

May 6, 2020

Louisiana Supreme Court
400 Royal St.
New Orleans, LA 70130

Re: Louisiana Courts, the Pandemic, Evictions, the Constitution, and the Americans with Disabilities Act

Dear Chief Justice Johnson,

We write you as the Chief of the Louisiana Judiciary to bring a number of serious issues to your attention and to the attention of the courts across Louisiana.

As you know, the COVID 19 pandemic has hit Louisiana extremely hard. Louisiana ranks 5th out of the 50 states in deaths per 100,000 people due to Covid.¹ Health and governmental authorities have repeatedly stated that citizens of Louisiana have much higher percentages of risk factors than most states. These people, our sisters and brothers, are described as members of “vulnerable populations.” The CDC describes people in these vulnerable populations as: people over 65; people with underlying medical conditions such as lung disease and asthma; people who are immunocompromised due to cancer treatment, smoking, HIV/AIDS, and other immune deficiencies; people with obesity; people with diabetes; people with liver disease; and people with chronic kidney disease undergoing dialysis.²

Further, African Americans in our state, who constitute 30% of our population, are contracting Covid 19 and dying at rates double that of the rest of the population.³

As the state’s courts prepare to open up to the public, there appear to be potentially serious violations of the law in the administration and operation of our state courts.

As you know, all citizens are entitled to fair treatment by the courts under the due process clause of the Louisiana and U.S. Constitutions.

Additionally, Title II of the Americans with Disabilities Act requires courts to take action to make accommodations to policies, practices, and procedures where necessary to avoid discrimination against people with disabilities. There is a private right of action to enforce that law.

In *Tennessee v Lane*, 541 U.S. 509, 124 S.Ct. 1978 (2004), the U.S. Supreme Court made it clear that Title II of the Americans with Disabilities Act applies to the rights of citizens to exercise their fundamental right of access to the courts and constitutes a valid exercise of Congress' enforcement power under the Fourteenth Amendment.

As the American Bar Association noted in their amicus brief in *Tennessee v Lane*, “The courts—as guardians of individual rights—have a special responsibility to protect and enforce the right of equal access to the judicial system because this right is the baseline for all other rights. First and foremost, the courts must ensure that their doors remain open to all individuals. In the case of individuals with disabilities, this obligation means providing accommodations and removing barriers that otherwise have

¹ <https://www.washingtonpost.com/graphics/2020/national/coronavirus-us-cases-deaths/>

² <https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/people-at-higher-risk.html>

³ <https://www.npr.org/2020/04/12/832682489/7-out-of-10-patients-killed-by-covid-19-in-louisiana-were-african-american>

the effect of excluding people with disabilities from the judicial system. In short, the courts must be a model of accessibility.”⁴

When courts reopen, it is extremely important that no court try to proceed in any matters unless they first comply with the provisions of the Americans with Disabilities Act.

Specifically, that means that courts are under a legal directive to create reasonable accommodations for people who are sick from Covid 19, people who are under quarantine because a family member or close friend has Covid 19, and those who are in the vulnerable populations who would risk their health and even their lives if they have to go to court without proper protections.

The National Center for State Courts strongly suggests the creation of a statewide Emergency Response Bench Book and Operational Guidebook for State Court Judges and Administrators dealing with a pandemic.⁵ Louisiana does not have such a guide at this time. The Center suggests limiting public access to the courts, allowing remote alternative appearance methods, reducing the number of court hearings, staggered hearings, providing personal protective equipment, avoiding unnecessary passing of documents, wide and effective communications to the public, and a significant increase in the use of technology.

Though these laws apply to all court proceedings, criminal and civil, the specific focus of this letter is on evictions.

Many in Louisiana expect a surge in evictions once the courts are reopened. Given the weak procedural protections in Louisiana’s eviction procedures, evictions used to move quickly in normal times. In normal times about 5,000 evictions each year are filed in Orleans Parish alone.⁶

However, these are not normal times. Without significant safety measures being imposed, the reopening of the courts and resumption of traffic into the buildings and courts could easily inadvertently become very powerful infection sources in our communities.

Court buildings which are open to the public must comply with the directions from the Centers for Disease Control “Reopening Guidance for Cleaning and Disinfecting Public Spaces, Workplaces, Businesses, Schools, and Homes.”⁷ These requirements include: regular deep cleaning and disinfecting, especially of frequently touched areas and objects such as workstations, door knobs, telephones, handrails; social distancing; physical separation of anyone with symptoms of fever, cough or shortness of breath; and limiting in person contacts. Provisions for testing and contact tracing are recommended as well for all staff and court personnel who interact with the public as well as all parties coming into the courthouse. All operations should be suspended if any person who is infected came into contact with the building until thorough cleaning and appropriate health screening is provided to all in the building.

Courtrooms which are in operation must adhere to guidelines of the Centers for Disease Control and not allow anyone within six feet of anyone else. All people, including judges, court staff, law officers, lawyers, parties and witnesses should be required to wear face masks. These steps will likely require

⁴ See Amicus Brief of American Bar Association in Tennessee v Lane. Online at:

<https://www.clearinghouse.net/chDocs/public/DR-TN-0001-0034.pdf>

⁵ <https://cdm16501.contentdm.oclc.org/digital/collection/facilities/id/194>

⁶ https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3361427&download=yes

⁷ <https://www.cdc.gov/coronavirus/2019-ncov/community/reopen-guidance.html>

significant reductions in the normal dockets of courts so people are not required to stay in waiting areas and be exposed to others who may be carrying the virus.

