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I, Jeffrey Saltiel, am offering the following testimony to the Senate on the issue of the reopening of the Housing Courts. I have practiced for the last 25 years almost exclusively in the area of landlord tenant law, first as a sole practitioner and then as a partner in 2 different firms. I am currently the managing partner at Wenig Saltiel LLP, where I have been a partner for the last 18 years. I have appeared in the Housing Courts in all 5 boroughs, but primarily in Kings and Richmond Counties. I have represented both landlords and tenants and have served as a guardian ad litem in over 300 cases over the last 20 years. I have conducted trials on an almost weekly basis, and often several times per week. For the majority of the last 12 years, I have served as either Vice President or Treasurer of the Kings County Housing Court Bar Association and since the transition to virtual communications the last several months, I have been responsible for disseminating information to members and receiving countless questions from the bar as to the continuous changes in procedure. I have taught many continuing legal education classes in the area of landlord tenant law. I have also served as a small claims arbitrator for the last 15 years and as an attorney fee dispute arbitrator for the last 5 years.

I recently did the first in person 'trial' (settled) in Staten Island on August 13th. As of the date of the Senate hearing, it was the only in person trial scheduled in that county so far. I have some observations, below, that I want to share with you that belie or clarify the messages being sent by the court system.

I and my clients (both landlords and tenants) have serious reservations about doing in person trials in Kings county stemming from safety concerns getting to and entering the courtroom (several weeks ago and, as I understand, this week there were numerous protests which continued as break ins and trespasses to neighboring law offices). To attend a trial, many litigants and attorneys would be forced to take a sometimes lengthy trip on a public bus and/or a train, perhaps with their children as the schools are not yet in full operation. This needlessly

exposes them to hundreds of other people, many of which who do not respect social distancing requirements.

I am of the opinion that the in-person trials are window dressing for the court system to advertise that they are not closed and are operating close to 'business as usual'. The truth is that the administration and the legislature have basically stripped judges of all of their power and ability to exercise their discretion, while neglecting to address close to 99% of the cases currently pending in the Housing Court. At this juncture, many attorneys feel badgered to appear for in person trials on cases where a trial may not even be necessary, as if the judges have been directed to hold as many in person trials as possible, to send the message that the courts are 'operating'.

Housing court judges are not elected but rather appointed based upon their credentials, which almost always include landlord tenant experience. As such, every housing judge I have appeared before has exercised their judgment and discretion in order to avoid the forfeiture of a tenancy and to provide services to those who cannot adequately represent themselves. In other words, to do what is necessary so that no one gets evicted accidentally whether they are too ill to appear in court, cannot communicate effectively, or are undergoing a financial situation where they can obtain assistance to pay all or most rent that is in arrears. Likewise, many cases present the situation where despite everyone doing what they can to help a tenant, and upon balancing the interests of the landlord, an eviction must proceed. Unique challenges are nothing new for skilled jurists who have previously had to incorporate 9/11, Hurricane Sandy, and even drastic changes in the law, to the things they have to balance when they mete out justice. So when the legislature, the governor, and the court administration prohibit them from fulfilling their mandate and living up to the oath that they made, I am troubled.

A few notes from my trial:

The court had most seats taped off – an officer would seat people – then another officer would come and ask them to move – then a clerk would come and tell them to move again. The end result is that they could not focus on what the judge was saying and I also could not focus because I was turning around to see what all the activity behind me was.

Court officers would not allow you to be within 6 feet of your client (or anyone else) which means that you cannot quickly speak to your client and you must go to a separate room instead, where you have to continue to be 6 feet apart. I foresee judges getting tired of taking breaks to have attorneys speak to their clients often, resulting in complaints that 'I wasn't allowed to speak to my client when I wanted to'. Further, looking at a document together with your client may not be allowed, unless you are 6 feet apart, which will likely make it impossible to properly look at the document together.

Having the court officers acting as chaperones when I was trying to have a private discussion with my client in a side room – supervising us to make sure we were at least 6 feet away and interrupting us if we got too close also creates numerous issues. Indeed, the most egregious is

that with the court officer standing in the room with you and your client, your conversation with your client is no longer privileged. That is a major problem as it violates the client's rights.

Due to social distancing requirements, litigants are often deprived of the ability to meaningfully prepare with their attorney prior to trial. In addition to not being able to meet with counsel, litigants may not be able to participate in virtual conferences leading up to trial and may not be able to secure witnesses' attendance at an in-person trial. Therefore, litigants may be denied the opportunity to meaningfully prepare witnesses, access and gather critical documents and evidence, and review the court's file in advance of an in-person trial.

Equally important, litigants are deprived of their ability to sit within six feet of their counsel during the trial, thereby preventing them from conferring with counsel during the trial in such a way that the attorney-client privilege will not be immediately breached. While the court may provide a separate room for counsel and parties to consult, this would interrupt the natural flow of questioning and does not allow for parties and their counsel to think on the spot and adapt. Due to the requirement that all individuals wear face masks, parties and their attorneys will be denied a meaningful opportunity to question witnesses and the Court and counsel will be unable to evaluate the demeanor of the witness and adjust questioning accordingly. As the finder of fact, the Court will be denied a meaningful opportunity to determine witness credibility.

