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**TESTIMONY OF THE
CRIMINAL JUSTICE OPERATIONS COMMITTEE
CIVIL RIGHTS COMMITTEE AND
CRIMINAL COURTS COMMITTEE
ON T2014-2177**

“EXAMINING THE OPERATIONS OF NEW YORK CITY’S SUMMONS COURTS”

**NEW YORK CITY COUNCIL
COMMITTEE ON COURTS AND LEGAL SERVICES
COMMITTEE ON PUBLIC SAFETY
DECEMBER 15, 2014 - 10:00AM**

My name is Michael Oppenheimer and I am testifying on behalf of the New York City Bar Association’s Criminal Justice Operations Committee. Thank you for this opportunity to testify about the operations of New York City’s Summons Courts.

The New York City Bar Association, through its Criminal Justice Operations Committee, Civil Rights Committee and Criminal Courts Committee (“the Committees”) recommends further study of the Summons Parts before expanding the number of offenses that are made returnable in those Parts. Last year, based on a concern that due process rights may not be protected in the Summons Parts and that summonses were issued primarily to young men of color in minority neighborhoods, the Criminal Justice Operations Committee and the Civil Rights Committee began an examination of the Summons Parts. While we currently are in the process of collecting data, and do not express a position on Mayor de Blasio’s announced plan to have marijuana violations returnable in the Summons Parts, rather than in Criminal Court, we write to inform the Council about issues of concern that we have been examining.

According to data provided by the Office of Court Administration, over the past 10 years New York City Criminal Courts have processed between 450,000 and 650,000 summons filings each year. Although most summonses are for non-criminal offenses, tens of thousands charge misdemeanors, to which a plea of guilty results in a criminal conviction and all of a conviction’s attendant consequences. Moreover, even a plea of guilty to a violation may have collateral consequences, including significant immigration consequences. Additionally, summonses are almost universally heard by Judicial Hearing Officers, not Criminal Court judges, in crowded courtrooms under tremendous time constraints. On a typical day, over 100 summonses are returnable in each of the Summons Parts of the four most populous boroughs.

Among the concerns the Committees would like the City Council to consider are:

- There is no data collection on the race or ethnicity of the respondents who appear in Summons Parts, and therefore it is difficult to determine whether there is data to support the anecdotal impression that summonses are more likely to be issued to members of minority communities;
- If the respondent does not appear in court on the return date, a warrant will be issued for the respondent's arrest;
- Before entering the court room, respondents are asked to execute a waiver of the right to have their cases heard by a judge, and consent to having their cases adjudicated by a judicial hearing officer; it is doubtful that the vast majority of respondents understand the consequences of this waiver;
- The large numbers of cases, judicial haste, and small number of defense attorneys limit the opportunity for respondents to confer with assigned counsel, and we question whether the respondents can be said to have been provided with the actual right to counsel, rather than simply the questionable benefit of an attorney being present in the part;
- Many of the guilty pleas entered by respondents are entered without a clear understanding of the rights to which they are entitled and which they are giving up by entering a plea of guilty, including the right to a trial, or that there may be collateral consequences attached to entering a plea of guilty, even to a violation;
- Non-U.S. citizens may not be informed by counsel that entering a plea of guilty to a marijuana violation, not even a crime, and paying a fine may subject them to such harsh consequences as removal from the United States, rendering them permanently inadmissible and preventing them from demonstrating the good moral character required for citizenship;
- Entering a plea of guilty to a marijuana violation may render the respondent ineligible for public housing for a period of from two to three years; and
- Although there is a right to file a notice of appeal and to appeal a conviction after entering a plea of guilty, the vast majority of people who enter pleas of guilty to a summons are not informed of their right to appeal.

In conclusion, the City Bar has serious concerns about the protection of due process rights in the Summons Parts. We caution restraint in changing policy to include even more offenses returnable in the Summons Parts, and urge further study.