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Submitted Via E-Mail to Comments.Mailbox@njcourts.gov

Hon. 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

Your Honor:

My name is Matthew Cohen, and am I an associate with the Law Offices of Nancy L. Callegher, Staff Counsel for Farmers Insurance Company, located at 343 Thornall Street, Edison, NJ 08837. Our physical office closed in March 2020 due to COVID-19, and thus I have listed my home address above, as I will be working out of my home for the foreseeable future. The phone number listed above is my cell phone number, again, as my physical office is not being presently staffed.

I understand that you are accepting comments regarding the possibility of all-virtual civil jury trials. I believe that I am in a unique position to provide insight regarding same, as I participated in one of the few "hybrid" civil jury trials during the COVID-19 pandemic. Specifically, I was defense counsel in the matter of Hyunjung Kim v. Masanori Bito, Docket Number BER-L-8329-17 before the Hon. John D. O'Dwyer on November 9, 2020 and November 10, 2020. The case stemmed from an automobile accident. Liability was stipulated, and the parties agreed to an expedited trial. Thus, the only live witness was the plaintiff herself. On Monday, November 9, 2020, we virtually selected 25 jurors from a pool of 60 via Zoom. The 25 jurors that were selected to come to the Courthouse for the final in-person voir dire on Tuesday, November 10, 2020 did not express any concern over having to do so. The final voir dire was conducted in the Jury Assembly room, which was sufficiently large enough to ensure proper social distancing. Once the jury was selected, we conducted the trial a courtroom which had been retrofitted for COVID-19 concerns, with plexiglass and adequate spacing for the parties and for jurors. Masks were worn at all times by all participants. I believe that the staff at the Bergen County Courthouse did a tremendous job adhering to safety protocols, while at the same time, ensuring that we could still try a case and remain safe at the same time.

I do understand that the case we tried was a simple one. Specifically, this was an expedited trial with only one live witness, and the testimony was relatively short. I also understand that not every case is as simple, and sooner rather than later, more complex matters will need to be tried. I must, however, voice my opinion in opposition of a completely virtual jury trial system. This

year, the legal industry has had to adapt to meet the challenges that we have faced due to a global pandemic. I truly believe that we have done the best that we can do under these circumstances. While the technology that we have at our disposal is tremendous, there are inherent problems with it when it comes to the implementation of jury trials. My office has a weekly meeting via video conference. All attorneys and staff are on this meeting using their computers. Everyone had internet access at their home, and adequate technology. Yet, during each and every meeting, there is always an instance (or two, or three) where someone's computer speed or internet speed is not working in tune with everyone else's speed, and there is a lag (or worse, a skip) of what a person says. Also, I have been conducting depositions virtually throughout this pandemic, and there is always an instance (again, sometimes multiple instances) where a question has to be repeated, or words are completely missed in a response. I worry, specifically if I were giving an opening argument or a closing argument, that the words I am speaking would not be heard by the jurors. Human nature being what it is, I would worry that a juror would not want to raise their hand and stop me while I was speaking to let me know that they missed something, and thus I would never know that they didn't hear something which may be critical to the case. In the alternative, if a juror were to continuously interrupt a speaking attorney because they could not hear, it may be detrimental to the others who could hear in processing the information.

Additionally, when we have in-person jury trials, we ensure that there are no distractions for the jurors during testimony. Specifically, we don't allow jurors to use their cell phones in Court, nor do we allow other outside distractions, which the sheriff's officers see to on a daily basis. When you remove this in-person aspect and allow jurors to decide cases from their own homes, distractions may occur, even with the best of intentions. Off camera, a television may be on in the background, distracting a juror. Off camera, another person may be in the room, or in an adjacent room listening to testimony. Small children whom a juror didn't think would be an issue suddenly have an issue which require attention. I'm providing just a few examples I can think of, but really, my objection is for all of the scenarios which may arise that I cannot think of, which would be alleviated by simply having an in-person jury.

I believe that my trial serves as evidence that a fully-functional jury can be selected mostly virtually, and with more safety than one would encounter at his or her local grocery store. Witnesses can testify safely with precautions. Juries can sit in judgment and deliberate safely with precautions. Attorneys can give their opening and closing arguments with precautions. In my opinion, there is simply no need for a fully-virtual system, when a hybrid model is just as effective, while eliminating the possibility that a juror may not be afforded the opportunity to see and hear all of the testimony of witnesses and argument of counsel. I worry that the hard work that goes into a trial may be for naught, and that the administration of justice cannot be ensured without the parties all being together in one room for trial. I believe that the latter can be accomplished safely, with adequate protocols.

I thank Your Honor for the opportunity to comment, and I hope my opinions are helpful to you.

Sincerely,

Matthew I. Cohen