



**RECOMMENDATIONS TO THE
COMMISSION TO REIMAGINE THE FUTURE OF
NEW YORK'S COURTS
ON PANDEMIC PRACTICES**

July 15, 2022

**Submitted By:
Latino Judges Association
Hon. Walter Rivera, President**

The Latino Judges Association is submitting this Report in response to the request for written submissions made by the Commission to Reimagine the Future of New York's Courts.

The members of the Latino Judges Association hail from all the courts throughout the Unified Court System. As such, our comments and recommendations are gathered from a variety of perspectives and have general applicability to the entire court system.

The Latino Judges Association formed its own Pandemic Practices Working Group to examine the issues regarding pandemic practices and prepare this report. The members of the working group are as follows:

1. Hon. Walter Rivera, Court of Claims, White Plains District;
2. Hon. Lourdes M. Ventura, Supreme Court, Queens County;
3. Hon. Wilma Guzman, Supreme Court, Bronx County;
4. Hon. Rita Mella, Surrogate's Court, New York County;
5. Hon. Fiordaliza Rodriguez, Family Court, Bronx County;
6. Hon. John A. Howard Algarin, Civil Court, Bronx County;
7. Hon. Edwin Novillo, Criminal Court, Queens County;
8. Hon. Elena Goldberg-Velazquez, Yonkers City Court, Westchester County;
9. Hon. Enedina Pilar Sanchez, Housing Court, Queens County;
10. Hon. Maritza Fugaro-Norton, Cortlandt Town Court, Westchester County.

Comments and observations as to how the courts operated during the pandemic:

The rapid pivoting to virtual proceedings was unprecedented and embraced by our members. The deployment of equipment to judges and authorized staff was widespread and done in a swift manner by the Office of Court Administration ("OCA") to enable virtual proceedings to proceed.

It appeared, during the height of the pandemic, that part of the blame for the rise in crime was unfairly laid at the feet of the judiciary due to a perception that the courts were not open or running effectively. Nothing could have been further from the truth. Judges handling matters that were categorized as essential were physically present in the courthouses and those that were not physically present in the courthouses were working remotely in an effective and efficient manner.

The pandemic has taught us the necessity of flexibility and electronic operations provides that to us. Technology allows us to order goods and services of all kinds 24 hours a day, 365 days a year. We are quickly getting used to this –not so new– way of satisfying our needs and the public now demands and expects to be served in this fashion. Court users will demand soon enough that services be provided at the precise moment they need it. In the 21st Century, courts will need to be cognizant of this reality and prepare to meet those demands.

The divide between those with access to technology and those without should not be viewed as an insurmountable obstacle. In April 2021, the Pew Research Center reported that 97% of people in the United States owned a cellular phone and 85% percent of them owned a smartphone. Thus, not owning a computer is not necessarily determinative of one's ability to access electronic data and communications.

The following anecdotes demonstrate how various courts operated during the pandemic.

The Court of Claims, Supreme Court, Criminal Court, Family Court, City Courts, and Housing Courts handled a significant number of virtual conferences and trials during the period when in-court proceedings were restricted to essential matters. This list is not exhaustive.

The first few weeks of the pause of in-person operations in the Surrogate's Courts throughout the state were difficult to say the least. In New York City alone, at the beginning of May 2020, the official death toll due to Covid-19 was more than 19,700. The virus hit hardest in low-income communities and communities of color, including Latinos. At a time when family members of those who had died were in most need for the services provided by the Surrogate's Court, the Administrative Orders that were in place at that time limited the type of proceedings that could be processed in person to those considered "essential." The staff of some of the Surrogate's Courts outside New York City had been informed by their respective Administrative Judges or District Executives that matters in their courts were not deemed essential. As such, the many families who needed access to decedents' houses and apartments to search for burial instructions, life insurance policies to cover funeral expenses, or even clothes to bury their loved ones, were left without recourse. Only the Surrogate's Court can grant such access to families that lost loved ones when their deceased relative had lived on their own and died alone in their residence.

