

**Association of Housing Court Judges
Housing Part of the Civil Court
of the City of New York**

Good day. I would like to thank the Senate Standing Committees on the Judiciary, on Codes, and on Housing Construction and Community Development for taking the time to hear from us today and to express interest in exploring this issue.

I am the President of the Housing Court Judges Association. I represent 50 Housing Court Judges. I have previously testified before the Judiciary Committee regarding Court Consolidation. It is an honor to be invited back.

You have invited us here to hear both about logistics of reopening, but also the “unique impacts on individuals of legal proceedings and legal determinations during a pandemic.” I will start with the latter because Housing Court is at the center of the “unique impacts” created by resuming in person proceedings during a pandemic.

Housing courts around the nation are at the center of a fraught national conversation about housing insecurity and the morality of evictions during a pandemic. New York City Housing Court is no different. We directly affect the poorest, sickest and neediest New Yorkers. This City is actively pouring money into protecting tenants from eviction and finding adequate housing for those already homeless. Despite this reality, OCA and UCS are actively pushing Housing Court Judges to start trials - demanding personal appearances wherever medically possible and permitting virtual trials when not. Virtual trials are creating legitimate questions about due process. For example, providing effective interpretation services is extremely difficult in a virtual or socially distanced environment, and the availability of technology for our court users remains a challenge. Many Housing Court users rely on these services and will continue to do so whether we ask that they appear in person or virtually.

The Tenant Safe Harbor Act (TSHA) is an attempt by the legislature to curb the impact of the influx of evictions that is sure to come. But a money judgement for all rent arrears is not a panacea. There is a high likelihood that the Human Resources Administration (HRA), the primary source of rental assistance for New York City residents, will be unable to issue grants for nonpossessory money judgements because they do not create a risk of eviction. Preventing eviction is a requirement for HRA to issue rental assistance. Thus, tenants, many of whom through no fault of their own, will face enormous money judgements which they may never satisfy. This result creates an anchor on the necks of many poor and working class New Yorkers for years to come and will contribute to many of the societal ills and inequality with which this country is currently struggling. The burden to prove need in the TSHA is unequal as well. While Tenants must establish hardship in order to avoid eviction, something which can be difficult for many (think of the housekeeper or day laborer); there is no reciprocal burden on the landlord to establish urgency or need. Without an equal burden, there is little incentive to negotiate.

Our court is also about to consider whether to allow thousands of stayed warrants to execute in October 2020 during a pandemic, with a cold and flu season ramping up, and the probability of a second wave of the COVID19 virus upon us. Why? Is this the best we can do? Homelessness is out of control and getting worse. Our City shelters are full. The City is paying for the homeless to stay in hotels. Landlords

can sue to evict without any incentive to amend on-going rent levels or to negotiate debt reductions. This is untenable. Our governmental objectives of preventing increased homelessness during a pandemic and the full resumption of court business, are at loggerheads and are not reconcilable. As a result, Housing Court Judges are being asked to make impossible determinations in an impossible environment.

As to the measures taken by OCA and UCS to reduce the spread of COVID-19 at in-person proceedings, there have been several issues, which appear systemic and need to be addressed. In expressing these concerns, I acknowledge the difficulty of the times and of the mandate to safely return personnel and users to Court facilities comprising one of the biggest, busiest, and, most complicated court systems in the nation.

1. Lack of effective communication. The Court system is a bureaucracy. Change is not easy or welcome, but necessary. The Court System relies too heavily on communication by grapevine.
 - a. Executive leaders disseminate information to a myriad of middle level leaders. Those leaders then filter that information down orally to the various Supervising Judges. Those Supervising Judges then disseminate further to the judges and court staff on the ground, so to speak. As a result, communication is slow and muddled, people are operating without necessary information, and the onus is placed on the employees to express and voice concerns or ask questions to get information, rather than on management to inform. Some examples:
 - i. Facilities Management is a thicket. Who oversees a facility? Who do we contact about what issues? It is not clear. I have been told at different times to call different places: DCAS (the landlord), the County Clerk, engineers, my Supervisor. This should be streamlined and formalized given our new reality.
 - ii. No notice of HVAC interruptions. We need clear and quick information when HVAC interruptions happen – even if just to the heating or cooling elements. Observing a problem with HVAC either by temperature changes or the quiet the results when the air is not flowing are stressful given the importance of HVAC operation in preventing the indoor spread of COVID-19. Alas, the system is – if you feel warm, call the county clerk and that person will get you answers. While I have been assured that if air flow through the facility is disrupted, the Deputy Citywide Administrative Judge would be notified and would determine whether to evacuate the affected facility. It is unclear what is considered when making this decision or what expertise is put to bear. And, ultimately, if the evacuation is not ordered, we will likely never be notified. This “trust us” approach is never comfortable when working within a large and impersonal bureaucracy.
2. Lack of effective use/availability of PPE:
 - a. The plexiglass installation in the courtrooms has been slow and haphazard. I have personally witnessed poor installation design. It is unclear what guidance OCA is seeking in deciding where and how to install plexiglass.

- b. The answers we have received about cleaning protocols are robust. The actions are not. We are told about the ideal but witness something else. For example, in NY County, no one was cleaning the emergency courtroom between users. It was only after a judge raised the issue was a methodology enacted to notify DCAS to clean between cases.
 - c. There is still NO PLAN for cleaning the communal keyboards, microphones, and other technical equipment. [DCAS as a rule will not clean “electronics” for liability reasons.] Again, only after a judge asked about the safety of the situation was it addressed. Since then we have been unable to get antibacterial wipes to wipe the communal keyboards and other equipment. No solution has been reached on communal microphone use. This as we welcome witnesses into our courtrooms and to use those microphones. We have discussed disposable microphone covers to no avail.
- 3. Lack of Enforcement: It is unclear how OCA plans to enforce its requirements for social distancing and mask compliance. Grand Juries started to convene again this month. Already there have been incidents of hallway crowding and mask non-compliance. There was not room to socially distance the witnesses waiting to testify. Again, the issue was reported and seems to have been addressed. But it reduces confidence in the “system’s” ability to bring the public in safely.
- 4. Lack of a Continuity: The Housing Court Judges have worked very hard to recreate virtual calendars without court clerks, to organize and conference cases without necessary equipment, and to settle whatever cases we can in impossible times. It would be a shame to see all that effort unravel when either a judge or clerk or court attorney becomes sick or needs to quarantine.
 - a. We are about to begin in-person trials and we are about to go into the cold and flu season. We all interact with each other. There are no bubbles or teams. Thus, if someone becomes infected, the consequences could be very disruptive and dire. And to have that disruption occur just when we get back to some level of order would be catastrophic.
 - b. Court clerks have negotiated a system where they report for two weeks, then are off for two weeks. The clerks are unable to work from home. Thus, whatever continuity is created with one clerk is undone every two weeks. This is not efficient and results in a lot of wasted effort.

I hope this has been informative and helpful. Thank you for your attention. I would be happy to answer any questions you may have.

Daniele China, Judge
Housing Part, NYC Civil Court
President of the Housing Court Judges Association