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PETRELLI PREVITERA
MATRIMONIAL TRIAL LAWYERS

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August 16, 2021

via email to comments.mailbox@njcourts.gov
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, NJ 08625

RE: Comments on Future of Court Operations (remote and in-person proceedings)

Dear Honorable Glenn A. Grant:

Thank you for the opportunity to comment on the future of court operations as we enter this 17th month of the COVID-19 pandemic, when unfortunately, despite the efforts to make the vaccinations accessible, New Jersey's COVID-positive numbers are increasing due to the Delta variant. Just as things were beginning to feel "normal" again, what was old is new again. We are back to mask-wearing, social-distancing, and the momentary sense of security felt from having the vaccination is gone.

In a recent meeting with my colleagues here at Petrelli Previtera, a firm whose exclusive focus is family matters, we discussed the judiciary's request for comments in our regular attorney meeting and we enthusiastically embrace the proposal set forth in the July 16, 2021 notice for the ongoing future of court operations.

We agree that uncontested adoptions; hearings to establish or modify child support; applications for a temporary restraining order (TRO) and initial conferences (but not hearings on a final restraining order); initial applications for protection pursuant to the Sexual Assault Survivor Protection Act (SASPA); matrimonial early settlement panels; and mediations, except for Intensive Settlement Conferences should continue in a remote-first format. All of us believe that these actions are best conducted by video (Zoom or Teams, but Zoom being the preferable format) and should be conducted exclusively by video conferencing. The time has come for telephonic hearings to end. This may have been an appropriate stopgap measure in the Spring and Summer of 2020, but there are serious issues with phone hearings and it is problematic that certain counties continue to resort to phone.

Phone hearings create significant issues for us as attorneys and for the clients that we represent. Without being able to see the faces of the litigants, it is difficult to make credibility determinations, or to be able to discern whether a litigant is safe or being intimidated by someone nearby, whether a litigant is high or drunk, these issues are incredibly important in any case and yet where the safety of children, the most vulnerable, are involved, it is deeply troubling that even in custody matters where substance abuse is a disputed issue that the courts are not even able to see the litigants. Phone hearings make it incredibly difficult to communicate clearly and respectfully with the court, to wait for ones turn. We implore the judiciary to discontinue the use of telephonic hearings immediately. With Zoom and Teams as much more

effective and efficient means for conducting these hearings, attorneys and litigants should not have to settle for blind participation in an antiquated proceeding by phone. When the technology exists to permit face-to-face communication, there is simply no acceptable reason to conduct anything by phone - ever. It is wholly unacceptable that parenting mediations are being conducted by phone. Thousands of litigants annually are paying $25 each for their fee and yet they aren't given the courtesy of a mediation where they can see the mediator or the mediator can see them. Each litigant is informed of complimentary alternative dispute resolution (ADR) alternatives upon inception of the divorce process, signs a sworn statement certifying to being advise of mediation, which clearly projects the importance of ADR, yet that message is not clearly conveyed when we reduce such an important step in the litigant's process, one that has significant impacts on their families, to a singular phone call without a face attached to it. Simply put, litigants deserve a true mediation experience and that must occur by Zoom or Teams. We ask that the phone mediations stop immediately.

We also respectfully note that there should be some courtesy extended to litigants who are navigating not only the courts processes and procedures but also the technological aspects of participation. There may be times were litigants struggle and that should not be met with criticism or ridicule, but with a certain level of understanding and flexibility. Unfortunately, we feel that certain technological aspects are disproportionally prejudicial to litigants in depressed socio-economic backgrounds. We attach to this letter, by way of example but not of limitation, an email scheduling a non-cancellable, non-reschedulable mandatory mediation, where the expectation was that a litigant print, then sign, then scan, then email back or fax back a form 24 hours prior to the mandatory mediation. Sadly counsel was not noticed or even cc'd on the email. Communications with represented litigants in this fashion continues to occur. The technological know-how aside, such a requirement on litigants (represented or *pro se*) is burdensome and unreasonably expects that litigants possess printers, scanners, and fax machines. Failure to do so resulted in the cancellation of the non-cancellable, non-reschedulable mandatory mediation. The judiciary can and must do better for our litigants. Mediation of custody and parenting time should not be contingent upon such arbitrary and ineffective processes.

