

MESSAGE FROM CHIEF JUDGE JANET DIFIORE

February 1, 2021

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 begin this week's message with a report on the productivity in our virtual courts, which continues to grow with each passing week. For the week of January 25th, our judges and staff conferenced and heard 24,309 matters; settled or disposed of 6,617 (or 27%) of those matters; and issued over 1,800 written decisions on motions and other undecided matters. In addition, 1,047 virtual bench trials and evidentiary and fact-finding hearings were commenced last week across the state.

And during the third week of operations, our new Unindicted Felony Parts continued to make progress to reduce the large backlog of unindicted felony complaints awaiting grand jury presentation in New

York City. Last week, the judges sitting in those parts remotely conferenced and heard 621 cases, resulting in another 224 dispositions. Over the three week period, they have heard 2,451 cases and achieved dispositions in 881, or 36%, of the matters heard. Our plan is to continue with the Parts for as long as they remain productive in reducing our large backlog of unindicted felonies.

Today, I'm also pleased to report on new rules affecting case management and pretrial practice in our civil courts. In the 2018 State of Our Judiciary, I highlighted the success of the Commercial Division of the Supreme Court in implementing new rules and procedures to streamline discovery and reduce litigation costs. In an effort to take advantage of these innovations as part of our Excellence Initiative, I tasked our statewide Advisory Committee on Civil Practice with evaluating and recommending those Commercial Division reforms deemed most suitable for adoption into general civil practice.

After nearly three years of intensive study, public comment and additional review and analysis by two working groups of leading judges and practitioners, the Administrative Board of the Courts has approved a broad set of amendments to the Uniform Civil Rules for the Supreme

Court and the County Court, which are designed to make case management and pretrial litigation more efficient and cost-effective for lawyers and litigants in our civil courts. A number of the changes also serve the goal of limiting unnecessary personal appearances and foot traffic in our courthouses.

Highlights of the amendments include: presumptive limits on the number and duration of depositions; presumptive limits on interrogatories; requiring counsel to consult in good faith to resolve and narrow issues prior to a preliminary or compliance conference with the court; procedures for resolving discovery disputes and adhering to discovery schedules; and staggered appearances for oral argument of motions to reduce courtroom congestion. A copy of the Administrative Order with the language of the amended rules is available on the Unified Court System's website by scrolling down the page to "Latest News."

We are grateful to the many judges and attorneys who devoted their valuable time and expertise to evaluating the Commercial Division's rules, selecting the most appropriate provisions, and specifically tailoring them for application to our general civil parts. A

special thank you goes out to Alan Scheinkman, the former Presiding Justice of the Appellate Division, Second Department, for leading the effort to finalize the new rules. And of course, I want to thank my colleagues on the Administrative Board of the Courts -- Rolando Acosta, Elizabeth Garry and Gerald Whalen -- for their strong commitment to the Excellence Initiative, and the important goals of streamlining litigation, improving efficiency and reducing litigation costs in our civil courts.

I turn now to the New York City Small Claims Court. The issues heard there may not be as complex as those litigated in Supreme Court, but they are every bit as important to the many thousands of individuals and small business who appear there every year -- usually without a lawyer -- to resolve disputes of up to \$10,000.

In an effort to resolve these matters in a fair and timely manner during the pandemic, we have been conducting virtual trials and presumptively referring Small Claims matters to free virtual mediation. And last Friday, we launched an innovative Online Dispute Resolution (or "ODR") Program that is being piloted in small claims matters in Manhattan Civil Court.

The new ODR model leverages online technology and ADR to create a user-friendly digital forum that provides unrepresented parties with an opportunity to resolve Small Claims disputes arising from the purchase or sale of goods and services. Although cases meeting the program's criteria will be automatically referred to ODR, the parties can opt out for several reasons, including technology or English comprehension challenges.

ODR relies on an automated negotiation process. Each party starts out by making an offer that is disclosed only if both offers match. If the offers don't match, the ODR platform uses algorithms to guide the parties in negotiating further settlement terms. If that process does not lead to a settlement, opportunities for direct negotiation and mediation are made available prior to a scheduled court hearing. If the parties reach an agreement through the ODR platform, they can electronically sign a settlement agreement that is automatically delivered to the Court.

In addition to the innovative online negotiation component, the ODR platform contains a robust educational component, with

centralized plain language information and resources, to assist litigants in understanding the ODR and small claims processes.

The ODR Pilot was in development well before the pandemic struck, but it is being launched at a most opportune time, when we have to be bold and creative in finding fair, safe and effective ways to resolve disputes and provide access to courts, such as the Small Claims Court, that traditionally operate in crowded environments.

This program has been painstakingly developed over several years, and I want to thank everyone who worked so hard to develop such a creative and promising new approach, including the organizations that provided expert input and collaboration: the American Bar Association, the National Center for State Courts, the New York Peace Institute, and the EAC Network of Long Island Dispute Resolution Centers.

And we are, of course, grateful as well to the organizations that provided generous funding support to allow us to implement and get the program off the ground: the State Justice Institute, and the AAA-

ICDR (American Arbitration Association's International Center for Dispute Resolution) Foundation. And, a special thank you to our court leaders and managers, including: Anthony Cannataro, Administrative Judge of the New York City Civil Court; the Judges and professional staff in that Court; the Office of Justice Initiatives; the Permanent Commission on Access to Justice; and our Division of Professional and Court Services and ADR Office. And, finally, our Assistant Deputy Counsel, Diana Colon, who did an absolutely remarkable job of very ably managing this project from inception. Thank you to all of them.

As I look back on all the challenges we've faced as a system over the last 11 months, it's clear to me that the Administrative Judges who supervise and guide our trial judges and professional staff on the front lines have done a terrific job of putting us in a position to meet the needs of lawyers and litigants across the state.

We are grateful to them for their leadership, and committed to supporting them in these challenging times. In fact, tomorrow, February 2nd, our AJs will be participating in a virtual conference on "Leadership in Challenging Times," with sessions presented by: Judge David Prince of Colorado, a faculty member of the National Judicial

College, and a nationally recognized judicial leadership expert, focusing on techniques and practices to augment leadership skills; our Inspector General's Office, addressing the growing use of social media to disseminate improper, including racist, statements, and the consequences for public trust and confidence in our courts; and Deputy Chief Administrative Judge Edwina Mendelson, updating our AJs on the work that is being done to implement Secretary Johnson's Equal Justice recommendations and combat racial bias and discrimination in our system.

I want to thank our Deputy Chief Administrative Judges, George Silver, Vito Caruso and Edwina Mendelson for proactively organizing this leadership conference, and for crafting a most important and timely agenda to help our AJ's become better leaders who fully understand the challenges, the expectations and the resources available to support them and ensure their success. So, thank you to our Administrative Judges for being "all in," particularly during these unprecedented times.

And with that, I conclude today's Monday Message and once again thank you for your time and ask you to stay disciplined in doing

all that you can and should be doing to keep yourselves and those around you safe.