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INSURANCE COUNCIL OF NEW JERSEY

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August 18, 2021

Honorable Glenn A. Grant, J.A.D
Acting Administrative Director of the Courts
Hughes Justice Complex
P.O. Box 037
Trenton, NJ 08625-0037

Re: Comments on the Future of Court Operations

Dear Judge Grant:

On behalf of the Insurance Council of New Jersey, our property and casualty insurance company members and our associate members who serve their auto, home, commercial and workers' compensation policyholders' needs both inside and outside the courtroom, we appreciate this opportunity to provide comments on the recent proposal for the future of court operations. Throughout the COVID-19 pandemic, New Jersey courts have undertaken a herculean task to balance pandemic restrictions with the need to keep the justice system moving forward. We applaud the work of the judges and administrative staff throughout the pandemic.

Overall, we believe that the proposal represents a careful and balanced approach to a more complete return to court operations. However, we echo concerns over the interplay between paragraphs (2) and (6) as explained in the comment letter by our colleagues at the New Jersey Civil Justice Institute.

Specifically, Paragraph 2 generally states that "[j]udges shall have discretion to determine whether to conduct court proceedings virtually or in person" and sets forth a list of proceedings that either must proceed in person or may only proceed remotely with the consent of all parties. ICNJ has no objections to this standard as it fits the concepts introduced in *Pathri v. Kakarlamath*, __ N.J. Super. __ (App. Div. 2020) (slip op. at 15), which addressed the appropriateness of remote proceedings. Paragraphs three (3) through five (5) then provide some guidance for the exercise of judicial discretion mentioned in paragraph 2.

Paragraph 6 goes on to state that "[t]he following matters in general will proceed remotely" (emphasis added), including "[m]otion arguments and case management conferences in all trial divisions of the Superior Court . . ." and various civil proceedings listed in paragraph 6(c). We are concerned that it may be unclear whether intent of paragraph 6 is to create a presumption

for handling the proceedings listed therein remotely, or instead, whether the judicial discretion mentioned in paragraph 2 essentially allows each trial judge to individually decide whether all such proceedings will be held remotely or in-person in their courtroom. Likewise, it is not clear exactly how the second half of paragraph 3, which provides that “judges may determine to proceed in person . . . in other exceptional circumstances”, governs the discretion afforded by paragraph 2 and/or the apparent presumption established by paragraph 6.

ICNJ respectfully believes that further clarification on this point would benefit both the public and the bar by establishing a clear standard for departing from a presumptive remote proceeding. Absent this clarification, a civil litigant in one matter might proceed remotely, while a litigant on an identical matter in another county may be required to appear in court. In-person proceedings impose higher costs on litigants, such as costs for travel and billable attorney time spent waiting in a courtroom. Whether a civil litigant will shoulder the increased cost of in-person motion practice during a case should not depend on personal preferences unique to the judge. By providing a clear standard, the proposal will enable litigants’ to better anticipate the cost of litigation when considering early settlement discussions.

Of course, we support the ability of individual trial judges should retain discretion to overcome this presumption and switch to an in-person format in the interest of justice or efficiency when the circumstances of a particular matter demand it.

In conclusion, ICNJ appreciates the opportunity to weigh in on the proposal for the future of court operations and we applaud the Judiciary’s leadership throughout the pandemic in balancing the safety of all parties and the need for matters to proceed. If Your Honor has any questions about these comments or would like to discuss the matter, then please do not hesitate to contact me directly.

Respectfully submitted,

Gary R. La Spisa, II
Vice President, Insurance Council of NJ