

LEGAL SERVICES STAFF ASSOCIATION

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August 21, 2020 Joint Public Hearing: The Unified Court System and COVID-19
Judiciary, Codes and Housing, Construction and Community Development Committees

My name is Sonja Shield, President of the Legal Services Staff Association, NOLSW/UAW 2320. Thank you for the opportunity to testify about Covid-19 and the impact on the court system, low-income litigants, and their representatives.

We in the Legal Services Staff Association are a union representing the staff employees at Legal Services NYC (LSNYC) and Mobilization for Justice (MFJ) in New York City, providing civil legal services to low-income New Yorkers. We represent all non-management employees at LSNYC & MFJ – attorneys, paralegals, secretaries, social workers, fiscal and IT staff, process servers, maintenance workers, and more.

I am also here today on behalf of our national union, the National Organization of Legal Services Workers, Local 2320 of the UAW, which represents employees at legal services organizations both upstate and downstate, including the Legal Aid Society of Mid-New York, Legal Aid Society of Northeastern NY, Legal Services of Central New York, Legal Services of the Hudson Valley, Worker Justice Center of New York, Nassau/Suffolk Law Services Committee, National Employment Law Project, Urban Justice Center, Goddard-Riverside/West Side SRO Project, Housing Conservation Coordinators, and others.

Our advocates represent low-income New Yorkers facing eviction in housing court and termination of tenancy in NYCHA and HPD administrative proceedings; those facing wrongful foreclosures; families torn apart or threatened by unnecessary foster care placements; immigrants seeking a permanent home in this country; students seeking special education services or defense against wrongful and racist

disciplinary proceedings; workers cheated of their wages; and more. This work vindicating New Yorkers' rights takes us from housing court to State Supreme Court to family court to virtually every administrative forum in New York City.

My remarks today focus primarily on what we are observing in housing court.

Evictions are a Public Health Crisis

Evictions do violence to communities and families. This is even more so in the midst of a pandemic, when displacing someone from their home through either legal or extralegal means tears them out of the safest space available to protect against the virus: one's home. Job loss from the pandemic has caused unemployment to skyrocket, and each month increasing numbers of New Yorkers are unable to pay rent. Homeless New Yorkers are 61% more likely to die of Covid-19 than those who are housed; to protect New Yorkers and all of our communities, it is imperative that we keep people housed.

We therefore urge you to pass these critical bills:

First, the **Rent and Mortgage Cancellation Act of 2020** (Salazar/Niou) (A8802/A10826). This "cancel rent" bill would cancel residential rent payments that came due between March 7th and the end of New York State's state of emergency, plus 90 days. Tenants would not have to jump through hoops to prove hardship, and would not be subject to eviction or money judgments against them. Landlords could qualify for reimbursement of the canceled rent by promising to freeze rent for five years and committing to not evict tenants without good cause.

Second, the **Emergency Housing Stability and Displacement Prevention Act** (Myrie/Reyes) (S8667/A10827) would extend the universal eviction moratorium for one year, barring new housing court filings, execution of warrants of eviction, and the filings of money judgments for a year after the pandemic. This bill would apply to both commercial and residential tenants.

Third, the **Housing Access Voucher Program** (Kavanagh 7628A /Cymbrowitz A9657A). This bill provides vouchers to rehouse New Yorkers experiencing homelessness. This state-funded statewide rent support program would assist New Yorkers in moving out of shelters and off the street into permanent housing.

