

## STATEMENT OF THE NEW YORK COUNTY LAWYERS ASSOCIATION

### Electronic Filing and Service During the Current Pandemic

In response to the current pandemic, some, but not all, New York courts have relaxed the rules governing the filing and service of legal papers by permitting electronic filing and service. And as of March 22, 2020, the Administrative Order of the Chief Administrative Judge of the Courts prohibits filings except in certain enumerated matters and those matters deemed “essential.”<sup>1</sup>

To ensure the safety of the thousands of individuals involved in the filing, service, and review of legal documents, we recommend that New York appellate and trial courts, in both civil and criminal cases, quickly enact a rule that requires electronic service/filing of all legal documents and prohibits paper service/filing. *See* C.P.L.R. § 2103(b)(7) (authorizing the chief administrator to create rules governing e-service). This proposed rule would not require the establishment of any new e-filing systems but would instead merely require courts and litigants to make e-mail addresses available for electronic filing. This rule will facilitate filings in those cases where filing is currently permitted under the March 22nd Order and will continue to facilitate filings once that order is lifted some time in the future.

An exception to this proposed electronic-filing rule should be made for (1) incarcerated individuals and (2) *pro se* litigants who, due to financial, technological, or other hardship, cannot file documents electronically. This rule would be temporary in light of current circumstances and should remain in effect until subsequent rule modification.

This rule should not require consent of the parties and should simply require that courts and litigants make all reasonable efforts to provide an avenue for electronic service and filing. In virtually all pending cases, these avenues are already in place as parties already have access to court and party e-mail addresses. And if e-mail addresses are not currently available to accommodate this simple method, arrangements can easily be made to facilitate electronic filing and service. We are confident that attorneys and courts can, with ease, quickly adapt to this simple change.

We further recommend that the court system continue to make efforts to permit oral argument *via* video or telephone conference during this difficult period.<sup>2</sup>

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<sup>1</sup> <https://www.nycourts.gov/whatsnew/pdf/AO-78-2020.pdf>

<sup>2</sup> The New York County Lawyers Association was founded in 1908 as one of the first major bar associations in the country that admitted members without regard to race, ethnicity, religion or gender. Since its inception, it has pioneered some of the most far-reaching and tangible reforms in American jurisprudence, including through the work of its many committees that provide in-depth analysis and insight into legal practice areas. A version of this statement was approved by the Committee on Appellate Courts on March 22, 2020. The Executive Committee approved this statement as a Statement of the New York County Lawyers Association at its regular meeting on March 25, 2020.