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VIA EMAIL: Comments.Mailbox@njcourts.gov

Honorable Glenn A. Grant, J.A.D.

Acting Administrative Director of the Courts

Comments on the Future of Court Operations

P.O. Box 037

Trenton, New Jersey 08625-0037

**Re: Notice to the Bar and Public – Future of Court Operations
Remote and In-Person Proceedings**

Dear Judge Grant:

Please accept this letter as a compilation of comments gathered from the 30+ litigators who constitute this firm's litigation department. I circulated the Court's Notice to all litigators in the firm and the comments I am sharing were collected from all levels of seniority within the firm. A transition to almost exclusively virtual court appearances is something that can be easily managed and can make life easier for senior lawyers with established practices, professional networks, and who have spent years working in the courts. Although I expected our younger lawyers to take these proposed changes in stride, it was those less-seasoned lawyers who spoke up most forcefully and apprehensively against the proposed new practices. The following concerns were expressed by our litigators:

- The lack of in-person court appearances will deprive all lawyers of the opportunity to informally interact with adversaries and judges. Lawyers at all levels believe these interactions are important to professional development, but they are especially important for younger ones. The experience in this firm is that the younger generation of lawyers have grown so reliant on electronic communications that they rarely pick up the phone and have conversations with other lawyers, and the lack of in-person depositions is further depriving them of the opportunity to have "off line" conversations. Those are the conversations, in the gallery or on the walk back to the parking lot, that tend to distill case issues or reveal non-legal issues that are driving cases;
- The lack of in-person court appearances will deprive all lawyers, but in particular junior lawyers, of the opportunity to see other lawyers and judges "in action." It is the rare lawyer who does not adjust his or her presentation of a motion based upon observations of a judge's style or mood when the lawyer is sitting in the gallery waiting to present his or her case. In that sense, the lack of in-person appearances either limits the lawyer's ability to fine-tune his or her advocacy or benefits lawyers in larger practices with larger intelligence networks;

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- There is a sense that the lack of in-person interactions among adversaries allows lawyers to “hide behind their keyboards” and be less-than-civil to each other. The collective perception in our firm is that such incivility is reduced where adversaries know they will have to periodically meet each other face-to-face;
- The lack of time in a courtroom will deprive younger lawyers of the opportunity to learn the geography of the Courtroom, including basic points like which party sits at the table closest to the jury. There will be a complete disconnect between that generation’s “courtroom” experience and what they will face when trying their first case.

It is also worth considering that lawyers and clients are already managing our changed conditions, and other proceedings within litigation, such as depositions, continue to be conducted remotely, even when pandemic conditions started to abate. Our expectation is that clients will continue to strongly influence the resumption of appearances outside of court and insurance companies will insist on virtual depositions. Insurance companies’ practice of paying only 50% of travel time was already influencing the way lawyers practice and manage their time. The additional deprivation of court appearances threatens to make the practice of law a “touchless” profession.

There are also at least two economic factors for the Court to consider in contemplating this proposed change.

First, law firms talent-spot and recruit based upon interactions in court, which benefits both the firms doing the recruitment and the lawyers, often younger lawyers, who perform in court and impress other lawyers. In that way, the effective closure of physical courthouses could inhibit dynamism in the legal economy.

Second, many of our courthouses are located in inner cities and their presence supports the tradespeople and small businesses that service the traffic of lawyers and clients entering and exiting the courthouse. The copy shop, the deli, and the newsstand that may have held on this far through the pandemic in the hope that court traffic would resume will have their hopes dashed if this change is adopted.

The consensus within our firm is to have the default be that hearings and conferences continue to be in-person, which necessarily imposes upon the lawyer a higher level of concentration and preparation for a proceeding. If all parties agree, as was true prior to the pandemic, that an in-person appearance is not necessary, then the Court can accommodate that, as well.

We appreciate the opportunity to share these thoughts with you.

Respectfully submitted,



EAI/lmd

Eric A. Inglis