MESSAGE FROM CHIEF JUDGE JANET DIFIORE

February 8, 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 of our virtual courts for the week of February 1st, when our judges and staff conferenced and heard 22,133 matters; settled or disposed of 5,752 of those matters; and issued over 1,600 written decisions on motions and other undecided matters. In addition, 956 virtual bench trials and evidentiary and fact-finding hearings were commenced last week across the state.

It's noteworthy that last week's productivity was essentially unaffected by the major snowstorm that impacted large areas of our state. In the past, thousands of court proceedings would have been postponed and rescheduled, leading to disruption and delay. So very

clearly, one of the benefits demonstrated by our new virtual model is that most court business and services can now be carried out and delivered seamlessly over our online platform, notwithstanding inclement weather or other conditions that would otherwise make it difficult or unsafe to travel to court. As we move forward into what will be a new and "better normal," the work we have done to create a well-functioning virtual court system will be of enormous benefit to the public.

Our Unindicted Felony Parts in New York City completed their fourth week of operations last week, and another 756 cases were remotely conferenced, resulting in 165 additional dispositions. Since inception, the judges presiding in these parts have heard more than 3,200 cases and achieved dispositions in 1,046 (or 33%) of the matters heard. We are pleased with the steady progress that is being made to reduce our large backlog of unindicted felonies, in cooperation with the New York City District Attorneys' Offices and the defense bar.

Last week, we received two more valuable reports from our incredibly productive Commission on the Future of the New York Courts. The first of these reports was issued by the Commission's

"Structural Innovations Working Group"-- co-chaired by my Court of Appeals colleague, Leslie Stein, and Westchester County Clerk, Timothy Idoni -- and it proposes legislation to give the Chief Administrative Judge broader authority to decide where, and when, to expand e-filing programs in our courts.

For more than two decades, our court system has had a very successful experience with e-filing, and the Legislature has periodically authorized us to expand e-filing to new courts and categories of cases, to the point where e-filing is now widely available in the Supreme Court, Surrogate's Court, Court of Claims and Appellate Division.

However, e-filing still cannot be implemented in our lower criminal courts or most of our lower civil courts. Nor can it be implemented in certain categories of cases, such as matrimonial actions. Such limits make little sense in today's world, and they should be eliminated. But in order to expand e-filing to those courts and case types, we must seek advance approval from the Legislature, a cumbersome process that prevents us from moving swiftly to bring this efficient, cost-effective, convenient and highly popular court service to where it is needed.

As the "Working Group on Structural Innovations" points out in its report, requiring incremental legislative approval for new e-filing programs may have made sense 20 years ago when e-filing was a new technology, but this is now a very basic and expected court service that is central to court operations and the practice of law, and one that should be made more widely available to lawyers and litigants.

The pandemic has opened our eyes to the value and importance of e-filing. It has provided litigants with safe and reliable access to our virtual courts, and minimized the number of people entering our courthouses to file and submit papers. Given the growing backlogs in some of our courts, and the likely prospect of a post-pandemic surge in court filings, this is the perfect time to expand and leverage the efficiency and convenience of e-filing. And it is the right time to give the officials who are most familiar with the needs of our complex court system the authority and discretion they need to expand e-filing in the best, most productive and beneficial way possible.

So, thank you to the Working Group for identifying all of the compelling and common sense reasons why the Chief Administrative Judge should be granted the authority to implement new e-filing

programs. We look forward to following through on their recommendations, and working with our partners in Albany to adopt this important reform during the current legislative session.

I turn now to the work of the Commission's "Technology Working Group," which issued a separate report last week on "Remote Judging: Access and Use of Technology." Led by practitioners Mark Berman and Sharon Porcellio, the Working Group surveyed more than 1,900 judges and professional staff last Summer to learn about their experiences in transitioning to a virtual court model. One of the things we learned from the survey was that, early in the pandemic, judges and staff often used personal devices to conduct court business. We moved quickly to address this issue, distributing nearly 4,000 additional court-issued laptops to our judges and professional staff, and enhancing our virtual connectivity to improve performance and, most importantly, the security of our systems.

So, I want to thank the Technology Working Group for their recommendations to further improve the functioning of our virtual courts, and I want to express my deep appreciation to all of the Commission's members, and especially the Commission's Chair, Hank

Greenberg, for working so effectively to help us identify valuable innovations to strengthen our remote operations and improve court access -- during the pandemic and beyond. Thank you to all of them.

I turn now to the issue of racial bias and discrimination. I hope that you were able to read the memo that Chief Administrative Judge Marks and I sent last week to all Judges and non-judicial personnel concerning the handling of disciplinary charges that were filed last year against an upstate court employee who posted highly insensitive and offensive comments about the killing of George Floyd. While the employee's misconduct was substantiated following an investigation by our Inspector General, the court officials who filed the charges based on the I.G.'s report unfortunately settled the matter through stipulated penalties, and without a disciplinary hearing, and that was a mistake -- a serious mistake.

While settling certain types of disciplinary matters can serve appropriate goals, settling cases that involve charges of racial or other forms of bias creates the perception that such conduct, though penalized, is nevertheless tolerated in our ranks. Well, it's not.

Consequently, and commencing immediately, we will require a full disciplinary hearing in all matters where the Inspector General has investigated and substantiated a claim of discriminatory conduct by one of our employees. And from now on, where a Hearing Officer sustains a charge of discriminatory conduct, the Deputy Chief Administrative Judge responsible for reviewing the Hearing Officer's findings will consult with a newly established "Special Panel," consisting of the counterpart Deputy Chief Administrative Judge for the courts inside or outside New York City; the Deputy Chief Administrative Judge for Justice Initiatives; and the Director of the Office of Diversity and Inclusion. The Special Panel will advise on the appropriate penalty to be imposed where charges of discrimination have been sustained in order to ensure statewide consistency of discipline, and to draw upon the broadest possible experience and wisdom in handling these sensitive matters.

In addition, we have issued an "Anti-Discrimination and Anti-Harassment" policy, applicable to all non-judicial and judicial personnel, prohibiting conduct and communications, including electronic and social media communications, that demean, disparage or harass others on the basis of race, sex, gender identity and other personal attributes.

The policy fully details the standards and expectations that all court personnel must meet, and makes clear that our approach to bias, discrimination and harassment is zero tolerance. I encourage you all to review the "Anti-Discrimination and Anti-Harassment" policy, which can be found on the court system's website under "Latest News."

Even though it may sometimes feel like we're taking two steps forward and one step back, I want to assure you that we will not be deterred from our goal of eliminating racial bias and discrimination. We are in this for the long haul, and we will continue to make progress. We have Secretary Johnson's excellent Equal Justice plan to guide us, with recommendations that we have accepted and will faithfully implement. And we have an incredibly dedicated and caring court family that is committed to fostering the highest standards of fairness, equality and inclusiveness.

So, we have a lot going for us, not the least of which is our commitment and determination to do the hard work, however long it may take, of creating a strong institutional culture of zero tolerance for bias and discrimination, a culture that treats every person with equal

justice, dignity and respect. There can be no higher priority for us, and we will lead by example.

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.