State of New York
Unified Court System

25 Beaver Street
New York, N.Y. 10004
(212) 428-2100

Lawrence K. Marks
Chief Administrative Judge

M E M O R A N D U M

June 18, 2020

To: Hon. George J. Silver
Hon. Vito C. Caruso
Hon. Anthony Cannataro

From: Lawrence K. Marks LM

Subject: Procedure for Addressing Residential and Commercial Eviction Proceedings

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As the Court System continues its expansion of court operations around the State in coordination with the Governor's reopening of various geographic regions, we remain concerned about the adverse public health consequences that may arise from a sudden high-volume influx of eviction matters, often involving unrepresented tenants (and unrepresented landlords in some cases) and necessitating in-court appearances. In addition, as you know, an assortment of restrictions on filing and prosecution of eviction matters remains in force under federal statutes, gubernatorial executive orders, and other legal authority. For these reasons, we have established the following protocol for handling of eviction proceedings pursuant to Article 7 of the Real Property Actions and Proceedings Law (RPAPL), effective June 20, 2020:

- Commencement documents in eviction proceedings must be filed with the court by NYSCEF or mail only at this time (AO/121/20 [Exh A]).

- Until further order, petitions in commercial and residential eviction proceedings (for nonpayment of rent or on other grounds) are required to include two additional documents (AO/127/20 [Exh. B, with attachments]):

  1. A form petitioner's attorney affirmation (or, for self-represented petitioners, a petitioner's affidavit), indicating that counsel (or the self-represented petitioner) has reviewed the various state and federal restrictions and qualifications on eviction proceedings and believes in good faith that the proceeding is consistent with those restrictions and qualifications; and

2. A form notice to respondent-tenants (in English and Spanish), informing them that they may be eligible for an extension of time to respond to the petition in light of legal directives related to the COVID-19 pandemic, and directing them to a telephone number and/or website link for further information. (Separate form notices have been provided for proceedings inside and outside New York City.)

- Whether or not an answer is filed in an eviction matter, further hearing of the case shall be stayed until such time as gubernatorial Executive Orders suspending statutory timetables for the prosecution of legal matters (i.e., 202.8, as extended by 202.14, 202.28, and 202.38) expire. In conjunction with AO/68/20, this continues the suspension of eviction matters for the time being, with a singular exception:

    - Evictions matters commenced on or before March 16, 2020 in which all parties are represented by counsel shall be eligible for calendaring for virtual settlement conferences.

- At or before the expiration of the Governor's executive order suspending statutory timetables, we will issue further directives on the processing of these cases.

On a related note: as you may be aware, we are in the final stage of authorizing consensual electronic filing of New York City Housing Court matters, as part of the New York State Courts Electronic Filing System (NYSCEF). We anticipate that the system – a substantial enhancement of our e-filing functionality -- will be operational later this summer. Additional information about training and implementation will issue in the near future.

Please distribute this memorandum and attachments as necessary.

Attachment

c: Hon. Edwina Richardson-Mendelson
Administrative Judges

EXHIBIT A

ADMINISTRATIVE ORDER OF THE
CHIEF ADMINISTRATIVE JUDGE OF THE COURTS

Pursuant to the authority vested in me, at the direction of the Chief Judge, and consistent with the Governor's determination approving the easing of restrictions on commerce imposed due to the COVID-19 health emergency, I hereby direct that, effective June 10, 2020:

1. In courts and case types approved for electronic filing through the New York State Courts Electronic Filing System (NYSCEF), represented parties must commence new matters or proceed in pending matters exclusively by electronic filing through NYSCEF, and must file and serve papers in such matters (other than service of commencement documents) by electronic means through NYSCEF or, where permitted under NYSCEF court rules, by mail. Unrepresented parties must file, serve and be served in such matters by non-electronic means unless they expressly opt in to participate in NYSCEF.

2. To the extent that NYSCEF electronic filing is unavailable in courts or case types in the trial courts, represented parties must commence new matters exclusively by mail, except where otherwise authorized by the Chief Administrative Judge. Following commencement of a new matter, and in pending matters, represented parties must file papers through the Unified Court System's Electronic Document Delivery System (EDDS) or by mail, and must serve papers (other than commencement documents) by electronic means or by mail. Unrepresented parties must file, serve and be served in such matters by non-electronic means unless they provide written notification to the court and all parties that they wish to file, serve and be served electronically.

