



MACDL

Massachusetts Association of
Criminal Defense Lawyers

Chief Justice Gants
Supreme Judicial Court
1 Pemberton Square
Boston, MA 02108

Chief Justice Carey
Office of the Trial Court
1 Pemberton Sq.,
Boston, MA 02108

Chief Justice Fabricant
Suffolk Courthouse
3 Pemberton Square
Boston, MA 02108

Chief Justice Dawley
Brooke Courthouse
24 New Chardon St.
Boston, MA 02114

Chief Justice Ronquillo
Brooke Courthouse
24 New Chardon St.
Boston, MA 02114

1 Mercantile Street Suite
740
Worcester MA 01608
info@macdl.com
www.MACDL.com

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Dear Chief Justices Gants, Carey, Ronquillo, Fabricant and Dawley,

On behalf of MACDL, we thank you for the opportunity to meet via Zoom on July 22, 2020, along with members from the Committee for Public Counsel Services, to discuss the issues raised in our July 14, 2020 letter to you. We are pleased and grateful that you expressed a willingness to listen to our concerns and to work with us to ensure the safety and wellbeing of the members of the bar, their clients, and members of our community who appear on a daily basis in our many courts.

MACDL acknowledges the challenges in juxtaposing the need to gradually re-open the courts with the ability to develop and implement safety protocols, and your efforts with respect to the latter. However, while your hard work is commendable, the minimal protocols that have been implemented are respectfully inadequate to assure the safety and well-being of all. This is evidenced by not only the frequent closure of courts resulting from positive Covid-19 testing since July 13, 2020, but also reports from attorneys regarding their experiences in courthouses across the state.

Many of our attorneys and our clients do not feel safe coming to court under the current circumstances and, by and large, there is no reason for them to do so. Compelling attorneys to appear on duty days, among others, is unnecessary, inefficient and unsafe. There is a better way. First, we must minimize as many in-person hearings as possible until conditions improve. We propose the following:

1. All duty attorneys will be on call. All arraignments and bail hearings will be conducted via Zoom conference. In the event that the Commonwealth moves for detention pursuant to M.G.L. c. 276, sec. 58A, the defendant will be informed of his/her right to an evidentiary hearing via Zoom, in person, or a deferment of his/her hearing to a further date. In the event that an in-person hearing is elected, an attorney will be made available to do so;
2. All status conferences and other non-evidentiary hearings will be conducted either through a Zoom videoconference or by phone in staggered hearings;
3. In the event of a scheduled evidentiary hearing for violations of probation, the defendant will be informed of his/her right to appear via Zoom, in person, or a deferment of his/her hearing to a further date. In the event that an in-person hearing is requested, an attorney will be made available to do so.

The safety protocols, which have not distributed, are currently inadequate as implemented. We propose the following:

1. Plexiglass dividers must be installed at all counsel tables, and headset microphones must be made available for attorneys and clients to safely consult during in-court hearings.
2. Plexiglass dividers must be installed in lock up areas for custody clients, and in private, safe and secure meeting rooms for non-custody clients.
3. The Trial Court Administration accelerate and complete its investigation of the adequacy of the HVAC and air filtration systems of the courthouses, and must make immediate improvements where necessary;
4. The Trial Court Administration issue safety protocols that ensure safety at all courthouses, taking into consideration each courthouse's configuration, age, capacity, air quality, and other like circumstances.
5. The Trial Court Administration develop a mechanism to strictly enforce its current protocols and deploy sanctions, when necessary.
6. The Trial Court Administration identify the name and curriculum vitae of the epidemiologist utilized in advance of the 7/13/2020 re-opening, as well as the review that he/she undertook, and the conclusions derived therefrom.
7. The Trial Court Administration demand consistent and uniform application of procedure and safety protocols in each court.
8. Trial Court Administration provide counsel, through notice to CPCS and/or MACDL, with specific information whenever there is a positive test result in any courthouse, and that the notice be sufficient to permit counsel to know whether they may have had contact with the infected person.

To be clear, we perceive the virus as the only enemy and welcome a collaborative approach that ensures that our courts re-open for business in a smart, safe and effective manner. We all benefit when we collectively harness our talents, creativity and vision. We look forward to scheduling another conference in order to discuss these urgent issues at your earliest convenience.

Sincerely,

Victoria Kelleher

Victoria Kelleher, President
Massachusetts Association
of Criminal Defense Lawyers