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August 12, 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:

The New Jersey Civil Justice Institute ("NJCJI") is a nonpartisan coalition of the state's largest employers, leading trade associations and small businesses. NJCJI's mission is to promote a fair and predictable civil justice system in New Jersey, which is an essential ingredient for a functioning economy. This correspondence serves to provide NJCJI's comments in response to the Court's proposal for the future of court operations (remote and in-person proceedings) dated July 16, 2021 ("Proposal").

Overall, NJCJI believes that the Proposal sets forth a thoughtful and measured approach to the future administration of justice in New Jersey. The Proposal reflects the Judiciary's herculean efforts over the last year and a half to serve the people of New Jersey and continue the pursuit of justice in our state courts. Thanks to the adaptability of the judges and the relentless professionalism of court staff, justice still moved forward in New Jersey despite the unprecedented challenges presented by the COVID-19 pandemic.

However, with respect to the Proposal, NJCJI has practical concerns regarding the interplay between paragraphs two (2) and six (6) of the proposal. Specifically, Paragraph 2 generally states that "[j]udges shall have discretion to determine whether to conduct court proceedings virtually or in person" and then specifically sets forth a list of proceedings that either must proceed in person or may only proceed remotely with the consent of all parties. NJCJI has no issue with this standard, as it comports with 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.

Finally, Paragraph 6 states that "[t]he following matters <u>in general</u> 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). It is 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

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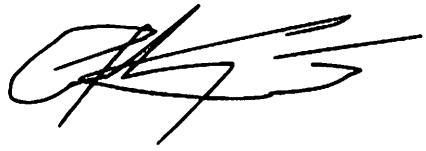
allows each trial judge to individually decide whether all such proceedings will be held remotely or in-person in their courtroom. Likewise, it is not clear whether or how the second half of paragraph 3, which provides that "judges may determine to proceed in person . . . in other exceptional circumstances", governs the discretion afforded by paragraph 2 or the apparent presumption established by paragraph 6.

NJCJI respectfully submits that further clarification on these points would benefit both the public and the bar. Without a clear standard for departing from a presumptive remote proceeding, a civil litigant in one matter might proceed remotely, while a litigant on an identical matter in another county may be haled into 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. The resulting randomness would reduce litigants' ability to anticipate the cost of litigation, which in turn could negatively affect early settlement discussions and slow the resolution of cases. Rather, a presumption of remote handling of routine motions and case management conferences should be clearly and explicitly established in the protocol.

Of course, 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. For example, routine civil case management conferences or civil discovery motions should always enjoy a presumption of remote proceedings. On the other hand, however, certain complex civil motion hearings, including those that require live testimony and turn on credibility determinations, may overcome the presumption through the regular exercise of judicial discretion during a matter.

In sum, NJCJI supports the Proposal and hopes that these comments seeking further clarification only serve to improve it. NJCJI deeply appreciates the Judiciary's leadership and its willingness to evolve to serve the changing needs of the public. If Your Honor has any questions about this comment or would like to discuss the matter, then please do not hesitate to contact me directly.

Respectfully submitted,



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