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New Jersey Defense Association

Please reply to:

EXECUTIVE DIRECTOR
Maryanne R. Steedle
P.O. Box 463
Linwood, NJ 08221
(609) 927-1180
FAX (609) 927-4540
e-mail: njda@comcast.net
www.njdefenseassoc.com

CHAIRPERSON OF THE BOARD

John V. Mallon, Esq.
Chasan Lamparello Mallon & Cappuzzo, P.C.
300 Lighting Way
Secaucus, NJ 07094
201-348-6000

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McCarter & English, LLP
100 Mulberry Street
Newark, NJ 07102
973-622-4444

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Michelle M. O'Brien, Esq.
Flanagan Barone & O'Brien, LLC
4 Essex Avenue, Suite 200
P. O. Box 259
Bernardsville, NJ 07924-0259
908-306-6707

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Weir Attorneys
2109 Pennington Road
Ewing, NJ 08638
609-594-4000

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100 Mulberry Street, Ste 1301
Newark, NJ 07201
(973)242-8099

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Newark, NJ 07102
(973)622-4444

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NJ Manufacturers Insurance Co.
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Trenton, NJ 08649
609-883-1300

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Hoagland Longo Moran Dunst & Doukas, LLP
40 Paterson Street
New Brunswick, NJ 08902
(732)545-4717

Nicole R. Cassata, Esq.
Chasan Lamparello Mallon & Cappuzzo, P.C.
300 Lighting Way
Secaucus, NJ 07094
201-348-6000

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Brian J. Chaberek, Esq.
Davison Eastman Muñoz Lederman Paone, P.A.
100 Willow Brook Road, Suite 100
Freehold, NJ 07728
732-462-7198

Robert M. Cook, Esq.
Goldberg Segalla
301 Carnegie Center Drive
Suite 200
Princeton, NJ 08540
609-986-1380

2021 - 2024

Katelyn E. Cutinello, Esq.
Cocca & Cutinello, LLP
36 Cattano Avenue, Suite 600
Morristown, NJ 07960
973-828-9000

Kelly P. Corrubia, Esq.
Hall Booth Smith, P.C.
1 Garrett Mountain Plaza, Suite 502
Woodland Park, NJ 07424
973-881-1101

DRI State Representative

Natalie H. Mantell, Esq.
McCarter & English, LLP
100 Mulberry Street
Newark, NJ 07102
973-639-7926

August 16, 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: Future of Court Operations

Dear Judge Grant:

The NJDA respectfully submits this letter in response to The Supreme Court's invitation for written comments regarding the proposal to continue certain court events in a remote format (see Notice to the Bar and Public – Future of Court Operations – Remote and In-Person Proceedings – Publication for Comment, dated July 16, 2021). We are grateful that the Court and AOC have continued to seek input from the bar regarding these important issues.

Our Board of Directors has sought input from our membership as to the future of remote court operations. We are pleased to report that we received a great deal of feedback from our membership. Our membership is fairly evenly divided as to the future of remote court proceedings. A slight majority favor remote arbitrations, case management conferences and oral arguments. Conversely, the majority prefers in person settlement conferences. As our membership is divided as to their preference on these events, the NJDA will not take a position that one format is preferable or better than the other. However, we did feel it was important to share some of the thought processes that members expressed to base their preference, as many valid points of view were raised and we hope are considered by and beneficial to the court in making a determination as to remote or in person events.

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Those that favored remote proceedings pointed to the following as motivation for their position:

1. Remote proceedings are more efficient. Wait time has all but been eliminated. Hearings are scheduled for a set time and routinely start promptly. The lack of wait time allows counsel to work on other matters while they would normally be driving (or sitting in traffic) and waiting in the courtroom. This results in a cost savings for clients. The reduced travel eliminates some stress, reduces automotive costs and allows attorneys to easily appear in multiple counties in the same day. Some pointed to the environmental and traffic benefits of removing attorney cars from our roadways.
2. Remote proceedings more readily allow out-of-state clients and carriers to attend settlement conferences. With respect to arbitrations, counsel have found that the arbitrators are better prepared as they have the ability to review the submissions prior to the hearing. The pre-arranged times for the hearings have made the arbitration process much more efficient.

The faction of members that favored in person events noted the following as motivation:

1. The ability to spend time together in court was invaluable as that is an excellent opportunity for counsel to get to know each other. While wait time in court may seem inefficient, most attorneys use the time to talk with their adversary or other attorneys that they have cases with that are not scheduled that day. A tremendous amount of work gets done in this fashion. Togetherness breeds collegiality and comradery. Many noted that there has been a slippage in professionalism since legal proceedings went remote. The remote process simply does not afford attorneys and judges a chance to interact as they do in person.
2. Those favoring in person settlement conferences agreed that bringing parties to the courthouse and having counsel face to face creates a greater opportunity for settlement. Judges are better able to foster settlements in person.
3. While the benefits of remote arbitration are compelling, those that favor a return to in court arbitrations point to the fact that

the litigants rarely participate in the remote hearings as a drawback. Their absence does not allow the arbitrator or adversary to access their credibility. The burden on arbitrators has also been tremendous during the pandemic. What typically had been a three or four hour morning session, now involves more than a week of correspondence and collection of submissions and a large commitment of time the day before the hearing to review the submissions. There has been some feeling that the current commitment is not sustainable and that arbitrators will resign.

4. The final concern raised by those favoring in person appearances, is that the remote format does not afford younger attorneys the opportunity to grow and learn. The experience of conducting legal proceedings in court is not easily replaced by Zoom. Young attorneys lose the ability to watch other proceedings and practitioners. There is no ability to arrive early and observe the judge handle other oral arguments to gauge that particular judge's preferences.

While we are not taking a position on remote versus in person court events, we would urge that the judges be given the discretion and ability to call for in person appearances when the judge determines that such an appearance would be the most appropriate way to conduct the proceeding. Likewise, counsel should have the ability to request an in person hearing where they deem it necessary.

Respectfully,

A handwritten signature in black ink that reads "Ryan Richman". The signature is written in a cursive, flowing style.

Ryan A. Richman, President
New Jersey Defense Association