3. This order shall not affect procedures for the filing and service of papers in essential matters.

4. The court shall not request working copies of documents in paper format.

Chief Administrative Judge of the Courts

Dated: June 9, 2020

AO/121/20

EXHIBIT B

ADMINISTRATIVE ORDER OF THE
CHIEF ADMINISTRATIVE JUDGE OF THE COURTS

Pursuant to the authority vested in me, I hereby order and direct that, effective June 20, 2020, petitions in eviction proceedings involving residential or commercial property pursuant to Article 7 of the Real Property Actions and Proceedings Law (RPAPL), whether brought on the ground that the respondent has defaulted in the payment of rent or on some other ground, shall require the inclusion of (1)(a) an attorney affirmation in the form attached as Exh. 1a, in cases where the petitioner is represented by counsel, or (1)(b) a petitioner's affidavit in the form attached as Exh. 1b, in cases where the petitioner is self-represented; and (2) a Notice to Respondent Tenant in the form attached as Exh. 2a (if filing within the City of New York) or Exh. 2b (if filing outside the City of New York).

Consistent with prior and current gubernatorial Executive Orders (EO/202.8, EO/202.14, EO/202.28, EO/202.38) and Administrative Order AO/68/20, RPAPL eviction matters commenced on or before March 16, 2020 shall continue to be suspended until further order; eviction proceedings filed after March 16, 2020 shall, upon the filing of a petition (if no answer is filed thereafter) or the filing of an answer, be suspended until further order. Notwithstanding the foregoing, eviction matters in which all parties are represented by counsel shall be eligible for calendaring for virtual settlement conferences.

This order shall take effect on June 20, 2020, and shall remain in effect for such time as state and federal emergency measures addressing the COVID-19 pandemic amend or suspend statutory provisions governing eviction proceedings, or until further order.

Chief Administrative Judge of the Courts

Dated: June 18, 2020

AO/127/20

Exh. 1a

[Court]
COUNTY OF _____

_____

Index No. L&T _____

Petitioner (Landlord)

AFFIRMATION

v.

Respondent (Tenant)

Address:

_____

Please note: As a result of the COVID-19 pandemic, the commencement and prosecution of eviction proceedings were stayed under various provisions of law, including but not limited to Governor Cuomo's Executive Order 202.8 and Executive Order 202.28, Chief Administrative Judge Marks's Administrative Orders AO/68/20, AO/121/20, and AO/127/20, and the federal Coronavirus Aid, Relief, and Economic Security Act of 2020 (Public Law 116-136). This affirmation is designed to advance the purpose of these federal and state directives, and to avoid unnecessary in-person appearances of parties and others in courthouses.

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[_____] , Esq., pursuant to CPLR §2106 and under the penalties of perjury, affirms as follows:

1. I am an attorney at law duly licensed to practice in the state of New York and am affiliated with the law firm of _____, attorneys for Petitioner in the above-captioned eviction proceeding pursuant to RPAPL §732. As such, I am fully aware of the underlying action, as well as the proceedings had herein.

2. I am aware that, as a result of the COVID-19 pandemic, various state and federal authorities have issued statutes and executive orders regulating the time and manner of commencement and prosecution of eviction proceedings. These include (without limitation), gubernatorial Executive Orders EO-202.8 (March 20, 2020), EO-202.14 (April 7, 2020), EO-202.28 (May 7, 2020), and EO 202.38 (June 6, 2020); Chief Administrative Judge Administrative Orders AO/68/20 (March 16, 2020), AO/121/20 (June 9, 2020), and AO/127/20

(June 18, 2020), and federal Coronavirus Aid, Relief, and Economic Security Act (CARES Act, enacted on March 27, 2020).

3. I have reviewed these authorities, have consulted with my client, and affirm that, to the best of my knowledge, information, and belief, the petition and other papers filed or submitted to the Court in this matter comport with the requirements of those state and federal directives -- including the directive, set forth in Executive Order 202.28, that "[t]here shall be no initiation of a proceeding or enforcement of ... an eviction of any residential or commercial tenant, for nonpayment of rent ... by someone that is eligible for unemployment insurance or benefits under state or federal law or otherwise facing financial hardship due to the COVID-19 pandemic for a period of sixty days beginning on June 20, 2020."

4. I am aware of my obligations under New York Rules of Professional Conduct (22 NYCRR Part 1200) and 22 NYCRR Part 130.

DATED:

_____

Please note: Counsel may augment this affirmation to provide explanatory details, and may file supplemental affirmations or affidavits for the same purpose.

Exh. 1b

[Court]
COUNTY OF _____

_____

Index No. L&T _____

Petitioner (Landlord)

PETITIONER'S AFFIDAVIT

v.

