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Glenn A. Grant, J.A.D.
Acting Administrative Director of the Courts
Comments on Proposal for Virtual Civil Jury Trials
Hughes Justice Complex; P.O. Box 037
Trenton, New Jersey 08625-0037

Re: Comment to the Proposal for Virtual Civil Jury Trials

Dear Judge Grant,

On behalf of the Conference of Civil Presiding Judges (“Conference”), please accept these comments to the proposal for virtual civil jury trials (“proposal”) set forth in the November 25, 2020 Notice to the Bar. The Conference notes the need for action and commends the work of the Post-Pandemic Planning Committee on Resuming Jury Trials. These comments may not be shared by all Conference members, but the Conference as a whole felt it was important to present them to the Court.

The proposal does not require the consent of the parties to proceed remotely with a trial. Some members expressed concerns about proceeding without consent, while others believe this is the appropriate course of action. Consent, or lack thereof, is being used by parties as a litigation tactic and, ultimately, trial certainty is what prompts the resolution of cases.

The proposal to provide pre-marked exhibits to jurors in advance of or during trial is concerning. Jurors should only have documents admitted into evidence, and even then, they should only get them at the end of the trial.

The potential for “digital manipulation” and other video frauds, easier to perpetrate in a virtual trial, is of concern. To minimize this potential and to the extent possible, the judge and the attorneys should be physically located in a courtroom where the technology can be more easily controlled and issues that arise promptly addressed. The use of multiple large screens is suggested so judges and attorneys can see all jurors as well as any testifying witnesses simultaneously. Live trials allow jurors to observe the entire courtroom. They watch a party’s demeanor in and out of the witness box. They pay attention to how an allegedly injured plaintiff moves about. They see the parties’ reactions to certain testimony or to the admission of evidence. The use of multiple large screens will help minimize the loss of these types of in-person observations by jurors.

Precautions should be taken to ensure jurors conduct themselves appropriately. At the start of a trial, a judge explains the limitations of communication with others and the prohibition of independent research. Virtual instructions received by jurors sitting in their living room may not be met with the same understanding and import as a judge looking them in the eye in a courtroom. Already in front of a computer screen, jurors might be more apt to conduct their own internet research or allow family members to watch the trial along with them.

A final concern relates the de-personalization of the trial process. Trials are personal experiences for jurors, litigants and others involved. Jurors form bonds with one another as they exercise respect and courtesy to consider one another's point of view and try to reach a consensus. Trials are important events where humanity must be front and center. A virtual trial is more likely to resemble a TV show. The empathy of a litigant's plight, which presents itself during a live trial, will not exist in a virtual setting. Jurors will not face the party for or against whom they are delivering their verdict. The deliberation phase will also change dramatically. The sanctity and confidentiality of the jury deliberation room can be easily compromised by a juror who records the discussions. These issues must be considered prior to the start of a virtual trial.

The Conference understands the importance of continuing to provide court services, such as virtual trials, while also limiting in-person events. I would welcome the opportunity, on the Conference's behalf, to discuss these suggestions and concerns in further detail.

On behalf of the Conference, we thank you for your time and consideration.

Very truly yours,

s/ Thomas F. Brogan

Thomas F. Brogan, P.J. Cv.
Chair, Conference of Civil Presiding Judges

cc. Conference of Civil Presiding Judges
Steven D. Bonville, Chief of Staff
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