

Changes in the Practice of Law and Our Responsibility as Lawyers

Due to the COVID-19 outbreak, the current state of the world and the practice of law often feels like it is changing every day, resulting in many lawyers who are anxious, unsure, and uneasy. When courthouses across New York State ceased non-essential operations on March 17, few thought that COVID-19 would completely upend the day-to-day operations of the court. None of us have lived through this type of situation. This is uncharted territory and a fast-moving situation where every day we're facing new challenges.

New York State Chief Judge Janet DiFiore has issued a series of orders since the beginning of March that has created a seismic shift in the way the courts operate. These extraordinary challenges recognize the primary importance of safety to court officers, employees, attorneys, and the public we serve and the importance of the court providing essential services. Out of these challenges, we are adapting to it and learning what the new court system is going to be like in the future.

The Courts now in Phase 4 of endeavoring to begin operating with more "in-person" court appearances, but it has not been without some operational delays. All of the courts are struggling with the unique challenges faced by attorneys and clients during the pandemic.

As you may already know, the New York State Court system is continuing to expand "in-person" court operations, including the operations of both our Superior and Local criminal courts. Judge Andrew Crecca, our new District Administrative Judge, is overseeing the implementation of this expansion in Suffolk County. As we move forward, Judge Crecca sees the vital importance of working collaboratively with all of our criminal justice partners.

What will look courts like as more in-person operations come back on line, and how will the technology that helped court operations during the

shutdown likely to play a role going forward? Out of these challenges, we are learning what the new court system is going to be like.

Even though the courts in Suffolk County may have been closed for nearly three months, e-filing and some conferences were taking place during the shutdown. There has been exceptional work done by the judges and non-judicial staff to keep operations open so that the citizens of Suffolk County could come to the courts and seek justice.

Under the direction of now-retired District Administrative Judge C. Randall Hinrichs, the civil and criminal judges in Suffolk County started an open motions program where each of the judges significantly reduced the backlog of their motions. Judges have done a miraculous job of reducing their motions, so lawyers can be expecting to get decisions from the court very soon.

Each phase of the court reopening plan has allowed more operations to take place and attorneys now see some big differences in how some of the courtrooms look, due to the installation of plexiglas. With restrictions on large in-person gatherings continuing for the foreseeable future, the court is looking at ways to cut down on the number of court appearances. There are also discussions about sending a ready-made order with dates on it when someone files for a preliminary conference, including a compliance date.

When it comes to technology and virtual conferences lasting into a post-COVID-19 world where effective vaccines are available, we see the significant gains the court has made in terms of integrating technology into operations. Attorneys will have to make changes to adapt to the times. The use of online technology has changed the way the court operates, with Skype Conferences and telephone court conferences. Arraignments are also using technology to allow virtual appearances and dispositions in some cases. Some of those things are not going to change and to the extent that we can continue to utilize the technology, we certainly will, because it has been effective.

We are moving to navigate some uncharted territory as we think about the future. Thus the Bar Association has created a Court ~~Conference~~ Conferencing and Litigation Task Force, designed to recommend uniform protocols and practices facilitating all aspects of litigation by the use of virtual online technology and the return to in-court appearances. The Task Force has formulated Sub Committees for the Supreme Court Civil, Criminal Courts, Family Court/Supreme Court Matrimonial, Federal Court, Technology and Surrogate's Court. There is great enthusiasm and interest in the opportunity to make an impact on how the courts will continue to move forward in restoring the in-court operation using the efficiency of online litigation practice. We will continue to rely on the cooperation and support of the many judges, lawyers, clerks, professional staff, and parties as we move into the E-filing requirements and online litigation age.

A major consideration in a majority of the legal community is when will jury trials resume and how can they be administered safely? Suffolk County is leading the way with grand jury selections and the developing protocols for the commencement of County Court and District Court trials as early as September and October. Of course, the court will follow social distancing and safety protocols as a guiding principle.

One of the great thing I have seen throughout the pandemic has been the willingness of the Bar Association members and staff to step up to the task of keeping our Association informed, involved, and committed to service. They work together. Barry Smolowitz, SCBA Director of Technology, has provided outstanding professional support for our Zoom conferences and committee meetings and provides access and support for virtual meetings for members, updates on Executive Orders, from Governor Andrew Cuomo, and messages from Chief Judge Janet DiFiore. Jane LaCova, our Executive Director, and the staff work tirelessly to keep our Association one of the most active in the state.

The SCBA also has goals and standards intended to focus its members on the hallmarks of our profession. During my installation speech, I talked, in part, about the power and effectiveness of creative, courageous, and committed people. Mostly I wanted to uphold a goal of the Association to “...strive to eliminate race, gender, ethnic, sexual orientation and religious discrimination as it affects our profession in its practice and the professional career opportunity and advancement of lawyers, and will not engage in such discrimination.” As lawyers, we believe that this nation’s laws must be applied equally. We cannot ignore the threats to our justice system or to preserving the rule of law.

We continue to find ourselves living in desperate times as our nation is ravaged by COVID-19 and reignited racial tensions. The violence that erupted in our cities across our nation is a source of heartbreak. Peaceful protest and vocal dissent against injustice are rights that every American can claim. However, violence and destruction are counter-productive, if we truly seek to build a better world. We must continue to protest, but we must do so nonviolently. We must support organizations and efforts that seek to create a more just society for all people (inclusive of race, religion, and sexuality), but we must do so also by calling out acts of injustice when and where we see them. We must continue to demand true justice. We must remain vigilant in our pursuit of a more just society. As attorneys, we have a responsibility to assure equal justice for all Americans regardless of their color, religion, or sexuality, with the respect and dignity that both the law and humanity requires.

Membership is the lifeblood of the Bar Association. Renew your membership and encourage your colleagues to join.

Hon. Derrick J. Robinson
President