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Sent: Sunday, December 13, 2020 9:18 PM
To: Comments Mailbox
Cc: Patrick Galligan; 'John Paul Velez'; cjones@morriscountybar.com; Kraiss, William A.
Subject: [External]Comments on Proposal for Virtual Civil Jury Trials - Morris County Bar Association Civil Practice Committee

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VIA EMAIL

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

Dear Judge Grant:

Please accept this email on behalf of the Morris County Bar Association Civil Practice Committee in response to a request for comment with respect to the Court's Proposal for Virtual Civil Jury Trials.

First, we welcome the Court's extensive efforts to keep the judicial system open and operating in the face of this pandemic, thus serving litigants throughout the state. Second, we understand that even the potential for any one case being assigned to trial can motivate other cases to settle. Third, we recognize and appreciate the lengths to which the Court has gone to ensure fair, safe, and effective virtual jury trials over the coming months. Nevertheless, we wish to bring to the Court's attention the concerns of our members, as we prepare for the possibility of virtual jury trials. We assume, of course, that the Court and its committees already have considered these concerns, but thank the Court, nonetheless, for the opportunity to add our voice to the dialogue between the bench and the bar.

Our committee's concerns fall, generally, into three categories:

1. Virtual trials should be conducted among litigants and counsel who have consented to this process.

While the proposed Recommendations state that the Civil Presiding Judge, trial judges, and attorneys will work together to select or exclude appropriate cases from this process, and that the first virtual civil jury trials should involve those who are amenable to the process, the recommendations further state that "[c]onsent to proceed remotely should not be required." We recognize and agree that there certainly are cases appropriate for virtual trials, including, for example, cases with one plaintiff/one defendant with few exhibits, or "expedited trials" not requiring expert/medical testimony. We also recognize that there are litigants and attorneys who would be willing to submit their cases to a virtual jury trial in an effort to resolve their matters. The Court should consider scheduling virtual jury trials in those cases. Otherwise, we believe it would be unreasonable to expose litigants and their attorneys – some of whom have waited years to resolve their disputes – to a system that curbs effective cross examination, limits the ability to present a client (or witness) to the jury, or relies on the vagaries of novel technology and procedures, without their having first consented.

2. The system should ensure that jurors can carry out their duties free of distraction or influence.

While there is nothing to compel a juror in an in-person trial to pay attention, at least those jurors cannot distract themselves with other technology while sitting in the jury box. However, in a virtual trial, there may be no way to limit a juror's distractions. For example, jurors easily could have the trial playing on their computer, while directing their attention to other activities on their nearby, but out-of-site, cell phone. In addition, given living arrangements for some jurors, it may be difficult for them to deliberate in private. We trust, therefore, that even beyond a Court's admonition, there will be safeguards in place to ensure the integrity of our jury system.

3. Technology challenges.

We are encouraged by the Court's commitment to provide Samsung Galaxy Pro tablets to all empaneled jurors, with Broadband activated if necessary. That said, in the last nine months we all have been on virtual platforms during court hearings, depositions, or other quasi-judicial events where the technology, which was tested and proven, let us down at an inopportune moment. The prospect of a similar glitch (or worse) marring a trial presentation, and potentially a client's case, is difficult to accept. Along those lines, we trust the Court will take all steps possible to ensure a smooth and technologically sound experience for all users.

Finally, while restarting civil jury trials, even virtually, if necessary, is an important step in getting the process "up and running," we assume that courts will face potentially insurmountable backlogs once things "return to normal." At that time, our Committee will make itself available to the Civil Division in Morris County to offer its time and resources to aid in moving cases as effectively and efficiently as possible.

Thank you for your consideration.

Respectfully submitted,

William A. Kraus, Esq.
Patrick Galligan, Esq.
Co-chairs, Morris County Bar Association Civil Practice Committee

William A. Kraus, Esq.

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