Thankfully, that all changed on May 15, 2020, when, by Administrative Order No. 99-20, Chief Administrative Judge Lawrence K. Marks included all matters in Surrogate's Court related to an individual who passed away from Covid-19 on the list of essential matters that could be handled. Before that, no matters could be handled by the Surrogate's Courts, either in-person or virtually, unless they were on the list of essential matters by the courts. Together with this change, OCA made it a priority to provide resources, including laptops and remote access to the court's databases through VPNs, to the staff of these courts so that the public could be better served.

Like all other courts, the Surrogate's Courts embraced the use of technology to provide services during the in-person pause and have continued this practice. Not surprisingly, there are benefits and drawbacks related to the Surrogate's Courts' adoption of technology in their operations. It bears mentioning that the facility with which people could access the Surrogate's Court and court proceedings through e-filing and virtual means increased the number of filed or contested matters that, upon examination, turned out to be of a frivolous nature. For example, persons that appeared virtually increasingly voiced their unhappiness with a petition but did not articulate any cognizable or law-based reason to object.

In Queens Housing Court, some of the virtual trials and hearings experienced challenges with the technology when both sides needed an interpreter. More specifically, the judge was unable to observe the demeanor of the litigant and translator. When there were two translators and multiple languages involved in the proceeding, it required that the court constantly pause to allow for the translation of the testimony to English and back into the two other languages. This scenario proved to be the most challenging, especially when the proceedings were virtual.

During the Covid-19 Pandemic, court conferences at Yonkers City Court were conducted virtually in the Chambers of the assigned judge. The data entry Clerk was at their desk, located in separate area of the courthouse from the judge. The Calendar Clerk would usually be at their desk, or in the judge's Chambers maintaining the requisite social distance, to call the case and mark the file jacket. This process was beneficial for the court and the attorneys as the conferences were conducted efficiently and expeditiously. When the judge was required to mark up the internal "judge sheet" and the file jacket, this process took more time as the judge had to continuously break before the next case was called to ensure the file jacket was properly marked.

Upon the return of judges and staff to the Yonkers City Courthouse in May 2020, the Clerical Staff and Court Officers were physically present in the courthouse on a two-week rotating basis. The rotating basis was to ensure that if someone was infected with Covid-19, the two-week period they were home in quarantine would ensure they did not have Covid-19 upon their return to work. However, the judges were required to be in the courthouse every day and did not have a rotating schedule. Social distancing and the mask policy were adhered to both in the courtroom and outside of the courtroom. There was no plexiglass in the courtrooms. Rather, social distancing requirements were enforced.

Adoption of ADR conducted by remote means in the Surrogate's Court, Court of Claims, and many other courts made a difference in handling and resolving contested matters that could not be scheduled for a hearing or trial because they were not considered essential.

Recommendations that should be made permanent:

- Our Association is of the view that the continued use of hybrid and virtual trials/hearings/conferences serves unrepresented litigants and families who would otherwise have to take off an entire day from work or arrange for childcare to address the court matter. There are also significant cost savings for out-of-town fact and expert witnesses who do not have to travel to court and can instead testify remotely. Lawyers are now much more comfortable with virtual proceedings (i.e., hearings, conferences, bench trials) and the expansion to virtual jury trials is recommended. Courts should look to move towards much greater use of technology in all aspects: filing, record keeping, and virtual appearances.
- Additionally, we recommend that courts be equipped with computers in each courtroom to enable easy access to virtual files and the handling of virtual appearances and that judges and support staff be provided with up-to-date laptops for potential remote work;

