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July 19, 2021

VIA E-MAIL ONLY

Glenn A. Grant, J.A.D.
Acting Administrative Director of the Courts
Comments on the Future of Court Operations
Richard J. Hughes Justice Complex
P.O. Box 037
Trenton, NJ 08625

RE: Future of Court Operations – Public Comment

Dear Judge Grant:

I am to provide comments on the Supreme Court’s proposal for the future of court operations. By way of background, I have been in practice as a civil litigator, appearing before State and Federal courts in New Jersey, for 25 years. My practice has been exclusively in the area of civil litigation and it has been my privilege to appear before Superior Court of New Jersey Civil Division, Superior Court of New Jersey Appellate Division, and New Jersey Supreme Court, in addition to appearing before the United States District Court for the District of New Jersey and the Third Circuit Court of Appeals.

My comments are limited to those portions of the Court’s proposal as it relates to civil matters in the law division and appellate matters. I fully support the Court’s proposal.

While the crisis that spurred the use of technology to conduct remote court proceedings, remote depositions, remote mediations and other litigation events was unspeakably tragic, the benefits to practitioners, the courts and, most importantly, the litigants themselves resulting from the use of such technology have been great.

First and foremost, remote proceedings provide time and cost savings to attorneys, which are directly beneficial to our clients. Because our practice is statewide, every motion argument,

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pre-trial conference, case management conference, settlement conference, mediation and deposition that takes place via Zoom, MicroSoft Teams or via some other platform, results in the attorneys at my firm saving anywhere from 1 hour to as much as six hours in round-trip travel time. That time is billable to clients in addition to generating costs to clients for travel expenses. Because our practice is primarily fee-shifting work, any reduction in fees and costs translates to an increased ability to settle cases and more money in the hands of our clients as the result of successful settlements.

The math is compelling. A typical motion argument might last anywhere from 15 -30 minutes. Using a nearby courthouse – Camden County – as an example, in order to insure that we arrive on time for argument, we strive to arrive at the courthouse at least 15 minutes before argument is scheduled to begin. If we are arriving for a general call at 9:00 a.m., when the lines for security are at their longest, we may increase that time by five or ten minutes. Accounting for time spent finding parking and time spent on travel to the courthouse, we will spend, on average, 45 minutes getting to the courtroom for argument. We'll spend another 30 minutes leaving the courthouse and returning to the office. That's a total of one hour and 15 minutes of "travel" time in order to participate in a 15 minute argument. Of course, that presumes that argument starts exactly as scheduled. If we are appearing for a "cattle call" we can spend as little as 5-10 minutes waiting for our case to be called and as much as several hours. It is impossible to be productive in any other matter during that time, all of which is simply lost as productive time, but is billable to the file and, thus, to the client. A typical motion appearance, even in a nearby courthouse can turn into a several hour billable event that also adds costs by way of parking expenses and mileage to our clients. A remote motion argument eliminates all of those costs and all billable time but for time spent participating in the remote argument. It is a tremendous saving to the litigants on both sides of the aisle and a great benefit to the attorneys who then can turn the hours otherwise spent travelling and waiting into hours that are devoted to substantive work on their cases. From a purely personal perspective, it also translates into more time that the attorneys can spend at home, increasing work-life balance.

When a matter is venued in a county that is not near to home or the office, the savings in billable time and costs are even greater. The same typical motion argument in Essex County for our firm generates, at the outset, four plus hours of drive time alone, in addition to the time spent finding parking, getting into the courthouse and waiting for argument to begin. Every time.

We are also able to participate in multiple arguments on any given motion day. Before the pandemic, being scheduled for motion arguments in Essex, Burlington and Ocean on the same day (certainly not uncommon) would have generated rounds of calls to adversaries and courts seeking consent for ready holds, requests for telephonic argument, trading motions with other attorneys in the office or other contortions to fit all arguments on the same day. With the advent of remote arguments, the ability to have all arguments scheduled for different times is much simplified.

Of course, the same analysis holds true for other events, such as settlement conferences, case management conferences and the like. While a settlement conference might be a much longer event at the courthouse, we still reap the same time and cost savings by eliminating the need to travel to the courthouse to participate. When the court requires parties to appear for a

settlement conference, our clients are also able to save time and money travelling to the courthouse, finding childcare, and, potentially, taking less time away from work depending on the nature of their job and schedule.

We see the same time and cost savings for out of court litigation events such as mediations and depositions. The increased convenience to our clients in terms of their own travel, impact on child care and impact on work are obvious.

We can only imagine that the use of remote proceedings has a benefit to the court in terms of increased efficiency, ease of scheduling matters and finding times available to the court and to counsel. We imagine that it creates a reduction in stress on the court staff and eases staffing issues on multiple levels.

We perceive little to no negative impact on the court, the parties or counsel resulting from the use of remote proceedings. While there may be the occasional glitch in technology, we suspect that such events are far fewer than attorneys unable to appear on time in court as the result of traffic on the parkway or the turnpike, weather delays and the like. The use of video technology allows the court and counsel to see one another, have the same visual cues permitted by in-person proceedings and same ability to substantively address the issues presented by the particular proceeding.

In sum, it is my experience and perception that the benefits of remote proceedings for the pre-trial events listed in the Court's proposal far outweigh any negative effects that might result.¹

Very truly yours,

COSTELLO & MAINS, LLC

By: /s/ Deborah L. Mains
Deborah L. Mains
Managing Partner

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¹ I do agree that in-person arguments before the Appellate Division and Supreme Court are preferable to remote events, having participated during the pandemic in both telephonic argument before the appellate division and multiple arguments by video before the Supreme Court. The gravity of those proceedings calls for in-person argument. Moreover, arguing before a panel of jurists is very different from argument before a single judge. Using remote technology generally does not permit counsel to see the full panel during argument and so we do lose visual cues we would have during in-person argument.