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JACOB V. HUDNUT
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August 13, 2021

Hon. Glenn A. Grant, J.A.D.
Acting administrative Director of the Courts
Comments on the Future of Court Operations
Hughes Justice Complex; P.O. Box 037
Trenton, New Jersey 08625-0037

RE: Request for Public Comment on Municipal Court Virtual Operations

Dear Honorable Judge Grant:

Thank you for the opportunity to respond to the AOC's July 16, 2021 request for public comment on future Municipal Court operations continuing in a primarily or presumptively remote fashion following the COVID-19 pandemic.

I have considered the proposal to conduct most Municipal Court hearings remotely, except for DWIs, other matters with especially serious penalties, and trials that involve multiple witnesses or complex evidence. I recommend that the proposal be amended to allow a Municipal Prosecutor the discretion to require an in-person appearance by a defendant for a pre-trial conference.

There is a shared agreement among us that Municipal Courts should, when appropriate, conduct certain hearings and non-jury trials using remote video technology. The pandemic has accelerated the introduction of remote video proceedings in Municipal Court and the benefits are clear, including improved efficiency, access, and fairness to the public. This result dovetails perfectly with important Municipal Court reform discussions that have occurred over the last five years.

However, the proposal as it stands does not appreciate the vast differences among Municipal Courts across the State. As a recent Supreme Court report highlighted, there are over 500 Municipal Courts statewide. Many hold one session per month. Others, like Jersey City, can hold upward of 18 sessions per day. To that end, some Municipal Courts are predominately traffic courts. These courts are appropriate for virtual operations. The nature of these courts are appropriate for the type of virtual operations considered before COVID-19, notably considered by Recommendation 22 of the Report of the Supreme Court Committee on Municipal Court Operations, Fines, and Fees (June 1, 2018). Other courts have a large criminal docket, including a high number of Superior Court remands. In these courts, a presumption of virtual operations should be considered cautiously and with the same limited scope that the proposal suggests for criminal matters in the Superior Court.

Most importantly, code enforcement bears much more discussion than it has enjoyed in either the July 16th proposal or in the May 21, 2021 memo for Municipal Court bench warrant protocols in this virtual era. Consider that Jersey City is approximately 70 percent tenants and renters and 30 percent owner-occupied. Our housing code enforcement looks entirely different here than it would in a municipality that is predominantly owner-occupied. In Jersey City, the Municipal Court is often a tenant's only hope in compelling repairs by a landlord. Many times the ability to hail a landlord to court is the *only* way to highlight the gravity of the substandard conditions that some landlords subject tenants to.

Similarly, a fire code violation at a property in a rural municipality may only affect *that* property. However, in an urban municipality like Jersey City an unabated fire code violation could affect an entire city block due to the concentration and close proximity of multiple properties.

Coming face to face with a judge is the only means of getting a disinterested corporate actor to fix such a violation.

With these realities in mind, there is little doubt that a Municipal Prosecutor needs a voice in what matters appear in-person as opposed to virtually. The aim in these code enforcement matters is not necessarily to obtain a conviction following a trial, but instead to compel repairs and abatement of dangerous conditions during pretrial conferences. This evokes what our Supreme Court once said:

The prosecutor “is the representative not of an ordinary party to a controversy, but of a sovereignty whose obligation to govern impartially is as compelling as its obligation to govern at all; and whose interest, therefore, in criminal prosecution *is not that it shall win a case, but that justice shall be done.*” Berger v. United States, 295 U.S. 78, 88 (1935)(emphasis added).

I therefore respectfully propose the following considerations in any permanent presumption of virtual Municipal Court operations:

Disorderly Person Offenses. A Municipal Prosecutor may enjoy, if she so moves, a presumption of an in-person pretrial conference in disorderly person or petty disorderly person offenses that include a victim or an individual with pecuniary loss or bodily injury or a threat of pecuniary loss or bodily injury. Examples include domestic violence matters, simple assault, shoplifting, and theft.

Code Enforcement. The Municipal Prosecutor may enjoy, if he so moves, a presumption of an in-person pretrial conference in code enforcement matters (either state administrative code or county ordinances or municipal ordinances) filed pursuant to N.J.C.R. 7:2-2(a)3 that include a victim or affected party or community, including defendant landlords with outstanding violations affecting tenants or defendant businesses with outstanding violations affecting the public safety or quiet enjoyment of others, including its customers, employees, or surrounding neighborhood.

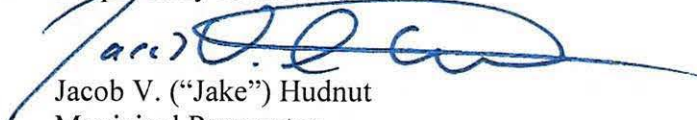
Public Nuisances. A Municipal Prosecutor may enjoy, if she so moves, a presumption of an in-person pretrial conference in all other public nuisances *demonstrably* affecting the public safety or quiet enjoyment of a considerable number of persons.

These presumptions would be subject to challenge by a defendant under a prosecutorial abuse of discretion standard.

Additionally, I also respectfully recommend that Municipal Prosecutors and Municipal Court Judges be afforded explicit latitude for in-person pretrial conferences in courts that have community solutions programs like those implemented in Jersey City and Newark. These programs are an important part of the Judiciary's commitment to sentencing alternatives including the commitment memorialized in Recommendation 6 of the Report of the Supreme Court Committee on Municipal Court Operations, Fines, and Fees (June 1, 2018) and Recommendation 3 of the Report of the Supreme Court Working Group on the Municipal Courts (July 9, 2019). The efficacy of these programs will be limited by virtual appearances in cases of defendants who require a higher level of attention and assistance in receiving social services.

In closing, the Judiciary has adapted remarkably well to COVID-19 and its unprecedented challenges by implementing dynamic and progressive responses. In doing so, the Judiciary has met and exceeded many of the statewide calls for reform that we have all heard over the past five years. I am confident that the Judiciary can also rise and meet the more nuanced dynamics of urban Municipal Courts and the communities we serve. That is why I offer the considerations above, and I am grateful for any consideration they are given.

Respectfully submitted,



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