Respondent (Tenant)

Address:

_____

Please note: As a result of the COVID-19 pandemic, the commencement and prosecution of eviction proceedings were stayed under various provisions of law, including but not limited to Governor Cuomo's Executive Order 202.8 and Executive Order 202.28, Chief Administrative Judge Marks's Administrative Orders AO/68/20, AO/121/20, and AO/127/20, and the federal Coronavirus Aid, Relief, and Economic Security Act of 2020 (Public Law 116-136). This affidavit, to be filed by petitioners who are self-represented in eviction matters, is designed to advance the purpose of these federal and state directives, and to avoid unnecessary in-person appearances of parties and others in courthouses.

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STATE OF NEW YORK)
)ss.
COUNTY OF _____)

_____, being duly sworn, says:

1. I am the petitioner in this eviction proceeding, and am not represented by counsel. I have personal knowledge of the facts stated in the petition.

2. I am aware that, as a result of the COVID-19 pandemic, various state and federal authorities have issued statutes and orders regulating the bringing of eviction proceedings. These include (without limitation), Governor Cuomo's Executive Orders EO-202.8 (March 20, 2020), EO-202.14 (April 7, 2020), EO-202.28 (May 7, 2020), and EO 202.38 (June 6, 2020) (https://www.governor.ny.gov/executiveorders); Chief Administrative Judge Administrative

Orders AO/68/20 (March 16, 2020), AO/121/20 (June 9, 2020), and AO/127/20 (June 18, 2020) (https://www.nycourts.gov/latest-AO.shtml), and section 4024 of the federal Coronavirus Aid, Relief, and Economic Security Act (CARES Act, enacted on March 27, 2020) (see, e.g. https://crsreports.congress.gov/product/pdf/IN/IN11320).

3. I have reviewed these authorities, and declare that, to the best of my knowledge, information, and belief, the petition and other papers filed in this matter meet the requirements of those state and federal directives -- including the requirement contained in Executive Order 202.28, that "[t]here shall be no initiation of a proceeding or enforcement of ... an eviction of any residential or commercial tenant, for nonpayment of rent ... by someone that is eligible for unemployment insurance or benefits under state or federal law or otherwise facing financial hardship due to the COVID-19 pandemic for a period of sixty days beginning on June 20, 2020."

_____

Petitioner's Full Name

Sworn to before me this
_____ day of _____, 20___

_____

Public Notary

Exh. 2a

NOTICE TO RESPONDENT TENANT

DURING THE CORONAVIRUS EMERGENCY, YOU MIGHT BE ENTITLED BY LAW TO TAKE ADDITIONAL DAYS OR WEEKS TO FILE AN ANSWER TO THIS PETITION.

PLEASE CONTACT YOUR ATTORNEY FOR MORE INFORMATION.

IF YOU DON'T HAVE AN ATTORNEY, PLEASE CALL

718-557-1379

OR VISIT

www.nycourts.gov/evictions/nyc/

AVISO A INQUILINO DEMANDADO

DURANTE LA EMERGENCIA DEL CORONAVIRUS,

ES POSIBLE QUE USTED TENGA DERECHO POR LEY

A TOMAR DÍAS O SEMANAS ADICIONALES

PARA PRESENTAR UNA RESPUESTA

A ESTA PETICIÓN

POR FAVOR CONTACTE A SU ABOGADO PARA MAS INFORMACIÓN.

SI USTED NO TIENE UN ABOGADO, LLAME AL

718-557-1379

O VISITE

www.nycourts.gov/evictions/nyc/

Exh. 2b

NOTICE TO RESPONDENT TENANT

DURING THE CORONAVIRUS EMERGENCY, YOU MIGHT BE ENTITLED BY LAW TO TAKE ADDITIONAL DAYS OR WEEKS TO FILE AN ANSWER TO THIS PETITION.

PLEASE CONTACT YOUR ATTORNEY FOR MORE INFORMATION.

IF YOU DON'T HAVE AN ATTORNEY, PLEASE VISIT

www.nycourts.gov/evictions/outside-nyc/

FOR MORE INFORMATION.

AVISO A INQUILINO DEMANDADO

DURANTE LA EMERGENCIA DEL CORONAVIRUS,

ES POSIBLE QUE USTED TENGA DERECHO POR LEY

A TOMAR DÍAS O SEMANAS ADICIONALES

PARA PRESENTAR UNA RESPUESTA

A ESTA PETICIÓN

POR FAVOR CONTACTE A SU ABOGADO PARA MAS INFORMACIÓN.

SI USTED NO TIENE UN ABOGADO, VISITE

www.nycourts.gov/evictions/outside-nyc/