

**The American Bar Association
Judicial Division
National Conference of the Administrative Law Judiciary
Survey Regarding Impact of COVID-19 on Administrative Courts
May 8, 2020**

Preliminary Report

The National Conference of the Administrative Law Judiciary (NCALJ), is one of the six national conferences that comprise the Judicial Division (“JD”) of the American Bar Association. In late April 2020, NCALJ undertook to conduct a rapid response survey of Administrative Law Judges to provide a snapshot of the actions taken by administrative tribunals across the country in response to the COVID-19 pandemic. The survey also sought to gauge the views and perspectives offered by judges in response to those actions along with suggestions for improving future responses to future pandemics or other natural disasters.

This Preliminary Report captures the first phase of several planned surveys to be conducted by NCALJ as we track the course of the COVID-19 virus and its impact on administrative courts, both state and federal. The views expressed herein are being presented on behalf of the National Conference of Administrative Law Judiciary. They have not been approved by the House of Delegates or the Board of Governors of the American Bar Association and, accordingly, should not be construed as representing the position of the Association.

Judge Henry Hamilton and Jim Pauli co-chaired the NCALJ committee. Jim is from the JD Lawyers Conference and his experience as a management consultant providing disaster recovery support to the Federal Emergency Management Agency proved invaluable. The April 2020 survey was designed to capture responses from judges prior to the “reopening” of the economies of many states. Release of the underlying data and responses is planned for May 20, 2020. The second phase survey is planned for June 2020, when many states are expected to have “reopened.”

This is a time of much uncertainty in our daily lives as well as governmental operations. Within a few weeks, businesses, government agencies, and Tribunals across the country scaled down to essential-only operations. As of today, the United States has recorded nearly 80,000 deaths in less than a 3-month period from COVID-19. Most of the country remains under “Stay-at-Home” orders and no one is certain what the “new normal” will be in terms of our daily lives.

I. Survey Responses

NCALJ surveyed its own membership of state and federal ALJs, as well as members of the National Association of the Administrative Law Judiciary (NAALJ), and the leadership of state Central Panels (CP). We received 88 responses hereafter referred to as judges. The survey was taken over a one-week period, and represents responses from nearly 45 agencies with judges numbering from one to 1,250 judges per court or office. They represent, equally, tribunals that conduct benefits determination and regulatory enforcement cases. In order to maximize candor and participation in our responses, NCALJ designed the survey to be completely anonymous both in terms of eliminating any identifiers in the questions as well as by having responses go directly to ABA staff to screen all contact information. NCALJ thanks all those who responded.

II. Survey Results

Survey results can be organized into two categories: Successful Tribunal Responses and Challenges Moving Forward.

A. Successful Tribunal Responses

COVID-19 hit. Tribunals rose to the challenge. They responded quickly, resourcefully, and successfully. The survey found:

- **Timely Information Provided; Judges Involved**
 - Seventy-six percent of judges felt that they were provided timely information about the pandemic.
 - Fifty-two percent of judges and 95% of central panel leadership indicated that judges were involved in emergency planning.
- **Powerful Tool Kits Developed**
 - Tribunals developed powerful toolkits to maintain essential operations. First among the tools was teleworking. Prior to the emergency, approximately 70% of judges and employees were teleworking 0 – 20% of the time. During the emergency, approximately 70% of judges and employees were teleworking 81-100% of the time.
 - Use of telephones and videos for hearings, especially evidentiary hearings and appeals increased dramatically. Prior to the emergency, fifty percent of the judges used telephone and video for pretrial hearings 81-100% of the time. During the emergency 70% of the judges used telephone and video 81-100% of the time. For evidentiary hearings and appeals, prior to the emergency 53% of judges used telephone and video 0 -20% of the

time. During the crisis, for evidentiary hearings, 68% of the judges used telephone or video 81-100% of the time.