Fourth, the “**Make Billionaires Pay**” package of bills (<https://makebillionairespay.info/>). During this pandemic, New York must turn to budget justice – austerity is not the answer. Our state is home to a major international stock exchange, some of the most expensive real estate anywhere, and many of the world's richest people, including 118 billionaires. To survive this pandemic and take care of our most vulnerable, we must make the ultra-wealthy pay their fair share. We urge you to pass the "Make Billionaires Pay" package of bills, which would, among others, raise income (S.7378 / A.10363) and wealth (S.8277 / A.10414) taxes on the ultra-rich; end the absurd rebate of the stock transfer tax (S.6203 / A.07791); tax luxury goods like yachts and jets (S.7135 / A.9053) and multi-million vacation properties (S.44 / A.4540) at a reasonable rate; and implement fair tax policies for corporations and the real estate and finance industries (including S.303 / A.3976; S.6203 / A.07791; S.7629 / A.09748; S.1659 / A.7454; S.7238 / A.8848; S.7231 / A.9041; S.7231 / A.9041; S.8056-A / A.10706).

In addition, we can anticipate that once the eviction moratorium ends, many newly poor and newly jobless New Yorkers will begin receiving eviction notices. Many will qualify for free legal services from the organizations whose staff we represent. In order to provide high-quality legal services to all who qualify, we will need more funding. We cannot count on the federal government and so it is incumbent on New York State and City to protect its residents by funding legal services providers.

Black Lives Matter

Communities of color in New York are bearing the brunt of the virus's impact: Black and brown New Yorkers are more likely to be essential workers who cannot perform their jobs remotely, more likely to live in overcrowded conditions exposing them to others who may carry the virus, and more likely to be un- or under-insured and to face discrimination in healthcare and housing.

Although average Covid rates are low across New York, these averages mask significantly higher rates in communities of color. For example, *The City*¹ reported that in Sunset Park, a majority Latinx and Asian neighborhood, the Department of Health found weekly positive test rates as high as 5%, compared to a citywide average of 1-2%.

¹ Irizarry Aponte, Claudia; Bhat, Suhail; and Welch, Will, *COVID Test-Wary Sunset Park Gets Stepped-Up City Attention to Ward Off Outbreak*, *The City*, August 12, 2020, available at <https://www.thecity.nyc/coronavirus/2020/8/12/21366016/covid-testing-sunset-park-brooklyn-coronavirus-spread>

New York University's Furman Center recommends that "[t]he most effective way to prevent existing inequalities from increasing homelessness in communities of color is to keep cases out of housing court."² Unfortunately, this is the opposite of New York's housing courts are doing.

Eviction cases filed on or before March 16th are now mandated by OCA to move forward, either virtually or in person. Evictions through either virtual or in-person methods are contrary to public health goals of protecting health by preserving housing for all. We urge the State Senate to heed the words of the tenant-led Right to Counsel Coalition which demands that "All eviction proceedings, in all venues, should be suspended, period...No one should have to face the stress of becoming homeless or arguing their case, in person or virtually, during a pandemic. Evictions and eviction cases negatively affect the health of tenants. There is no public health reason to proceed with eviction cases, on the contrary moving eviction cases creates a public health crisis. We therefore can't support eviction cases moving forward at all."

Our union has significant concerns about both virtual and in person proceedings.

Virtual Proceedings Raise Due Process and Technology Concerns

In addition to the stress and trauma caused by having one's home threatened in the middle of a pandemic, virtual trials of New York City housing court proceedings raise due process and technology gap concerns.

Many tenants, both *pro se* and those with representation, as well as their witnesses, lack access to technology such as high-speed internet sufficient to be able to adequately or meaningfully participate in virtual proceedings. Despite this, on August 12th, Hon. Anthony Cannataro issued DRP 213 allowing the court to issue orders of eviction against tenants who fail to attend, whether virtually or in person.

Many parties and witnesses lack any access to adequate cellular data or wi-fi, and may have other limitations such as having a device with a large enough screen or high-enough resolution that enables to view evidence or the parties clearly. Many may lack capacity to download any offered exhibits prior

² Ezrapour, Eliza, *Housing Justice in the Pandemic Age*, NYU Furman Center, July 27, 2020, available at <https://furmancenter.org/thestoop/entry/housing-justice-in-the-pandemic-age>

to hearings, as recommended. OCA has not taken steps to ensure that all litigants and their witnesses would have adequate access to overcome these issues.