- As a result of the pandemic, certain proceedings being held virtually have proven to be efficient and effective. Such proceedings include conferences, hearings, and bench trials. We recommend that a variety of conferences, including but not limited to discovery, settlement, and pre-trial conferences be held virtually. In the same vein, we recommend that hearings be held virtually, including but not limited to infant compromise hearings, approval of transfers of structured settlement payment rights, and mental health returns on warrants. In addition, we recommend that oral arguments and conferences on motions and orders to show cause be held virtually. We must of course remain mindful of the litigant's ability to access virtual proceedings via computer or smartphone. Access can also be arranged via telephone as appropriate;
- We recommend the promulgation of a new Court Rule setting forth the parameters for the continued use of virtual trials/hearings/conferences;
- Inasmuch as plexiglass in courtrooms still provides an added measure of protection from contagions, we recommend that plexiglass be installed in any courtrooms used for hearings and trials lacking such protection;
- We recommend the expansion of HELP CENTERS, both in-person and virtual, for unrepresented litigants with links to Microsoft Teams and virtual proceedings. Increased access to assistance with forms and information provided by court staff in multiple languages is also recommended;
- We recommend a *mobile* kiosk that can travel to underserved communities and rural areas on a rotating basis. The mobile kiosks can provide access to Teams and be used for virtual court proceedings. They should be equipped with "Hot-spot" zones to allow unrepresented litigants and indigent defendants to make virtual court appearances and gain access to the resources of the HELP CENTER referenced above. The mobile kiosk will also benefit the elderly and disabled court users that may otherwise have difficulties in getting to a courthouse. We recommend that interpreters be available on site or virtually to assist court users who do not speak English. A pilot program is recommended on the use of such a mobile kiosk;
- Mindful of the success and effectiveness of the OCA video on implicit bias that is shown to potential jurors, we recommend the creation of a video explaining how to navigate and participate in virtual trials/hearings/conferences for unrepresented litigants. This video should include instructions on how to upload exhibits to be used at trial;
- Subject to budgetary constraints, we recommend the deployment of additional laptops for use by judges and court staff at home until the final vestiges of the pandemic are well behind us. This will enable judges and court staff to work remotely without any loss of productivity should there be another spike in Covid-19 cases as well as allow for such use by judges and court staff when they are required to quarantine;

- We recommend that training for judges on the best practices for virtual proceedings (both fully virtual and hybrid) should continue and be incorporated into the NYS Judicial Institute’s curriculum on a permanent basis;
- We recommend the continuation of online training on NYSCEF and Microsoft Teams for judges, court staff, and court users, particularly to stay abreast of new developments and enhancements;
- We recommend the creation of a secure evidence section in NYSCEF for all index numbers without public access, which would be separate and apart from the Virtual Courtroom. An examination of needed protocols for uploading screen shots of text messages into NYSCEF is also recommended;
- We recommend the expansion of the 9th Judicial District’s Faith-Based Court Access Initiative to *public spaces* throughout the state to include state hospitals, SUNY campuses, and public libraries. The subject Initiative allows unrepresented litigants who do not have computers and cannot afford a lawyer to access Court Help Resources and Do-It-Yourself documents, and to attend virtual proceedings at dedicated spaces within local churches;
- We recommend that there be a public information campaign to determine which community organizations can secure funding for iPads/laptops and headphones to make them available to their constituents that have proceedings in Family Court (or other courts) for virtual court appearances;
- We recommend that the Unified Court System partner with non-profit organizations willing to undertake a project to do outreach to technology companies (Apple, HP, Dell, etc.) to seek donations of used iPads/laptops for deployment to unrepresented litigants who lack said resources;
- We are mindful of recent efforts by OCA to increase the hiring of interpreters and recommend that those efforts continue on an expedited basis for courts across the five boroughs as often proceedings in Family Court are delayed due to the lack of an interpreter;
- We recommend the creation of a centralized electronic filing system for Criminal Court for each case that would be similar to NYBench/CHRS. The system would contain all the paperwork from a case file. Such a system would allow all electronic motions/filings to be processed by docket number and automatically added to the electronic case file. The long-term benefits are that it is far cheaper to store electronic files through cloud storage than physical files in warehouses. This would also allow remote work for clerks and other court staff. Additionally, court files are generally meant to be public records and it is recommended that a system be created that would allow the public to inspect electronic case files with proper redactions faster and with greater ease;

