

## MESSAGE FROM CHIEF JUDGE JANET DIFIORE

October 12, 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.

I'm pleased to start today's message with a report on our jury trial pilot. And I start here in recognition of the central and vital importance of the availability of trial by jury in a functioning justice system.

Over the past five weeks, the courts outside New York City working with the Bar have done a careful, deliberate and successful job of scheduling 70 civil and criminal jury trials. Twenty-one trials have been completed, 2 are still in progress, 37 resulted in settlements and pleas, 9 have been adjourned, and there was one mistrial. And for this coming week, we have scheduled another 10 jury trials -- 5 criminal and 5 civil -- in most of our Judicial Districts outside the City.

In New York City, our current plan is to restart civil jury trials next week, although we are carefully monitoring the COVID metrics in different areas of the City and have not yet finalized decisions on the number or locations of these initial jury trials. You can be sure, however, that we will make responsible decisions based on all of the latest data and public health guidance, and that no jurors, lawyers or witnesses or members of our staff will be asked to report to our courthouses unless we are confident in our ability to protect their health and safety. And every trial that does take place will be conducted in a building that is operated with the full range of safety protocols that have been implemented, tested and refined to protect the hundreds of jurors, lawyers, witnesses and staff who have already safely participated in our jury trial pilot over the last several weeks.

As I indicated in the “Monday Message” last week, our commitment to incrementally restore in-person proceedings, including jury trials, does not mean that we have any intention of returning to the densely crowded courthouses of the pre-COVID era. To the contrary, we have been carefully and deliberately limiting the number of people entering our courthouses. We are now at about 10% of the capacity we routinely experienced before the onset of COVID, and we

are working around the clock to expand our virtual capacity in order to accommodate the demand for our services.

And regarding our virtual operations, last week our trial courts throughout the state began the transition to the new Microsoft Teams platform, which offers a better virtual experience and more capabilities for the increasing number of virtual trials and proceedings that we are conducting. Also last week, we completed our expansion of e-filing to all five boroughs of the New York City Housing Court, an enormous benefit for the litigants and lawyers in that very busy court.

With respect to ADR, our virtual model has played and will continue to play a key role in our ability to efficiently settle cases and move our dockets forward. In fact, from the beginning of April through the end of September, our courts were able to settle approximately 20,000 matters through ADR and many thousands more through traditional court settlement efforts.

ADR programs continue to bloom and grow all across the state, with more and more lawyers and litigants discovering the advantages

and efficiencies of this form of conflict resolution. Case in point -- after referring a few cases to mediation, Justice Robert Torres, who oversees the Discovery Part in Bronx County Supreme Court, posted a consent form for all of the cases pending on his docket to give the parties the option of opting into mediation. And as a result of Judge Torres' approach, the consent forms poured in at such a high rate that several other Judges amended their rules to provide for presumptive referral of their cases to mediation as well. Judge Torres' approach has the enthusiastic support of Administrative Judge Doris Gonzalez, who is confident that this will be another way in which our judges can appropriately and efficiently respond to the needs of the lawyers and litigants appearing in Bronx Supreme.

In the New York City Civil Court, Administrative Judge Anthony Cannataro has directed that all small claims matters filed before the pandemic which have not yet received a court date, along with all new filings, be automatically referred to free mediation. The Court is partnering with our Community Dispute Resolution Centers, local bar associations and local law school mediation clinics to develop and train a large roster of volunteer mediators who are committed to helping us

resolve our large docket of small claims matters in a timely and cost-effective manner.

Our courts outside the City have also fully embraced virtual ADR, and many are well on their way to implementing our system-wide commitment to presumptive early ADR. In Westchester County, almost 100 percent of eligible cases in the Supreme, Surrogate's and City Courts are being referred to local CDRCs, court-approved mediators or trained court staff, with settlement rates that consistently hover near 40%. Kudos to my friend, Administrative Judge Kathie Davidson, and the judges and professional staff in Westchester and the 9th JD.

In Nassau County Supreme Court, the reported numbers are very impressive: nearly 60% of the tort matters referred to the court's "Blockbuster Settlement Parts" have been settled. In the District Courts, virtual settlement conferences have resolved fully 80% of the referred civil matters. And in Family Court, virtual mediation of custody and visitation disputes during the pandemic has facilitated settlements in 50% of those matters. Really a wonderful job by Administrative Judge Norman St. George and the judges and staff in Nassau County.

And most impressive is that this is just a sampling of the extensive ADR activity, creativity and commitment of our judges and court staff statewide who are working hard in new and different ways to deliver timely, cost-effective justice during this very challenging period.

Staff in our ADR Office are working equally hard to support the front line efforts, providing virtual training for judges, court staff and outside neutrals on a regular basis, reaching out to bar associations and law schools to recruit additional neutrals, and last week, rolling out a number of online tools to support and encourage virtual mediation, including a user-friendly statewide directory of nearly 800 court-approved mediators and a post-mediation survey to allow lawyers and litigants to evaluate the quality of the mediation services received so that we have the information we need to assess the value of our ADR services.

We are also relying on virtual technology to safely discharge our broad operational and oversight responsibilities with regard to our Town and Village courts. Last week, the Office of Justice Court Support completed a five-day “Virtual Taking the Bench” Certification Training Program for new Town and Village Justices. Using Microsoft Teams, 33

new Justices received in-depth instruction on conducting criminal arraignments; issuing orders of protection; the fundamentals of criminal, housing and other areas of law; judicial ethics; and financial reporting responsibilities. This was the first time that the Certification Training program was conducted virtually, and it was a resounding success thanks to everyone at the Office of Justice Court Support and Justice Nancy Sunukjian.

Regarding our important regulatory responsibilities related to the admission of attorneys to the New York State Bar and the administration of the bar exam, last week was an important week. When public health concerns forced us to postpone and then cancel the scheduled in-person administration of the July bar exam we shifted to an online exam format, which was administered to over 5,100 candidates last Monday and Tuesday.

Based on all reported information, the online bar exam went very well. The number of candidates who experienced technical problems was small and it was consistent with the rate of issues we experience during an in-person administration of the bar. Of course, we will be carefully studying and reviewing all aspects of the online administration

in order to improve and refine the process in the event circumstances dictate that we administer our future exams on-line.

I want to express my appreciation to everyone who made it possible for us to successfully administer New York's first online bar, including: my Court of Appeals colleague, Michael Garcia, who worked very hard on behalf of the Court; the members of the special working group I appointed, chaired by former Court of Appeals Judge Howard Levine; our recently appointed Chair of the State Board of Law Examiners, another "former," Carmen Beauchamp Ciparick; former Chair, Diane Bosse; and the Board's Executive Director, John McAlary, along with his outstanding staff. This has been an enormously difficult challenge, and we are pleased to acknowledge the commitment, the skill and the responsible work done by all involved. Thank you all for a job extremely well done.

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