



July 8, 2020

Honorable Lawrence K. Marks
Chief Administrative Judge of the Courts of New York
Office of Court Administration
25 Beaver Street, Room 852
New York, N.Y. 10004

Dear Honorable Judge Marks:

On July 6th our offices received word from the Administrative Judges in each of the NYC Supreme Courts that in-person appearances will be required, starting in the coming weeks, with Bronx County beginning as early as Monday, July 13, under the Phase 3 implementation. Any OCA plan to unilaterally require in-person appearances would directly contravene the latest Executive Order 202.48, which requires consent for in-person appearances. What is more, any such plan to require in-person appearances would constitute a gross deviation from all conversations and understandings with OCA to date. Given what we believed was a collaborative effort to guarantee a safe environment upon returning to live appearances in the midst of the COVID-19 pandemic, we were shocked to learn of this drastic change in plan. We had been given clear and absolute assurances that the courts were not planning to reopen, even in limited capacity, so soon and that we would receive sufficient notice when that was to occur. We strongly oppose re-opening for in-person appearances because it is not safe and it is not essential to do so.

It seems as if the Court plans to require litigants, our clients, to make in-person appearances on non-emergency matters such as Supreme Court arraignments and case conferences matters that have been done remotely very successfully until now. There is no specific reason that these mostly routine appearances should result in the endangerment of the health and well-being of anyone required to appear, including the parties and counsel. We adamantly oppose this plan and request that any calendared cases be adjourned and that no additional in-person matters be calendared at this time.

On June 24 and 25, OCA representatives, including the Chief Administrative Judges and Chief Clerks for the courts, along with staff and managers from all of our offices and our hired expert, CrowdRx, along with representatives of the Association of Legal Aid Attorneys and Local 1199 participated in a first round of tours at nine courts in Brooklyn, Manhattan and the Bronx. During these tours, OCA representatives made it clear that OCA had no immediate plans to bring the public or litigants back into the courts in any significant way at any time soon. We were promised that OCA's externally hired epidemiologist would consult with CrowdRx on plans and


protocols and that we would be given the opportunity for CrowdRx to present their recommendations. CrowdRx has not yet presented its recommendations concerning the safe operation of the courts nor have they spoken to OCA's expert.

It is well established that the COVID-19 pandemic has had a disproportionate impact on low income Black and Brown people, the same community that is also disproportionately arrested and represented in court cases in NYC and will bear the brunt of this new policy. For example, people living in the South Bronx suffer from one of the highest percentage-positive rates of COVID-19 in New York, on par with other hot spot locations across the country. We note that such locations are taking measures to slow the re-opening of public venues, making the choice of in-person appearances the Bronx courthouse, which is located in the high-incidence area, so surprising and inexplicable. In addition to facing the death and debilitation of COVID-19, it is people from the same communities who shoulder the economic disparity and challenges associated with lack of alternative childcare and/or lack of paid vacation or sick time that are needed to make an appearance in person. Finally, like many New Yorkers, our clients will need to use the subway system, bus routes or other public transportation to travel to and from court, which many say is far too unsafe, even in Phase 3. These grave and unnecessary risks are compounded upon everyone who works within the courthouse as well as contributing to the number of people out in the public who can potentially transfer the virus. It is entirely inappropriate to reopen the courts to the public before all health risks have been evaluated and addressed.

Given all of this, requiring clients to come to Court for a non-emergency matter is simply unjust and fails to recognize the enormous burden this places on them, their families and communities, as well as on our staff, the staff of the District Attorneys' offices and the court personnel. It makes even less sense given that the Governor's Executive Order has continued the suspension of the right to a speedy trial until at least August. This relieves any legal pressure on the court to force cases along. Moreover, there have been many cases that have progressed or even been resolved without any live appearance at all.

For all the above reasons, we request that the Court discontinue the plan to commence live appearances until our experts have the opportunity to work together to develop plans and protocols for returning to Court in a safe manner and even then, only upon consent for cases where there are no better and safer options.

Sincerely,



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cc: Elizabeth Glazer, Director of Mayor's Office of Criminal Justice