In addition, housing court proceedings rely heavily on documentary evidence with original copies typically examined in person. Under current practices, it may be impossible to evaluate the authenticity of documentary evidence offered for the record, including whether the document shown has been modified, for example, dates, content and signatures changed. OCA has not taken steps to implement any evidence management system to control access and storage of digital documents. OCA has also failed to provide and clearly communicate the process for submitting evidence uniformly and securely, including page numbering, the naming of exhibits, markup of documents, and file size limitations.

As a final example, many housing court litigants participating remotely may not be alone wherever they are able to participate, which raises a number of serious issues. It may be impossible to verify whether a party is within earshot of a non-party witness. Testimony from the non-party witness may be tainted.

Housing Court is Not Safe

The Office of Court Administration's decision to begin holding in-person trials forces the poorest and most vulnerable New Yorkers, who are predominantly people of color, along with their advocates, to travel on the busses and subways to antiquated courthouses, putting their lives at risk in order to protect their housing. This is not a choice that anyone should have to make. Our clients, who are largely people of color, are being unnecessarily exposed to the virus, and then must return to their communities where they might unwittingly expose others. We urge the Legislature to scrutinize closely which courts are opening quickly and which communities are being most harmed by these re-openings.

In addition to the risk of exposure caused by forcing people to travel to the courthouses, the physical court buildings are not safe for mass gatherings or prolonged periods of time. The Office of Court Administration has not yet provided full information about the state of their buildings, but what we have learned so far is troubling. One example among many is the HVAC systems.

Covid is now being shown to be an airborne disease spread through aerosol transmission. Adequate air circulation and filtration is key to being able to ensure a safer indoor environment. The best safety standards call for Minimum Efficiency Reporting Value (MERV) 15 filters, and Governor Cuomo requires at least MERV 13 or 14 in other public accommodations such as malls. However, only one-

third of New York City courthouses have MERV 13 or 14 filters, and most of the rest have only MERV 8 filters, which is a low-efficiency filter that is unlikely to be effective at filtering particles and droplets containing SARS-CoV-2. At present, therefore, most of our courthouses are not able to adequately filter Covid from the courthouse environment.

To protect the health of litigants, court staff, and our communities, it is imperative that the Office of Court Administration provide full transparency about the physical condition of its courthouses and work collaboratively with unions, employers, and other stakeholders to ensure safety for all who enter. These are public buildings and the Office of Court Administration is accountable to us, the public, and to you, the Legislature.

We ask that you direct the Office of Court Administration to provide documents and testimony to you to establish the condition of the courthouses and the protocols they plan to use to protect the safety of all who enter. We urge you to demand documentation and answers to ensure, among other things:

- that the HVAC system in each courthouse has properly installed filters sufficient to filter out Covid particles, and that those systems are monitored (including through the use of carbon dioxide monitors) and maintained regularly;
- that OCA describe all completed or planned modifications to the buildings including installation of no-touch technology, toilet covers, temperature monitors, carbon dioxide monitors, ultraviolet light disinfection units, etc.;
- that OCA provide you with logs documenting their cleaning practices and demonstrating that those practices meet EPA standards;
- that OCA document how it plans to screen visitors to the courthouses (including those with SecurePasses) for Covid symptoms, how it will train court officers (who are not trained health professionals) to conduct these screenings; how it will identify asymptomatic carriers, how it will ensure that anyone denied entry does not suffer prejudice to their case, and whether it will be providing PPE to visitors to the court houses;
- that OCA provide all court and judge rules for conducting in-person proceedings with regard to confidential communications between attorney and client, submission of documents and other discovery protocols, subpoena submission and responses, consideration of reasonable accommodation requests, etc.;

- and that OCA describe its social distancing guidelines and protocols for employees and visitors, in particular in elevators and elevator banks, hallways, entrances, and other communal areas; and provide its protocols for limiting the number of people in a courthouse at one time.

Thank you for allowing me to testify before you.