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August 11, 2021

Via First Class Mail and e-mail (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, New Jersey 08625-0037

Re: Notice to the Bar and Public (Future of Court Operations – Remote and In-Person Proceedings – Publication for Comment) dated July 16, 2021

Dear Judge Grant,

On behalf of the Ocean County Bar Association’s Family Law Committee (hereinafter “OCBA FLC”), I thank the Administrative Office of the Courts (AOC) for the promulgation of the above-referenced Notice. In furtherance thereof, please accept this correspondence as the OCBA FLC’s comments regarding remote and in-person proceedings. These concerns and comments reflect the position of the attorney members of the OCBA FLC and should not be construed as the opinion or endorsement of any members of the judiciary.

The OCBA FLC recognizes the significant issues faced by litigants, attorneys, and the court as a result of the global COVID-19 pandemic. The OCBA FLC further thanks the AOC and the Ocean County Court for promptly taking measures to address the safety concerns of the pandemic and facilitate the continued operation of (and access to) the courts. Of particular note to the OCBA FLC were the implementation of the JEDS online filing system to allow for attorneys to file documents remotely as well as the implementation of remote hearings and conferences through programs such as Zoom and Microsoft Teams. The OCBA FLC and its individual members have all been directly affected by the issues related to the pandemic and we appreciate the AOC taking those issues seriously.

The OCBA FLC has discussed, at length, the question of remote and in-person proceedings. To that end, the OCBA FLC supports the continuation of remote proceedings for the following matters: case management conferences, pretrial conferences, most motion hearings, Matrimonial Early Settlement Panels (ESPs), and Intensive Settlement Panels (ISPs). These matters have proceeded remotely without issue during the pandemic. The benefits of handling these matters remotely greatly outweighs any associated difficulties as set forth below:

1. Effectiveness – The OCBA FLC’s attorney members have uniformly reported that these remote proceedings are just as effective, if not more so, than pre-pandemic in-person proceedings.
 - a. Conferences – Prior the pandemic, many conferences were already being held telephonically or, as to case management conferences, were being resolved by way of Consent Case Management Orders prior to the conference date. Now, the court, counsel, and litigants are able to address any conference necessitating an appearance via telephone or videoconference. The pandemic has actually afforded the court and counsel an additional tool to address these conferences (videoconferencing applications) that was previously unavailable.
 - b. ESPs/ISPs – The OCBA FLC’s attorney members have uniformly reported the same, if not better, settlement rates for ESPs and ISPs compared to pre-pandemic in-person settlement conferences/panels. While there are obvious advantages to in-person settlement conferences, (such as side-barring with other counsel who are present in the courtroom, the “buy-in” of being physically present, and the added layer of pressure to settle a case when dealing with the matter in-person), these advantages are marginal in terms of effectiveness and as reported by our experienced mediators and panelists.
2. Efficiency –
 - a. With remote hearings, attorneys and clients have been able to schedule and attend court conferences without blocking out hours at a time to wait in court for their matter to be called. This proves to be a cost-savings to clients as well as a boon to attorneys who can now work on other matters. Although some judges implemented staggered scheduling of in-person matters prior to the pandemic, during the pandemic most judges implemented staggered scheduling of their remote proceedings. This greatly reduced the overlap of cases and the attendant delay to counsel and litigants.
 - b. Attorneys are now able to handle more matters in various locations since they do not have to allow for travel time and traffic between courthouses. This is an added savings to litigants as well as a benefit to attorneys who can now schedule more matters on the same day.

3. Consistency – Whereas prior to the pandemic, some judges mandated in-person conferences and others did not, during the pandemic all matters have been remote. This has provided a level of consistency and stability to counsel that was not previously available. Counsel can now instruct litigants to appear via Zoom or Microsoft Teams and not worry about whether certain matters will be conducted telephonically or in-person.
4. Miscellaneous benefits:
 - a. Scheduling – Handling proceedings remotely has allowed counsel to schedule more matters with different courts (since counsel will generally have fewer wait-times and no need to travel to different court facilities). Utilizing e-mails to schedule matters has also allowed for scheduling conflicts to be addressed earlier (since there are reduced delays in communication compared to mailed correspondence or even facsimiles). This allows more matters to be addressed in the aggregate and in a more timely fashion.
 - b. Convenience –
 - i. Appearing remotely has reduced or eliminated the need for many litigants to take off from work or obtain childcare to appear for many matters. Further, many attorneys have also been able to balance childcare obligations with work obligations solely due to their ability to appear remotely. While the childcare issue was especially egregious during the pandemic (as a result of closed day care facilities and remote schooling), even after the resumption of in-person schooling and the reopening of day care facilities, virtual court appearances continue to provide a significant benefit to attorneys with grade school age (and younger) children.
 - ii. Attorneys who are volunteering as Early Settlement Panelists and/or Intensive Settlement Panelists are now afforded leeway in scheduling the settlement panels. Whereas prior to the implementation of remote settlement panels, attorney-volunteers had to appear at Court for the calendar call and, generally, wait to be assigned their case (or wait for all counsel and litigants to appear), now with remote hearings, attorney-volunteers can schedule the settlement panel based on their own schedule. This scheduling option allows for attorney-volunteers to capture time and money in their own practice.
 - c. Safety – The OCBA FLC appreciates the Judiciary’s prioritization of the health and safety of court personnel, attorneys, and litigants during the pandemic. With new and evolving strains of COVID-19 circulating and less than optimal vaccination rates, the OCBA FLC asks the AOC to continue to minimize mandatory in-person proceedings for the foreseeable future.

5. Motion Hearings – the OCBA FLC recognizes that there may be motion hearings that would benefit from in-person oral argument. To that end, the OCBA FLC respectfully requests that motion hearings be held remotely unless the judge hearing the matter decides an in-person hearing is appropriate (either *sua sponte* or upon the request of counsel/litigants). However, for the reasons set forth above, the OCBA FLC respectfully requests there be a presumption that the matter proceed remotely unless good cause is shown for in person oral argument.

Based on the above reasons, the OCBA FLC respectfully requests the AOC consider maintaining remote/virtual proceedings for all conferences, settlement panels, and most motion hearings.

If you have any questions, please feel free to e-mail me at: Greg@MRALawFirm.com. Thank you and I wish you the best.

Very Truly Yours,

/s/ Gregory B. Thomlison

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Chair, OCBA Family Law Committee

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