



METROPOLITAN BLACK BAR ASSOCIATION

“injustice anywhere is a threat
to justice everywhere”

MBBA TESTIMONY AT STATE SENATE JOINT PUBLIC HEARING TO EXAMINE THE RE-OPENING AND OPERATION OF NEW YORK’S COURTS DURING THE COVID-19 PANDEMIC

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Friday, August 21, 2020

The Metropolitan Black Bar Association (the “MBBA”) is the largest association of predominantly Black attorneys in the State of New York. Since 1984, the MBBA has faithfully promoted its mission to advance equality in the pursuit of justice and address legal issues affecting all New Yorkers. We take pride in creating a network of over 4,000 supporters and providing a voice for Black legal professionals in the communities we serve. Accordingly, we thank Senator Hoylman, Senator Bailey, Senator Kavanagh, and all members of the Senate Standing Committee on the Judiciary, Senate Standing Committee on Codes, and Senate Standing Committee on Housing, Construction and Community Development for the invitation to testify on this pressing issue of court re-openings and operations in light of COVID-19.

As you know, COVID-19 has had a devastating effect upon our state, especially within the City of New York. Black and Latino people, in particular, have been disproportionately affected. In New York City, the virus has killed Black and Latino people at twice the rate of their white counterparts. Many have worked on the frontlines during the pandemic. They are our healthcare workers, child care providers, and bus drivers that live in Brooklyn, Queens, and the Bronx--boroughs that have especially been hit hard by COVID-19 with tens of thousands testing positive for the virus. Since the peak of the pandemic, municipal action, social distancing measures, and the mandated use of masks have helped bring New York’s infection rate down to one of the lowest in the country. Executive Orders limiting unnecessary gatherings and non-essential functions around the state have saved countless lives. This progress cannot be lost in a rushed, tunnel-vision approach to return to pre-COVID-19 normalcy. No one entering a courthouse in New York should have to make a decision between prioritizing their legal case, or their health. Instead, we must continue to move forward recognizing that until we have an effective vaccine, COVID-19 remains a deadly threat.

It is for this reason, and the reasons listed below, that the MBBA strongly urges the courts to: 1) prioritize virtual appearances and 2) accommodate telephonic appearances whenever litigants lack technology to appear virtually.

I. Prioritize Virtual Court Appearances

Since the beginning of the pandemic, New York State Unified Court System (“UCS”) judges and staff have heard over 160,000 essential and emergency matters, the vast majority of which have been heard in the virtual courts which started up in late March. This is no small feat and UCS should be commended for its efforts.



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Many of our members, however, have expressed concern that the virtual parts have been operationally limited across practice areas for the last five months.

In lieu of investing more time and technology into making sure that every part can handle a virtual docket, some UCS actions seem to rush to return to in-person proceedings even though many questions remain about how safe that will be. For example, CDC guidelines explicitly recommend ventilation systems that maximize outside air flow in reducing transmission of the virus. However, courtrooms in Bronx Supreme Court – Criminal Term, do not even have windows that can be opened, let alone publicly available information as to the efficacy of each courtroom’s air filtration system. That notwithstanding, in-person appearances are currently being compelled in those very courtrooms, which makes no sense. Until UCS and the Office of Court Administration (“OCA”) can confirm with specificity and transparency that their facilities fully adhere to the CDC’s guidelines, we urge the courts to prioritize virtual appearances. This is especially true where the appearance concerns a status conference, calendar call, or related matter where the physical appearance of the parties is not truly necessary.

II. Accommodate Telephonic Court Appearances

We further exhort the court system to accommodate telephonic appearances whenever litigants lack technology to appear virtually. If litigants are unable to appear by telephone, only then—as a last resort—should the courts schedule in-person appearances. And in those instances, UCS must continue enforcing its protocols mandating social distancing, facial coverings, and temperature checks upon entry of the courthouse. Each courtroom must feature strategically placed plexiglass barriers. In addition, UCS should ensure that judges conduct in-person appearances in the largest courtrooms, such as the ceremonial courtrooms located at 60 Centre Street (Manhattan) and 851 Grand Concourse (The Bronx).

Ideally, every court part should be able to handle a larger docket of virtual appearances to address the backlog that is currently in the system. The practical implication is that the system desperately needs stenographers and clerks able to work virtually because many of them are currently not working at all. Especially in New York City’s Family Courts, where parties have long-faced challenges in obtaining high-quality transcripts, our members report that those courts typically have but two virtual parts up and running to hear the thousands of child protection and juvenile delinquency matters pending across the city. So many families, particularly in Black and Latino communities, currently have no forum by which to litigate the reunification of their families. Not only is this an urgent due process issue, it is one that strikes the heart of many Black and Latino families, given the demographic data reported by the Administration for Children’s Services.

We cannot allow our courthouses to inflict collateral damage upon the communities already hit hardest by COVID-19. At the height of New York City’s crisis in April, 61% of Hispanic Americans and 44% of Black Americans said they or someone in their household had experienced a job or wage loss due to the coronavirus outbreak, compared with 38% of white adults. This sad reality will inevitably have a disparate impact upon cases brought in housing court, family court, and criminal court. As docket backlogs will inevitably grow, the system must prioritize matters that affect litigants hit hardest by the pandemic, especially those at highest risk for contracting or transmitting the virus.



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For instance, with respect to landlord/tenant matters, real thought should be given to the role UCS will play when Governor Cuomo's suspension on eviction comes to an end. The influx of cases may require strategic long-term docketing of cases to allow certain tenants an opportunity to get back on their feet and to not create a secondary housing crisis. At the same time, warranty of habitability matters may need to be prioritized to keep tenants from living in squalor while landlords take advantage of the backlog in the system. The court should accept electronic filing to allow attorneys and litigants access to remotely commence actions and review court related paperwork.

In conclusion, the MBBA does not want to see any further COVID-19 related damage to our community. As Black and Latino New Yorkers bore the brunt of COVID-19's first wave, we have a particular interest in making sure that as court proceedings trend back toward pre-pandemic norms, that policies are in place to sufficiently protect Black and Latino litigants and litigators from further damage. We thank you for taking our testimony in serious consideration, and hope to continue to be a part of this conversation.

Respectfully submitted,

The Metropolitan Black Bar Association