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NYC Public Defenders File Federal Lawsuit to Halt OCA's Rushed and Dangerous Decision to Reconvene In-Person, Non-Emergency Court Matters

OCA's Proposal Violates the Americans With Disabilities Act, Fourteenth Amendment of the U.S. Constitution, and Rehabilitation Act of 1973

(NEW YORK, NY) - The Legal Aid Society, Brooklyn Defender Services, The Bronx Defenders, New York County Defender Services, Neighborhood Defender Service of Harlem and Queens Defenders filed a [lawsuit](#) today in the United States District Court for the Southern District of New York against the New York State Office of Court Administration (OCA) to prevent the rushed, dangerous, and unilateral decision to reconvene in-person, non-emergency court matters scheduled for Wednesday of this week.

The lawsuit argues that OCA's proposal violates the Americans with Disabilities Act (ADA) by depriving thousands of people who have medical vulnerabilities or other disabilities the opportunity to seek and help develop necessary accommodations from the Court. This forces people to choose between their health and their liberty, because if they do not attend court they can have a warrant issued and potentially be incarcerated.

The in-person appearance order implicates fundamental constitutional rights, including, at the least, due process of law, protections against arbitrary action of government, and excessive exercise of government power.

To give but one example, this order has put public defenders in a position of having to advise clients that they might be imminently required to appear in court without knowing for certain which people will actually be affected, the posture of cases that might be selected, or whether the court's COVID-19 planning will sufficiently protect people in court or will permit requests for reasonable accommodations.

Lastly, OCA's proposal violates the Rehabilitation Act of 1973 which prohibits any entity that receives Federal financial assistance - including New York's court system - from excluding a person with disabilities from participating in any of their programs or activities.

OCA's policy does not consider a persons' disability and does not provide reasonable modifications, including but not limited to virtual court appearances and enough advance notice of their court appearance, that people with disabilities need to participate safely and equally in these court administered programs.

The NYC Defenders stated: "For weeks, under the persistently trying conditions created by the coronavirus pandemic, we have attempted to work with OCA on the complicated task of balancing protection against COVID-19 infections, proceeding with cases, assuring due process, and ensuring access to the courts. OCA's sudden issuance of an order requiring in-person appearances in criminal courts—without a clear plan to ensure the safety of people attending those proceedings—not only contravenes commitments made by OCA, but also fails to strike an appropriate balance among these compelling and sometimes competing interests. OCA's proposal is illegal and we look forward to rectifying this situation for our clients and staff in Federal court."

Background

On Thursday, July 9, 2020, OCA issued an order, which for the first time advised that in-person appearances would commence in New York City criminal courts on Wednesday, July 15, 2020 - less than a week later. This was contrary to OCA's indications that in-person appearances were not imminent and that OCA would coordinate with health and safety experts retained by the NYC Defenders, as well as the epidemiologist retained by OCA, to assess the safety of court conditions.

This assessment and coordination has begun (with the knowledge, consent, and participation of OCA) but is not yet complete. The in-person appearance order violates this understanding, as well as the commitment of OCA to obtain and consider recommendations of their own epidemiologist who was to confer with experts hired by the defenders.

OCA provided no explanation for the abrupt refocus from maximizing virtual appearances to requiring in-person appearances, even where virtual proceedings remain feasible. Under the new order, people would be required to leave their homes—in communities with high infection rates—to attend non-essential and unnecessary court appearances, thereby increasing risks to people appearing, their families, court personnel, and the community. Throughout the city, people have suffered devastating consequences from COVID-19, consequences that are most severe for low-income people of color. People charged with crimes must appear when summoned to court or face revocation of bail, issuance of a warrant and potential incarceration.

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