- Other valuable tools included flexible work schedules, emergency notices, extensions and postponements, and flexible deadlines.
- **Technology Worked; Operational Issues Identified**
 - Approximately 70% of respondents found teleworking technology was adequate or good; and over 60% of the respondents were somewhat satisfied or satisfied with the use of telephones and videos for hearings.
 - Operational issues identified during emergency operations included: adding to case backlogs, computer connectivity, communicating with parties, lack of technology, difficulty communicating with colleagues, and difficulty accessing shared office devices.

B. Challenges Moving Forward

When Tribunals move from essential services to the new normal there will be challenges. The survey identified the following challenges:

- Seventy-five percent of judges feel that it is not safe to return to work, although nearly 60% of central panel leadership feel it is safe to return.
- The survey indicates that approximately 50% of cases were postponed during reduced operations, and that case backlogs are estimated to increase by greater than 50%.
- Respondents identified a large list of actions required for them to feel safe returning to work including: increased facility cleaning, facility changes to ensure six feet of separation, requiring all employees and those entering the building to wear face masks, providing PPE to employees and Tribunal users, increased use of telephone and video hearings, increased use of electronic dockets and files, temperature and status checks before people enter facilities, and employee COVID-19 and antibody testing.

III. Lessons Learned

As Tribunals move forward, we believe there are some lessons learned from their initial COVID-19 response actions.

- **Communicate Frequently and Fully**
 - Our finding: Seventy-six percent of judges felt that they were provided timely information about the pandemic. This could only take place with good communications. Further, governors of both political parties are being praised for their open and truthful communications concerning COVID-19. As Tribunals move forward to their next phase, we recommend they communicate frequently and fully.

- **Involve Judges and Staff in Decision-making**
 - Our finding: Fifty-two percent of judges and 95% of central panel leadership indicated that judges were involved in emergency planning. Every judge and every staff member cannot be involved. But Tribunals can develop ways to allow for input, comments and questions from all judges and staff. Further, ensuring some judges and staff are involved, and that everyone knows who is involved in planning and decision-making should improve decision-making, understanding, and support.
 - The survey indicated that 75% of judges feel it is not safe to return to work while 60% of Central Panel leaders feel it is safe to return to work. Communication and involvement are key tools for educating and aligning judges and employees with leaders.

- **Develop New Toolkits**
 - Due to COVID-19, Tribunals developed effective toolkits to successfully transition from normal to essential only operations. As Tribunals move to the next phase, they will need to use and adapt current tools and perhaps develop new tools. Telework and telephone and video hearings may be best practices that continue at some level, indefinitely. New tools may be needed to handle increased backlogs, e.g., implementation of standing procedural orders, more reliance upon summary disposition of cases, increased use of ADR processes, etc.

- **Improve Training, Systems and Support**
 - Considering the short time frames and immediate needs, it appears that Tribunals were largely able to transition to “stay-at-home” operations successfully. Successful does not mean without problems and issues, however. Survey findings indicated there were/are challenges including: computer connectivity, reduced communications with parties, lack of technology, difficulty communicating with colleagues, and difficulty accessing shared databases. Since it is not known how long these pandemic conditions will prevail, agencies should develop or enhance software training to allow judges and staff the ability to access all necessary databases and software systems, including Skype, Cisco WebEx, Zoom, Microsoft Team, and database systems.

- **Prepare For The Second Wave**
 - In addition to training, systems, and support, Tribunals now have time to build better emergency plans and procedures. Fifty seven percent of respondents stated that their Tribunal had disaster/ contingency plans in place before the advent of COVID-19. We suspect that most/all of those plans were built around natural disaster responses, and could hardly have been expected to have anticipated a pandemic on the scale that we are now experiencing. Now that Tribunals know a great deal more about

how COVID-19 affects people, and governmental operations, Tribunals need to incorporate these lessons learned into disaster preparedness and planning.

IV. NCALJ's Next Steps

We expect to issue a more complete report on this survey's outcomes, on or about May 20, 2020. Now that many states are beginning to "reopen", we expect to issue another truly anonymous, rapid response survey next month. We invite you to respond.

Should you have any questions or suggestions, please contact Bob Cohen, Chair NCALJ at Bob.Cohen@doah.state.fl.us.

Survey and report developed by the NCALJ COVID-19 Outreach Committee including:

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