



Empire Justice Center

Albany ♦ Rochester ♦ White Plains ♦ Long Island

Empire Justice Center

NYS Joint Public Hearing: To examine the re-opening and operation of New York's courts during the COVID-19 pandemic

Testimony of

Luis E. Ormaechea, Esq.

August 21, 2020

Written Submission by

Empire Justice Center, Consumer Finance and Housing Unit

August 20, 2020

1 West Main Street, Suite 200, Rochester, NY 14614

Phone: 585.454.4060 ♦ Fax: 585.454.2518

www.empirejustice.org

My name is Luis Ormaechea. I am a staff attorney with Empire Justice Center's Consumer Finance and Housing Unit. Empire Justice is a non-profit, state-wide, multi-issue, multi-strategy, public interest law firm, focused on changing the systems within which poor and low-income families live. Our mission is to make the law work for all New Yorkers, especially for those who need it most. I work out of our Rochester office serving clients from Monroe County.

We have heard much during these hearings about the impact the pandemic has had on the operation of New York's courts. An important aspect of my job is helping people at risk of foreclosure in the Rochester area, including helping them navigate the foreclosure settlement conference process and other aspects of foreclosure litigation so that they may remain in their homes. I do this work in conjunction with housing counseling agencies, namely The Housing Council in Monroe County. We are part of a broad network of housing counseling and legal services programs statewide funded through the NYS Office of the Attorney General's Homeowner Protection Program (HOPP). HOPP agencies are well-known and integrated with the courts, particularly with regard to our assistance of homeowners in the mandatory settlement conference process.

I want to first acknowledge the members of the legislature, and all the hard work you have done to keep families safe inside their homes during the pandemic. Your work matters a great deal to people, especially during these very uncertain and stressful times. Thank you.

Recently, courts have begun hearing foreclosure cases again, in many cases with the use of teleconferencing equipment so that litigants, attorneys, and court staff can appear at hearings remotely. We deeply appreciate that local courts in Rochester have collaboratively sought input from Empire Justice Center and other legal advocates in creating these new processes. At the same time, it is also clear that the current system opens the door to unequal justice for people in low-income communities.

Today, I want to highlight three themes in the foreclosure arena as we see them since courts have reopened, and leave you with a few recommendations:

1. Lack of Access to Technology Makes Legal Counsel Even More Critical

There is a new normal in our courts as they resume hearing cases during the COVID-19 pandemic. While some courts have reopened for in-person hearings, many cases, including the foreclosure settlement conferences I participate in, are being held remotely. Instead of being present in the courtroom to represent my clients, I sit at my desk at home, log in to the hearing on my computer, and wait for my cases to be called. It is not too different from a Zoom meeting or a Skype call, with all who are in attendance for the hearing (often dozens of individuals, including the court staff, the litigants, and the attorneys) logged on at the same time. Sometimes there are interruptions on the line because someone forgets to mute their audio feed. Sometimes the feed breaks due to a connectivity issue. Many cases are disposed of in under a minute or two, and it is helpful to follow along on a printout of the docket in order to be prepared with any arguments or updates to be presented on behalf of the client. One can easily miss important details if they are not paying close attention.

There is more technology to deal with and new rules to follow. Virtual meeting rooms have replaced the courtroom, and reams of court papers are now digital document folders. Large caseloads are dealt with while participants contend with mute buttons and volume settings. These aspects of the new digital courtroom will clearly impact homeowners differently. For some homeowners, this new, digital courtroom will work fine. But for homeowners in low-income communities who often do not have strong internet connections or video-friendly devices, this new, digital courtroom will create new barriers for reaching a fair and favorable outcome. Telephone conferences don't work much better either, as they can go by quickly and without sufficient guidance on how to raise defenses, provide evidence, or effectively share one's story.

Under these set of new circumstances, access to counsel becomes even more critical. The present day reality is such that in this new, fast-paced, technology-based format, it is more critical than ever for homeowners to have access to counsel such as those provided to them through the Homeowner Protection Program (or HOPP) network. Without counsel, this new reality can create further setbacks in the settlement process. Let me be clear: even with an attorney, all of these crucial legal tasks are hard enough to do in person because they are technically complex, time sensitive, and carry life changing consequences.

The technology-based reopening has also shown the great divide between the haves and have nots: attorneys for banks and mortgage companies quickly become adept at remote hearings, while homeowners in low-income communities are more likely to struggle with a lack of technology they need for a favorable outcome. So far, it is clear that the digital divide is often the widest in situations where there is also a deficit in legal representation.

