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Social distancing can allow court system to make needed changes

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In the world of politics, it is said "never waste a good crisis." Modernizing our court system has been a topic of discussion for many years. Our public health emergency has given urgency to new concepts and ideas. Social distancing, e-learning, Zooming have all become part of our vernacular in a month's time. We would be remiss not to stop and examine how our court system operates through the lenses of our new "normal."

Coupled with the implementation of statewide e-filing, what might have made sense in the past may not pass muster today. Holding court sessions as we have for generations may or may not be an option going forward. It certainly is not the best option.

Let's look at the following suggestions within the context of what brings most litigants to court aside from basic traffic citations; consumer contract actions and property damage matters. A good starting point for improvement is by amending Supreme Court Rule 101 and eliminating date certain summons in favor of the 30-day summons. Logic follows that mandatory court appearances be replaced by a "hearing by request" structure and optional "remote" hearings for those appearances.

Think this sounds crazy? Well, a review of some of our neighbor states will show that these proposed structural changes are far from novel. This will greatly reduce court attendance, thus increasing health and safety, increasing efficiency and leveling the playing field for litigants.

In Illinois, electronic filing has already eliminated the need for attorneys, clerks and self-represented litigants to come into the courthouse to file cases. After filing suit, the next step in the process is having the court clerk electronically issue a summons for the defendant to appear in court. (How to serve a summons beyond personal-abode service or by restricted certified mail is a

discussion for another day).

Illinois Supreme Court Rule 101 provides for two types of summonses. Generally, the procedure for an action for \$50,000 or less is to use a summons requiring an appearance on a specified day, typically between 21 and 40 days from the date of issuance. This summons is commonly called a “date certain” summons. The date the summons is served is not relevant to the court as long as it is served at least three days before the appearance date.

The second type of summons is one requiring an appearance within 30 days after service. This summons is commonly known as a “30-day” summons. A 30-day summons is guided by both the date of issuance and the date of service. As long as the summons is served within 30 days of issuance, the defendant has 30 days from the date of service to appear in court.

The practical difference between the types of summonses aside from the set court date is the length of time a defendant has to react to the summons. A date-certain summons may be served three days before the court date, allowing a defendant very little time to react. A 30-day summons allows a defendant 30 days to react.

Let’s forget efficiency and social distancing for a minute. Some matters like evictions and replevin actions require an expedited process. But for most other cases, a short time between service of process and the necessity to act does not serve the interests of justice.

Almost all counties in Illinois require a defendant receiving a date certain summons to appear in court either personally or by an attorney. This court date is typically chosen by the plaintiff or plaintiff’s counsel at least three weeks in advance on a date convenient to them. Defendants on the other hand, often completely unfamiliar with the court system, have as little as three days to react. Defendants that are able to reorganize their schedule (which often requires missing a day of work) such that they can make it to court, usually request a continuance to get their feet under them and seek legal assistance. This is a hardship on the defendant, a strain on judicial resources and a waste of time for all parties involved.

The system, which was probably meant to simplify and expedite the proceedings, is in effect doing the opposite. Today, having the plaintiff and defendant physically appear for what is at best a status date, is unnecessary, and dangerous to everyone in the packed courtroom.

The above only contemplates the first court appearance. Why bring the parties back to the courthouse at all if there is an agreement and a corresponding order that can be submitted electronically to the judge or judge’s clerk? If a hearing is requested or required, there’s no better time than now to equip our courtrooms with the technology that we’re all currently growing accustomed to.

While the courts may not have the funding necessary at the moment to make the technological upgrades we desire, this should not deter us from taking simple steps to ease the burdens on all stakeholders. The administration of justice requires us to rethink case flow management in today’s world. A relatively easy step is by amending Supreme Court Rule 101.

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