Many states, including Texas, restrict all in person proceedings to no more than 10 people in a courtroom, require all persons to wear face coverings and encourage remote proceedings to be held where possible.⁸

All court documents which require anyone to appear in any court should give full and adequate notice of alternative methods of participating in judicial proceedings. Such notice must include clear instructions on options for the use of remote technology as a reasonable accommodation.

Yet, even further steps must be taken to protect people who fall into the vulnerable populations.

People who are members of vulnerable populations should not be required under the Americans with Disabilities Act to risk their health and possibly their lives to come to court at all. In addition to enhanced risk of illness and death, they remain legally obligated to shelter at home.

The courts must recognize the special responsibilities they have to accommodate people who are in these vulnerable populations.

Some states like Arizona do not allow evictions to proceed at all against people in the vulnerable populations.

Louisiana should consider the directives outlined by Arizona to deal with eviction cases.⁹ The state rules allow evictions to be delayed if the person sought to be evicted gives notice to the landlord, the court, or law enforcement that they are in a high risk population; liberally grant continuances to people in high risk populations; recognize the 120 day federal moratorium on evictions; allow people to use technology instead of appearing in court; delays execution of evictions for people in high risk categories.

There is no reason Louisiana cannot do the same. Every single stage of the eviction process demands accommodation for those in the vulnerable population.

If evictions are not halted all together for people in vulnerable populations and a landlord chooses to seek to ask the courts to evict a person who is among the vulnerable population, the courts should insist that alternatives like mediation be pursued and documented before the judicial process proceeds.

If the courts are going to be involved in any attempted eviction of a person in the vulnerable population, provisions must be made so that the vulnerable person facing eviction can have remote visual access to their case and to the court before the case can be allowed to proceed. Any proceedings held using remote technology must provide participants with disabilities the same opportunity to present evidence and cross examine witnesses as they would have in an in person proceeding. The courts also need to take steps to provide access to technology for low income people with disabilities who may need to engage in an eviction proceeding remotely but may not have adequate technology to do so. Recall that

⁸ <https://www.txcourts.gov/media/coronavirus-covid-19-court-operation-guidance/>

⁹ <https://www.azcourts.gov/Portals/34/20200429EvictionGuidanceFinal.pdf>

a recent Louisiana survey performed by the Louisiana Department of Education found that more than 1 in 4 public students in Louisiana lack access to a computer or tablet.¹⁰

Similarly, if evictions are allowed to proceed at all against people in the vulnerable populations, the actual eviction has to accommodate the special needs of these people and proceed at a much slower pace because these people will have a much more difficult time finding a place to live. The last thing our communities need right now is an increase in homeless vulnerable people.

Only by complying with these requirements can the courts guarantee that individuals with disabilities can have full participation in the legal system.

These are not normal times and the constitutional demands of due process and the Americans with Disabilities Act require the courts to accommodate our sisters and brothers who are in vulnerable populations whether they be parties, court staff, lawyers or the judges themselves.

The specific accommodations we think these laws require include at a minimum the following:

- A stay of all evictions in courts of Louisiana until the local courts are certified as in compliance with the requirements of the Centers for Disease Control and the Americans with Disabilities Act;
- For those people who are disabled as a result of being classified as members of vulnerable populations and thus ordered to shelter in place at home in the first two phases of reopening¹¹, any eviction action against them must be stayed until the courts can provide full video and audio access to all phases of the process;
- Once full video and audio access is provided, no eviction actions should be allowed to be initiated against any person with a disability without prior certification of attempts to engage in mediation or arbitration have occurred;
- Once full video and audio access is provided, specific written notice of the rights of people to be accommodated and how they can access those accommodations must be included as a part of all notices from landlords and from the courts;
- Once full video and audio access is provided, courts must take steps to provide access to technology for low income people with disabilities who may need to engage in an eviction proceeding remotely but may not have adequate technology to do so;
- Once full video and audio access is provided, continuances must be liberally granted to people with a disability so that they can do everything in their power to access the courts in a meaningful manner;
- Once full video and audio access is provided, if a judgment of eviction is ultimately rendered against a person with a disability that person must be given additional time and consideration before the eviction is actually executed in order to allow them to find additional housing.

¹⁰ https://www.theadvocate.com/baton_rouge/news/coronavirus/article_ab5cc1b2-830a-11ea-be6b-6f3a78fd7303.html

¹¹ <https://www.whitehouse.gov/openingamerica/>

Of course, the specifics contained in this letter constitute only a tiny percentage of the guidance provided by the Centers for Disease Control and should not be taken as exclusive or the only requirements that courts must provide to accommodate people under the law.

We conclude by asking you and the rest of the Louisiana Supreme Court and our state judiciary to please take several actions. First, please distribute this letter to all judges and courts in Louisiana and insist that all court buildings, courtrooms, and all court proceedings follow the law. Second, as the National Center for State Courts recommends please create a statewide Emergency Response Bench Book and Operational Guidebook for State Court Judges and Administrators dealing with a pandemic. Third, please collect in one place and publish widely the procedures each court in the state is using to comply with the Americans with Disabilities Act for people in vulnerable populations. Fourth, please do, as our community members know you will, dispense the law with justice and mercy.

Unfortunately, this pandemic is likely to be with us for a very long time. Thus, the need for these procedures are both immediate and long lasting.

Thank you and the rest of the courts for your leadership and consideration.

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