While we have all experienced some instances of inefficiency which does not represent the judiciary in its finest light, we have found that so much of what we do is more efficient in a remote-first video format. MESP is the best example of an activity which has been absolutely revolutionized by remote participation. Previously, an attorney would spend hours driving back and forth to the court to present to the MESP or even serve as a volunteer panelist for MESP, litigants would wait hours in the crowded hallways, there was no defined or set order so you could be there for 1 hour or 6 hours. Our clients always needed to take a whole day off from work and needed childcare as well. Now, in the remote-first format, attorneys are provided pre-set times which is not only more-efficient but also more cost-effective for our clients. Now that we have been doing this for over a year now, it seems odd to think that we did it any other way previously because the positives far outweigh any negatives we have heard from other attorneys. Our clients spend less time and consequently less money as a result, and that's something that we stand behind. For others in our field who have complained, we have found it disheartening to hear that they mourn the loss of a coercive environment where either their clients or their adversaries yielded to the high-pressure situation. We here at Petrelli Previtera have found that MESP is largely successful in resolving cases without our clients having to feel like they are pressured or coerced to settle.

MESP should continue remotely. Hearings on FD Complaints and Applications for Modification should continue remotely. Routine motions arguments in the FM court should also continue remotely. Case Management conference should always and forever continue remotely.

We also agree with the proposal that where the participants have demonstrated an inability to proceed in a remote format, or in other exceptional circumstances, judges may determine to proceed in person. Where there is an inability to utilize technology or behave respectfully or communicate effectively with the Court, we can see the benefit to moving the hearing to an in-person format. However, we respectfully suggest that where the judge conducting the hearing has demonstrated an inability or disinterestedness to proceed in a

remote format, then the judge should proceed from his or her courtroom. On several occasions, in county bench-bar and the NJSBA convention in the spring, attorneys have been reminded to conduct ourselves in the same manner as if we were physically present in court. We have been counseled to dress like we are in court, speak like we are in court, and find an appropriate distraction-free location for appearance by video, so as to convey the seriousness and formality of the proceedings despite the remote and virtual format. Sadly, there are a few judges who have missed the memo, who through their dress, conduct, demeanor, have detracted from the seriousness, have degraded their own appearance of authority, and have conveyed a disappointing message to the litigants and to attorneys. Thankfully this is a small minority, but it is troublesome, nonetheless. We imagine that for each attorney who struggles with the remote-first format, there is a judge who experiences the same. However, this is a problem because if we say something and express our concerns, then our words may be prejudicial against our client or their interests. To whom and in what format can we report that a judge is appearing in hearings without his black robe on, or with his feet kicked up on the table, or that the judge has half of her face chopped off on the video, or has a child or family member present, or worse yet, interrupting a hearing?

For judges or attorneys who have demonstrated an inability to proceed in a remote format, it may be appropriate for them to physically appear in a courthouse. For some attorneys, the request to return to "normal" (pre-March 2020) has more to do about the lack of desire or ability to adapt to change, embrace change, work with the technology. For judges or attorneys who have demonstrated an *ability* to proceed in a remote format, to *thrive* in a remote format, they should be permitted and encouraged to proceed in the remote-first format and reduce the volume of persons in the courthouse.

Furthermore, we agree that when a participant prefers to participate in person and makes that specific request, that participant should be granted that opportunity if that request is reasonable and can be accommodated. Whether that participant is a judge or an attorney, if their distinct preference is to be physically sitting in a courtroom, where that can be accomplished, that should occur. However, one person's request or preference should then not require all participants to physically appear. One person's discomfort or lack of proficiency with technology should not taint the entire process, whether that person be a judge, attorney, or litigant. We collectively appreciate the flexibility and individuality of the proposals submitted by the judiciary for comment. We also agree with the proposal that in matters that are conducted in person, judges may determine to permit one or more participants to participate remotely based on the individual facts and circumstances of the case. We imagine that this could be beneficial for expert witnesses testifying, for attorneys who may otherwise have to drive 2 hours to a courthouse, or for litigants who are immunocompromised and could appear from home, or attorneys who would prefer to appear and argue via Zoom rather than with a mask that muffles their speech, conceals facial expressions, or restricts breathing. We have not found that the courts uniformly exhibit the level of preparedness for in-person appearances that would put us or our clients at ease. From county to county the situation differs as to whether there are even dividers or protections in place. We embrace the opportunity for discussions and conferences to determine if in person is necessary or if the remote format will be efficient and effective and acceptable.

While we believe that the judiciary has made significant strides in the past year, moving forward there is much that we believe could be done to make significant improvements in the remote-first conducting of matters.

