys, and court deputies and staff may have when they either do not know what court guidelines require, or do not see consistency in the application of guidelines among various courts. We respectfully suggest that these guidelines be distributed to all stakeholders in the justice system.

Include Defense Providers and other Stakeholders in Planning. The COVID epidemic forced the court system to be extremely nimble and creative, and as a result our courts were able to accomplish the Herculean task of shifting to virtual appearances on very little notice and with little time for preparation. We are grateful to you and the Office of Court Administration for making the safety of our staff and our clients a top priority during this unprecedented time. Currently, as local administrative judges are implementing measures to return to live appearances at all stages of a court proceeding, we urge you to include CDANY members in planning discussions. Our attorneys practice in your courtrooms and know the clients who appear in them; this makes public defenders an invaluable resource for OCA to utilize in gathering data, discerning potential problems, and developing plans of action. Today, the justice system is much better equipped to roll out initiatives methodically than it was when this crisis commenced. It is important now to involve all who work in the justice system when developing best practices.

Promote Transparency. A number of measures have already been implemented to facilitate the return to live court appearances; but, as the annexed survey demonstrates, a number of providers were not provided with corresponding written plans. This practice is ongoing, even as we broaden the scope of live appearances. In some judicial districts plans for returning to live jury trials have been developed and shared with stakeholders; in other judicial districts either no

plans have been prepared, or they have been prepared but not shared. Providers need to make arrangements for staff to accommodate these plans, particularly if they include use of PPE that is not immediately available. They further need to have an opportunity to comment on potential issues with plan implementation – be they safety issues or issues of a Constitutional nature – before it is too late to make adjustments. As such, the CDANY membership respectfully requests both equal access to the plans that we will be expected to help implement, and the chance to make recommendations that may protect the Constitutional rights of the clients we serve.

Establish Accountability. The hallmark of our justice system is its unique ability to enact and impose measures that ensure accountability. Likewise, CDANY respectfully requests that, under your leadership, OCA develop a system for monitoring compliance with established safety guidelines. It is clear that some courts are not engaging in even the most basic safety precautions, as evidenced, for example, by 10% of responding members indicating that social distancing is required in less than half of their local courts, and less than half of surveyed providers reporting that city courts require everyone in the courtroom to wear a mask. CDANY respectfully requests that you consider appointing an individual in each County to serve as an Accountability Officer, who would be responsible for randomly checking all courts in his or her jurisdiction for compliance and reporting same to the respective Administrative Judge. This individual's contact information should be disseminated for the purpose of addressing concerns raised by stakeholders in the justice system.

The members of CDANY applaud your endeavors to provide access to justice in the courts of New York State in a manner that is both safe and effective for all parties involved. We share this commitment, and renew our offer of partnership as you address the challenges of dispensing justice in these unprecedented circumstances.

Sincerely yours,

Laurette Mulry, Esq.
CDANY President

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