2. There Must Be Devoted Resources for Language Access As Courts Reopen

Over 5.5 million people living in New York State speak a language other than English. Of these, 2.5 million speak English less than well.¹ These individuals are described as having limited English proficiency (or "LEP"). People in the LEP, non-English proficiency (NEP), and deaf or hard of hearing communities, or that have other communication barriers, should have full access and meaningful inclusion to any and all court services in their preferred language and mode of communication.

Of the population I serve in Monroe County, approximately 13.6% of people speak a language other than English at home (According to the US Census population estimate for 2019).² Monroe County also has one of the largest per-capita populations of deaf or hard of hearing individuals in the United States.³

Through my efforts to increase language access in the mortgage loan area, including work with the Monroe County Language Access Coalition and the Americans for Financial Reform Language Access Task Force, it is clear to me that perhaps no population faces greater challenges in obtaining information about available mortgage relief than borrowers in these communities with communication barriers. For example, LEP borrowers are more likely to face

¹ <https://www.ny.gov/language-access-policy>.

² Id. (age 5 years +) (2014-2018).

³ <https://www.monroecounty.gov/?q=node/9433>.

long hold times if they are attempting to speak with their servicer by phone with oral interpretation. Many servicer websites do not contain any information on COVID-19 mortgage relief options in languages other than English, and do not even provide links to available translated agency websites.

When the State of New York shut down due to the COVID-19 pandemic in March, 2020, many in the LEP community were left without meaningful access to up-to-date information about COVID-19, unless they were connected to the few agencies that could help, such as Empire Justice Center.

To fill in the enormous gap in access to language, a wide range of advocates stepped in to fill in the gap. Many organizations came together to help agencies obtain information for their clients in a language they would be able to understand. In addition, some advocates translated documents, others provided representation in the language spoken, still others acted as information clearing centers. However, even with these collaborations, many are still at a severe disadvantage for virtual court appearances.

3. In-Person Resources for Low-Income Homeowners Disappeared With Virtual Hearings

Virtual hearings offer the opportunity to address certain primary goals of a legal hearing – provide a status update or advocate on a legal issue. In that sense, virtual hearings get the job done.

However, there are many other ways in which homeowners receive informal advice when coming to court during in-person hearings. For example, in Monroe County, each homeowner participates in a courtroom clinic at the commencement of the foreclosure settlement conference process. There, they hear from an Empire Justice Center attorney and from local housing counseling agencies what to expect from the foreclosure process and what resources are available to assist them in resolving the legal action. During the hearings, physical copies of papers may be handed from one party to another. Often times, the court will ask me or one of my colleagues to step into the hall and have a more in-depth conversation with a homeowner when it is clear the homeowner is struggling to understand some aspect of the proceedings. Face-to-face interactions build trust and help establish the attorney-client relationship. Much of this is lost in the virtual courtroom space. There is no real option for a sidebar discussion.

RECOMMENDATIONS

I would like to leave you with our three recommendations in the area of foreclosure:

1. For the Rochester area, extend the moratorium on evictions and foreclosures for low-income home owners as long as the pandemic continues, recognizing the need for moratorium might not be the same in all parts of the state. To the extent settlement conferences continue, it is critical that low-income homeowners have housing counselors and attorneys, such as those in the HOPP network, who can help homeowners navigate this complex legal arena that is made even more complex by reliance on technology. We cannot allow for a situation where the virtual courtroom contributes to existing barriers for families in low-income communities, including barriers to building generational wealth through home ownership.

2. Commit resources to language access for people who are limited English proficient, non-English proficient, deaf and hard of hearing, and for others in communication-challenged communities who face enormous odds in getting mortgage foreclosure relief. Lenders should be required to include at least some information about late or missed payments and notices of default in languages other than English. This should be in addition to the 90-day notice, which is already required by state law to include languages other than English.

3. Encourage efforts to inform homeowners about their rights in foreclosure proceedings. Some examples include collaborative efforts between courts and the advocate community in creating virtual webinars, recordings, and brief presentations about homeowner rights (e.g., about the Residential Foreclosure Actions Consumer Bill of Rights) prior to the mandatory Settlement Conferences. These efforts cannot replace sidebars or face-to-face interaction, but may temporarily fill in the gap while virtual hearings continue.

Thank you for this opportunity.

Luis E. Ormaechea, Esq.

Staff Attorney

Empire Justice Center

lormaechea@empirejustice.org

(585) 295-5813