We are asking the judiciary to take steps to improve the efficiency of proceedings for the sake of our clients. It is disheartening that the courts have extensive delays, postponements, and massive gaps of inaction. The Courts have not navigated the sensitive timing issues involved with certain family matters, such as relocation. Postponement of hearings and trials on these issues have grave consequences for our litigants and their children. Delays in processing divorces, even uncontested ones with fully executed settlement agreements, are a disservice to the litigants that the courts serve. Delays in returning signed orders, signed and sealed judgments of divorce or QDROs are having significant impacts on the lives of our clients. Delays

in processing complaints for divorce, waiting more than a month for a docket number, delays in scheduling motions, often postponed administratively several times, all are having significant impacts on the lives of our clients, and make our jobs exponentially more challenging.

Some vicinages are truly exceptional and doing an amazing job, they are exemplary and should be a model for other counties. They are efficient, effective, communicate in a timely and respectful manner. Other vicinages are lagging sorely behind and the response to reasonable requests for docket numbers, hearing dates, or even to narrow the window of time for a hearing (because an 8:30 a.m. to 4:30 p.m. timeframe is inefficient and discourteous at best, uneconomical and imprudent at worst) is met with rudeness, hostility, anger, or worse-- complete silence. No response is worse than a rude response, but how do we explain either of those to our clients whose lives are hanging in the balance? Some counties are not issuing notices, not scheduling management conferences, parent ed, mediations. Others are. The lack of consistency across the vicinages is disconcerting. The timelines and timeframes should not vary so greatly from one county to another. If the municipal courts which far outnumber the family courts and have significant volumes of cases are able to get their act together and assign hearing times, then there is no excuse as to why the family courts continue to insist upon assigning 8:30-4:30 and expecting attorneys and litigants to wait "on hold" for potentially 8 hours. Cable service technicians, appliance delivery, and Spirit Airlines are able to provide more narrow windows of time than the family division. Our litigants and attorneys should be treated with a level of professionalism commensurate with the seriousness of the matters before the court.

In summary, we, the undersigned, enthusiastically support the recommendations set forth in the July 16, 2021 notice for the ongoing future of court operations in the family division. We respectfully request that the judiciary take prompt action to improve the processes and procedures of the remote-first conducting of proceedings as well as the customer-service for timely and efficient processing, scheduling, and conducting of these hearings.

We thank you for your time and consideration in this matter.

Respectfully,

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----- Forwarded Message -----
From: "mediateatlcounty@aol.com" <mediateatlcounty@aol.com>
To: [redacted]
Sent: Wednesday, July 14, 2021, 02:06:43 PM EDT
Subject: Zoom Mediation (FM-01-0531-21)

Dear Mr. and Mrs. [redacted]dd,

During the Covid 19 pandemic, CMS is unable to conduct mediations in person. Therefore, all mediations will be performed through Zoom until the agency is notified otherwise. Please be advised that **your family mediation will take place on Thursday, July 22, 2021 at 11:00am.** You will be contacted shortly before the mediation and sent the link you will need for Zoom. Attached is Community Mediation Services' **"Agreement to Mediate." This form must be signed by each party and returned at least 48 hours before any mediation may begin.** ***Please read it and sign it and email it back to me at your earliest convenience.*** If you do not have that capability, you may also fax it to 609*345*7424. *If* you choose to fax the document, please print your name on it so that I will know to whom it belongs. If you do not have access to a fax machine, you may email me back and state the following, " I, (your name) have read Community Mediation Services' attached Agreement to Mediate, and agree to the conditions."

If you have any questions, please feel free to email me back or contact me at 609*345*7267. I wish you both the very best.

Mediation dates may not be cancelled or postponed. Children are not allowed to attend. Please participate in a quiet space that is respectful to all involved.

Sincerely,

Gina M. Benvenuto, M.S.
Executive Director
Community Mediation Services

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Audit Trail

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SIGNED	**08 / 16 / 2021** 06:28:37 UTC-4	Signed by Sara Cohen, Esq. (scohen@petrellilaw.com) IP: 71.71.137.68
EMAIL CHANGED	**08 / 16 / 2021** 07:09:43 UTC-4	tannese@petrelliaw.com was changed to tannese@petrellilaw.com after requester reassignment. IP: 174.58.73.229

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SIGNED	**08 / 16 / 2021** 10:02:33 UTC-4	Signed by Katherine Gomolson, Esq. (kgomolson@petrellilaw.com) IP: 108.24.169.190
SIGNED	**08 / 16 / 2021** 15:09:40 UTC-4	Signed by Terrence Annese, Esq (tannese@petrellilaw.com) IP: 173.71.89.191
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