

## **MESSAGE FROM CHIEF JUDGE JANET DIFIORE**

**November 16, 2020**

Thank you for giving us a few minutes of your time for an update on the latest COVID developments affecting our courts and the justice system.

Over the last three months, I have been reporting regularly on the excellent job that our judges and staff have done to safely re-start civil and criminal jury trials all across New York State. We have tried 47 cases to verdict outside New York City since early September, and another 12 in New York City just in the last month.

And while we are very pleased with the progress we have made to reaffirm the right to a trial by jury in New York State, the time has come to pause our efforts. Effective today, and until further notice, we are temporarily postponing the scheduling of new jury trials, and temporarily postponing the summoning of new trial jurors. Jury trials and bench trials that are now in progress will be allowed to proceed to

completion. Newly-commenced bench trials and hearings will proceed virtually, unless otherwise authorized by our Deputy Chief Administrative Judges. Sitting grand juries will continue operating for the time being, because of their critical importance to the functioning of our criminal justice system, but the summoning of new prospective grand jurors is also being postponed at this time, until further notice.

We are taking these steps in response to the increasing COVID positivity rate, the growing number of communities experiencing COVID-19 clusters, the advice of our epidemiologist who has reviewed our relevant data, and the Governor's latest directive significantly restricting in-person gatherings in commercial and residential settings.

With the COVID metrics clearly trending in a negative direction, and with Thanksgiving and the year-end Holidays fast approaching, it would not be wise or prudent for us to continue scheduling jury trials and summoning large numbers of jurors, lawyers, litigants and witnesses into our courthouses at this time. Of course, we will continue to closely monitor the COVID metrics, we will make all necessary adjustments in response to the data, and we look forward to

resuming grand jury and petit jury operations when the time is safe to do so again.

As we've said all along, our number one priority is the health and safety of our judges, our professional staff and the public we serve. We will not put anyone's health and well-being at risk, and we will do everything in our power to help prevent the further spread and resurgence of COVID-19.

One of the consistent themes running through our "Monday Messages," and a theme I sense that you understand and appreciate from the communications I've had with many of you, is our court system's dual response to the complicated challenges presented by the pandemic. At the same time that we've been retrofitting our courthouses, implementing safety measures and adjusting our operations to restore jury trials and in-person operations, we've also been working nonstop to expand and refine our virtual courts in order to safely meet the immediate demand for our services during this public health crisis.

We have made great progress on both tracks, and we have significantly increased our virtual capacity. With each passing week, we have become more facile and fluent in the virtual world, and we have been able to conduct more and more remote trials, hearings, conferences and ADR sessions, and we have been successful in resolving thousands of family, matrimonial, commercial, civil, housing and criminal matters.

And today, in a bit of excellent timing, I'm pleased to announce that our "Commission to Reimagine the Future of New York's Courts" has issued a new report containing "Goals and Recommendations for New York State's Online Court System." The valuable recommendations and best practices laid out for our consideration in the report are based on the Commission's comprehensive research into virtual court systems across the country; consultation with leading technology experts; and extensive interviews with court stakeholders across the state, including prosecutors, public defenders, legal service providers, pro bono organizations, practicing lawyers, bar associations, court administrators, judges and nonjudicial staff.

The report outlines three key principles to guide the just and efficient administration of our virtual courts: bridging the “digital divide;” using technology to increase efficiencies; and ensuring that online courts are implemented and operated in ways that do not exacerbate existing inequalities among court users.

In furtherance of these principles, the Commission has advanced dozens of helpful recommendations, including: creation of a central online court portal that consolidates and standardizes the websites of our individual courts and is easier for litigants and lawyers to navigate; legislation authorizing universal e-filing; and the launch of online dispute resolution platforms, starting with a pilot program in the busy Small Claims Court in New York County, a court where, each year, over 4,000 small claims cases are heard and resolved.

We’re so pleased to see the Commission endorse our virtual courts and identify the advantages and opportunities offered by online proceedings. At the same time, we remain cognizant of the serious access to justice and due process challenges that need to be addressed in order to ensure a fair and equitable virtual court system. The Commission has advanced numerous safeguards and best practices --

from collecting data about litigants' experiences to prioritizing the types of cases best suited for virtual proceedings -- in order to help us organize and order our priorities and ensure fairness for all categories of litigants.

Today's report is exactly what we had in mind when I first appointed the Commission back in June. We wanted to be able to draw upon the knowledge and ingenuity of our legal profession to help us navigate and meet the historic challenges posed by the pandemic, and this really fine group of judges, lawyers, academics and technology experts, charged not only with making recommendations to help our court system safely and successfully navigate the pandemic but also with assisting us in formulating a blueprint for how we can create the court system of tomorrow, has performed even beyond our highest expectations.

This report will help us leverage the power of technology to perfect our virtual justice services and create a just, accessible and well-functioning court system equipped to meet not only the immediately pressing pandemic-related challenges we have before us today, but the urgent justice needs of tomorrow.

And I am so very grateful to the Commission's members, especially the "Online Courts Working Group," led by two extremely talented and distinguished co-chairs -- Brad Karp, the Chair of his firm at Paul, Weiss, and Mylan Denerstein, a partner at Gibson, Dunn & Crutcher. And, of course, we appreciate the leadership of Hank Greenberg, the Commission's Chair. They have worked at break-neck speed to quickly produce two invaluable reports: the August recommendations that contributed directly to our successful re-start of in-person grand juries, jury trials and in-court proceedings, and now this report released today, entitled "The Initial Report on the Goals and Recommendations for New York State's Online Court System." We are fortunate to have such a talented group of professionals working in service to the New York State courts -- and we thank them all.

One of the hardest challenges of navigating this pandemic, which is now stretching into its eighth month, is the mental and emotional fatigue that comes from the constant worry and anxiety and from the prolonged disruption to our personal and professional lives. I know it's hard -- I feel it too -- but now is not the time for us to let down our guard. We have come so far together, and we've all sacrificed so much. And, now, we owe it to ourselves, to our families and to our friends and

colleagues to remain disciplined and safe as we move into the cold winter months ahead.

And though I surely can't predict that it won't get worse before it gets better, I do believe that we are starting to see the light at the end of the tunnel. So, let's stay patient, let's be understanding with one another, let's keep working together to find the right balance between openness and safety, and let's remember what we have been able to accomplish together to keep our court system up and running in the face of so many difficult challenges. We have a lot to be proud of, and we certainly have a lot to be grateful for.

So, today, thank you, again, for your time, and please do remain disciplined in doing all that you can and should be doing to keep yourselves and those around you safe.