

045

D'AMATO LAW FIRM

PC

COUNSELORS AT LAW

2900 Fire Road, Suite 300
Egg Harbor Township, NJ 08234

P 609.926.3300
F 609.926.3253

www.damatolawfirm.com

PAUL R. D'AMATO
member NJ bar

ERIKA LEZAMA
member NJ bar

ROSE L. SCOGNO
paralegal

ALEXA D'AMATO BARRERA
member NJ & PA bar

STEPHEN M. VAN NATTEN
member NJ & PA bar

SUSAN L. EISENLOHN
paralegal

December 15, 2020

VIA FACSIMILE ONLY: (609) 376-3002

Honorable Glenn A. Grant, J.A.D.
Administrative Office of the Courts
Richard J. Hughes Justice Complex
P.O. Box 037
Trenton, NJ 08625

Dear Judge Grant:

Initially may I thank you for giving members of the Bar the opportunity to address our thoughts on how we proceed in continuing to make our Courthouses available to the public for the resolution of disputed issues. Having been admitted to the New Jersey Bar in 1974 I am part of a generation that was taught that as trial attorneys we are "officers of the Court." It was explained to us that we along with the Judge, the Jury and Courthouse personnel had a responsibility to see that justice was administered fairly and responsibly. From my perspective the Disciplinary Rules for attorneys embody a set of rules that no other profession has that sets the bar so high regarding how we conduct ourselves even in our personal lives.

So it is with this mindset that this "stakeholder" shares with you my perspective. In my judgment any changes to the judicial system must and will be for the long term. To sit back and hope this pandemic and its effects on our society disappear in the near future is not realistic. Everything I read and hear gives me only insecurity that this pandemic is short lived. Just as of yesterday a physician on TV commented that theoretically the COVID-19 vaccine is only effective for three months but he was optimistic it would last one year. As to whether the population will even agree to take the vaccine, some surveys say 30% will not and 37% say they will wait and see. As early as this summer a distinguished scientist was on the CBS Sunday Morning Show and opined that he was most concerned about other coronaviruses working their way down the pike as to whether the vaccine would be effective against those mutations. Recently another scientist said that for the foreseeable future we will be wearing masks indefinitely. A dear friend of mine just spent ten days in the hospital recovering from COVID-19 and was told upon discharge that relative to her prognosis that all the doctors could tell her was that she was relatively "safe" for 90 days and after that the present body of scientific knowledge provides no answers. I could recite additional anecdotal information but I am sure you have heard it all.

As a plaintiff's personal injury attorney I can attest to the "fact" that liability insurance companies do not seek serious resolution of a pending case until close to trial. It is not my intent in this communication to address the business ethics of insurance companies and whether the existence of a meaningful "bad faith statute" would alter their business model. That could be for another day.

So with all the above in mind I urge that AOC and the New Jersey Supreme Court to amend the Rules of Court to provide for total virtual trials and that this be mandatory for ALL litigated matters where a jury has been requested.

For reasons that will become self-evident I suggest that there would be a financial benefit to liability insurance carriers if total jury trials were mandatory.

I represent plaintiffs in a personal injury matter involving a construction accident which occurred in 2015. The case has a 2016 Docket number. Two defendants remain. There were additional parties that were dismissed. The attorneys representing the defendants are very experienced and have conducted themselves in the true tradition as officers of the Court. In our discussions amongst ourselves and with the Court there is a consensus that the trial could take 4-6 weeks from the commencement of jury selection to verdict. At the conclusion of a hearing two weeks ago on this case I addressed the Court and my colleagues and asked that we consider trying the case "virtually." I explained that there would be a financial benefit to all the parties as well as to their insurance companies. The plaintiffs have 12 damage experts and two liability experts that will testify along with the plaintiffs and fact witnesses. The defendants have a total of three liability experts and fact witnesses.

With a virtual trial best practices dictates that the direct examination of an expert and the cross should be substantially reduced so that it is conceivable that a damage expert could be on and off in one hour. This is just one example: at everyone's convenience I could elaborate at a later date as to the cost savings measures for all parties. In the end I project that after jury selection I could put my case in in 5 days. That gives 1 week for the defendants' cases...two weeks versus four-six weeks. If we do not act aggressively to modify how we conduct jury trials the potential backlog of cases is beyond imagination. A proposed rule could provide that a party could be excused from a virtual trial upon a showing of good cause or extraordinary circumstances. Of course "good cause or extraordinary circumstances" has to be defined.

I am available for any future discussions. Thank you for your time.

Respectfully,



Paul R. D'Amato

PRD/lrp

cc: Chief Justice Stuart Rabner
Steven D. Bonville, Chief of Staff
Jessica Lewis Kelly, Special Assistant