- We recommend a bright line Court Rule as to whether electronic filings for a given day are accepted until 5:00 p.m. or midnight;
- Currently, EDDS is apparently not sorted by docket number. We recommend that court users be able to simply type in the docket number when submitting papers;
- Currently, in Criminal Court, there is a mix of both virtual and in-person court appearances. Most in-person court appearances are for hearings and trials. However, there are certain instances where defendants are appearing in person where nothing substantive is going on with their case. Examples of this include discovery conferences, conferences for the attorneys to submit their motions, or adjournments for the court to render a decision on motions previously submitted. While most appearances for these matters are still virtual, the trend appears to be swinging in the direction of requiring in-person appearances by defendants for all criminal cases. If fully implemented, we recommend that in-person appearances by defendants be excused in those instances where the defendant's appearance is not essential. In the alternative, if virtual appearances remain an option, we recommend that appearances by defendants in the enumerated instances be strictly virtual. This will have the added benefit of greatly reducing foot traffic in the courts, thereby reducing and limiting the possibility of the spread and exposure to Covid-19 and other communicable diseases;
- It is noted that any confusion regarding whether court appearances are virtual or in person can result in defendants and litigants missing court dates. Such confusion can be minimized by clear communication with all parties and having all court notices posted on the court's website;
- We recommend the creation of a 24/7 HOTLINE for litigants that lack the technology to access the courts or do not understand how to use the technology, even if they have access to it;
- We recommend that language access be reinforced with the hiring of additional interpreters dedicated to remote proceedings and servicing the aforesaid hotline;
- We recommend additional training for judges, court staff, and court users as to the use of interpreters in virtual proceedings;
- In cases in which court users have no or limited access to technology that would permit an audio-visual court appearance, we recommend a telephonic appearance, under certain specified conditions permitting verification of the identity of the appearing party. As noted above, the establishment of public access points in places such as libraries, colleges, churches, synagogues, and community centers, by partnering with those community-based organizations, would facilitate access to technology. For the elderly, the disabled, and those without private transportation means, this will serve to expand access to justice;

- We recommend the adoption of virtual or remote appearances at the process calendars in Surrogate’s Courts. Return of process pursuant to the Surrogate’s Court Procedure Act must be made before the court that issued the process and having virtual process calendars (which included appearances by telephone) allowed many individuals who otherwise would not have been able to appear to participate in court proceedings. This is particularly important in Surrogate’s Court practice because respondents (including members of a decedent’s extended family) can—and often do—reside in other states or countries. We recommend that this practice be continued;
- We recommend the continuation of virtual appearances at motion calendars for oral argument and conferences as well as the adoption of e-filing in all courts;
- We recommend greater access to Spanish and other interpreters through virtual means, especially for those courts that do not have interpreters on staff. Interpreters from any county can participate in court proceedings held virtually or in person in another county by appearing virtually;
- Most if not all Surrogate’s Courts and the Court of Claims operate with an antiquated database called ADBM. This database interacts very poorly, if at all, with NYSCEF and, especially in high-volume courts such as the Surrogate’s Courts in NYC, creates significant delays in the processing of cases. The adoption of e-filing through NYSCEF is, without a doubt, the major cause of the current substantial backlog in the processing of cases in the Surrogate’s Courts. We recommend that OCA upgrade this database on a priority basis;
- We recommend that the link for “Virtual Court Appearances for the Public” be placed on the home page of the NYCOURTS.GOV website. At present, the public must first click the box on the home page entitled “Information about Coronavirus and the Courts” before accessing another page containing this link;
- Looking forward, in the instance that another historic pandemic and associated societal shut down should occur, we recommend that the protection of judges, easily the foundational pillars of any society of laws, be enhanced by having judges work on a rotating basis in those courts that must remain open for in-person proceedings;
- Finally, we recommend that an associated public relations campaign be organized, when and if necessary, to assure the public that the laws are being enforced to their fullest extent and that the wheels of justice are still turning even when judges are working remotely due to unforeseen and emergency circumstances such as the pandemic.

Thank you for your consideration. Please do not hesitate to contact us if further information is needed.

Respectfully submitted,

Latino Judges Association
 Hon. Walter Rivera
 President