

#088

From: Jodi Mindnich <Jodi.Mindnich@selective.com>
Sent: Wednesday, August 4, 2021 4:50 PM
To: Comments Mailbox
Subject: [External]Comments regarding the future of court operations

CAUTION: This email originated from outside the Judiciary organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Good afternoon,

I am a civil defense trial lawyer, with the majority of my cases venued in Monmouth County. I have been in practice for 31 years. I sit as an appointed arbitrator in Monmouth County and Mercer County. I am also designated as a Blue Ribbon Panelist as part of the Monmouth County ADR program. I respectfully submit the within comments regarding future court operations relating to civil practice.

It has been quite a challenge for counsel and their clients to proceed through discovery and prepare a case for trial in a virtual setting during the pandemic. Absent from the practice of law for the last 17 months was the live interaction amongst counsel and litigants. An important component to this process is arbitration. Arbitrating cases in a virtual platform is more difficult than if in person. It is harder to evaluate a witness when one only sees their face on a laptop screen. You cannot assess someone's credibility when you cannot see their body language. Many plaintiffs appear via telephone rather than zoom and the arbitrator cannot assess the party individually. Cases involving scars are difficult to value, due to the coloration and quality of laptop screens. Counsel have lost the ability to discuss the case at the courthouse prior or subsequent to the proceeding in an effort to focus the issues and/or move a case toward settlement. Arbitration can be a very effective tool in case resolution, either by acceptance of the award entered, or by starting a dialogue among counsel that leads to case settlement.

As counsel representing a client in an arbitration, I prefer appearing in person to present my case, cross-examine my adversary's client and discuss the issues in the case with the arbitrator, without having to deal with connectivity issues, muted and muffled audio and parties who appear by telephone because they cannot appear via zoom. Arbitrations serve the greater good when all parties appear with counsel and participate in the proceeding. Since the parties, and not just counsel, are involved in the arbitration process, I submit that all civil arbitrations should be conducted in person. To address concerns of social distancing, it is recommended that cases be assigned a specific arbitration time, spread throughout the day, to avoid large crowds of people in the courthouse at the same time.

As far as other court operations, I find that case management conferences work very well in a virtual platform. It is a time efficient manner in which to address discovery issues. I would prefer to argue motions in person, as I believe one can be more persuasive in a live setting; however, I do understand that continuing motions in a virtual fashion is also more time efficient.

With respect to jury trials, I believe that jurors should be present in the courtroom along with the Judge, counsel and parties. Jurors must, as the trier of fact, have the ability to observe counsel and the parties in person, without outside distraction or influences, or be limited to their viewing capability based upon the placement of courtroom camera angles. The role of the juror is far too important to allow for virtual participation in the trial process. I do note that the proposed future operations does grant discretion to the trial judge to determine to proceed in person during the interim adjustment period, with an intention to return to complete, in-person jury proceedings when deemed safe.

Thank you for your consideration.

Jodi F. Mindnich

Jodi

In response to the COVID-19 health emergency, we are working remotely for an indefinite period of time. To facilitate our working remotely and timely responding to communications, we would appreciate your sending all communications to our office electronically by email, rather than in paper form by regular mail or fax. We thank you for your consideration and courtesies.

Please include my secretary, Colleen Trout, on all emails involving scheduling matters. Her contact information is below. Thank you.

Jodi F. Mindnich, Esquire

Senior Trial Attorney
Zirulnik, DeMille & Flynn
200 Clocktower Drive
Suite 101
Hamilton, NJ 08690
direct dial: 609-890-4623
fax: 855-515-8190
jodi.mindnich@selective.com

Secretary: Colleen Trout | 609-890-4365 | colleen.trout@selective.com
Paralegal: Crystal Hensal | 609-890-4630 | crystal.hensal@selective.com

This email contains information that is protected by the attorney-client privilege and/or work-product doctrine. This email message and any attachment(s) are intended only for the personal, confidential use of the designated recipient(s). If the reader of this message is not the intended recipient, or an agent responsible for delivering to the intended recipient, you are hereby notified that you have received this document in error and that review, dissemination, distribution or copying of this message is strictly prohibited. If you have received this communication in error, please notify us immediately by return email or by telephone and delete this email from any computer without copying.
Thank you.

©2011 Selective Insurance Company of America