There was only plexiglas between the judge and clerk and the judge and witness. No other plexiglas because as we were told 'DCAS could not get it'.

There are court officers standing everywhere which results in them not being 6 feet from others and therefore not socially distanced. There needs to be better organization on this front.

Even more problematic is that you can barely understand any words when people speak through masks more than 6 feet away from you. (and probably much less if an interpreter is needed)

The only intelligible conversation came when people consistently lowered their masks, which happened each and every time that I was able to understand what someone was saying. This is the most concerning situation of doing in-person trials. Many times (pre-Covid) people have trouble hearing each other given the acoustics and noise present in a courtroom. The new situation of less people, bigger rooms, partitions, and masks, creates an impossible situation where it is simply not possible to conduct a trial and hear what is being said absent the removal of one's mask.

The court provides rubber gloves and a small sanitizer on every table. Not sure what the gloves are for because no one uses them, even though they are supposedly there to handle trial exhibits. It is extremely difficult to handle papers with rubber gloves.

I could see how everything is so cumbersome and how it would be difficult to deal with a shared exhibit like a log book on a traverse hearing. It is also hard to concentrate and present your case properly when it is so hard to hear, people keep asking each other to repeat what they said, and when court personnel often ask you and your client to move and do other things while

you are concentrating on your case. Trying a case is a skill not shared by most. Even for a seasoned practitioner, it is practically impossible, and a logistical nightmare to conduct a trial with the present rules and restrictions.

Interestingly, court administration has been promising for months to provide PPE to all who need it when they enter the courthouse. That representation has changed to one of providing PPE so long as it is available. Now, some judge's rules provide 'adequate supplies of hand sanitizer shall be available' while others shift the burden for providing PPE to the parties by requiring 'all persons physically appearing in the courthouse are expected to provide their own Personal Protective Equipment (PPE) including, but not limited to, face coverings, face shields, protective gloves, and hand sanitizer.'

Among the questions they ask at the door to the courthouse is whether you have been in contact with someone who came from one of the other states with rising numbers, during the last 2 weeks. I haven't heard that question before and it is not one that businesses are required to ask per the posted NYC regulations, but I'm sure it will generate a lot of 'yes' answers, resulting in many last minute adjournments or worse, defaults.

I also asked whether I could review a file in the clerk's office and was told we cannot pull files and that if we needed something, we have to write a letter to the clerk requesting an appointment to see the file. I can see nothing but appeals over denials of such requests or an appointment that is so far delayed to be of no value. Likewise, when one cannot pull files from the Housing Court or Supreme Court, or get certified documents such as deeds, they may not have what they need to prepare or prove their case properly. That is in addition to law offices still having staff on furlough, not all businesses being fully open, and clients and witnesses being unavailable (including governmental agencies – I am still waiting 5 months for a FOIL request and have been told 'maybe in September').

In the ensuing months, some attorneys will be unable to personally attend a trial either because they are high risk or perhaps they have been temporarily furloughed from their position. While employers are mandated to accommodate health issues, that does not seem to translate to a court when a law firm is told 'have someone here' to try a case. As a result, the person who has been previously handling the case would not be the attorney to try the party's case in court and another attorney from their office, who does not have the history with the case or maybe the time to come up to speed, which is often about a week (which is the usual advance time frame in which judges are requiring in person trials) might have to be assigned to handle the trial. That person may not be the best attorney to try the case as someone else has handled the case since its inception and is intimately acquainted with the legal and factual nuances of the case. Attorneys do not relish 'picking up someone else's case.' Not to mention, as most attorneys are working from home these days, they may not have access to their firm's case file. Additionally, parties that have a rapport with an attorney are able to trust and confide in their counsel and this type of relationship cannot be quickly duplicated by just substituting in another attorney, especially as not all attorneys are trial lawyers.

I hope I have conveyed some idea of why the aggressive scheduling of “in person” trials, as opposed to scheduling conferences by skype or otherwise for the large number of pending cases, a large part of which are probably moot by now, does not appear to be the most productive way to move forward at this time. I strongly suggest that courts move forward with addressing all cases, new and old, residential and commercial, and let judges perform the functions of their appointment. I foresee numerous cases being discontinued as they are now moot, many cases being resolved through negotiated agreements, as well as some being scheduled for virtual or, eventually, in-person trials. Cases can move forward, but each must be addressed on its own facts. What appears very clear to me, is that if the court system continues to avoid handling large portions of the open cases, whether because a party does not have an attorney or when the case was filed or some other reason, then they will not catch up, while affording due process to litigants, for many years, if ever.

Respectfully submitted,

A handwritten signature in black ink, appearing to be 'Jeffrey Saltiel', written in a cursive style.

Jeffrey Saltiel, Esq.