NEW YORKERS FOR RESPONSIBLE LENDING

Via Email to lmarks@nycourts.gov

April 15, 2020

The Honorable Lawrence K. Marks
Chief Administrative Judge
New York State Unified Court System
Office of Court Administration
25 Beaver Street
New York, NY 10004

Re: Implementation of Virtual Court Appearances in Nonessential Matters

Dear Judge Marks:

We write concerning implementation of Administrative Order 85/20, which expands virtual court operations to nonessential court matters in light of the ongoing COVID-19 crisis. We recognize the herculean efforts by the administrative leadership, judges and non-judicial staff within the Office of Court Administration over the past month in moving to virtual appearances in essential matters. As the judiciary transitions to virtual operations in "nonessential" categories of cases, we respectfully offer some suggestions for "best practices" in order to ensure the protection of especially vulnerable communities and those without counsel, for whom virtual appearances can pose special challenges that can impair access to justice.

New Yorkers for Responsible Lending (NYRL) is a statewide coalition of more than 170 organizations that promotes economic justice as a matter of racial and community equity. Our membership includes legal service providers, housing counseling agencies, unions, credit unions, AARP, Consumer Reports, and other community groups. We work with low-to-moderate income ("LMI") people throughout the State, many of whom are elderly and/or have limited English proficiency ("LEP"). The populations we serve overlap greatly with the population of people who appear *pro se* in New York State courts.

As the Office of Court Administration implements virtual appearances, we would encourage it to keep in mind the following recommendations so that these appearances do not have an adverse impact on the thousands of *pro se* litigants throughout the State. In making our recommendations, we have been guided by these key considerations:

- Many people, including LMI, elderly, LEP persons and others, would have huge difficulties in appearing virtually, and their access to justice would therefore be curtailed if virtual appearances are made mandatory;
- Virtual appearances by *pro se* litigants should be voluntary only, when they choose to "opt in";
- Many *pro se* litigants would be unable to meaningfully participate virtually due to technological obstacles, including the lack of computers and unavailability of high-speed internet;

- Limited scope legal assistance programs that have partnered with courts to assist *pro se* litigants, have been suspended;
- New York residents are simply weighed down and overwhelmed by the conditions that the COVID-19 virus has forced upon us, and will not have the time, ability or resources to navigate virtual appearances.

In light of the above considerations, we encourage the judiciary to keep in mind the "digital divide" that results from the economic inequality that pervades our society when expanding virtual operations to categories of cases with high numbers of unrepresented litigants. Therefore, we recommend that cases involving *pro se* parties be excluded from virtual appearances for nonessential matters. Courts could make exceptions for *pro se* parties who specifically request virtual appearances if the requesting *pro se* party affirms she or he has the technological capacity to participate. As with e-filing, which had a rocky roll-out when the needs of unrepresented parties initially were not taken into account, we recommend that there be a presumption that unrepresented parties are excluded from virtual appearances unless they specifically request to "opt in" to virtual participation.

While we recognize that "justice delayed is justice denied," our concerns over delay are outweighed by our concerns that virtual appearances could quite easily negatively impact *pro se* litigants. We therefore would recommend that appearances involving *pro se* litigants resume in person when the courts reopen. For cases where time is of the essence, we recommend that a *pro se* litigant be permitted to join by telephone conference call if the litigant prefers. There are many litigants who would experience difficulties with or who lack the technological equipment or expertise to manipulate Skype or similar video conferencing.

Where parties do appear virtually, these appearances are made more complicated by the number of people who must call in separately to those conversations, especially when they are "on the record." In order to alleviate one potentially complicating factor, Courts should avoid requiring virtual appearances for any litigants who require the use of interpreters in nonessential matters.

Courts should be aware that, throughout the state, many litigants lack access to reliable high-speed internet. While this problem may be especially acute in more rural parts of the State, it is also true for many litigants in urban and suburban settings.

Courts should also be aware of the enormous scheduling pressures faced by families throughout the State during this time. Although most people in the State are either working from home or have lost their jobs, many *pro se* litigants work in service industries that are deemed essential, such as grocery stores, delivery services, hospitals, or restaurants. While those litigants have limited control over their schedules under the best of circumstances, now they face even less flexibility because of the heavy demand placed on their employers. Additionally, many litigants, even those who are fortunate to be able to work from home, are also providing care for children or other loved ones around the clock, which makes appearing at set times more complicated. Litigants may also be managing medical appointments (now made more difficult by the limitations on in-person medical care) for themselves or family members., In light of these circumstances, Courts should not issue defaults for any litigants who fail to appear for scheduled

virtual appearances. Instead, these virtual appearances should be rescheduled with the maximum amount of flexibility possible.

Once the Courts reopen we anticipate that they will be inundated by new filings, especially from plaintiffs in "bulk" practices like debt collection or foreclosure. We recommend that the Courts impose reasonable limits on new filings by, for example, only permitting single plaintiffs or firms to file a limited number of cases per day or per week. (Courts could, of course, make exceptions for matters facing statutory deadlines to file.)

We appreciate that these are unprecedented and difficult times and that the Office of Court Administration has moved swiftly and thoughtfully in its response to this crisis. We hope these suggestions for best practices are helpful as OCA moves forward. Please feel free to contact us if we can provide additional assistance.

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