



## NEW JERSEY STATE BAR ASSOCIATION

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December 21, 2022

Honorable Glenn A. Grant, J.A.D.  
Administrative Director of the Courts  
Hughes Justice Complex  
P.O. Box 037  
Trenton, NJ 08625-0037

Dear Judge Grant:

The New Jersey State Bar Association believes that no other state in the nation made the transition to pandemic-footing as smoothly as New Jersey. The Judiciary rightly earned praise for its leadership in demonstrating how to continue to keep the courts running smoothly for everyone involved in the legal process. In the spirit of partnership, I reach out today to share feedback about how implementation of the Oct. 27, 2022, notice to the bar and public about the future of court operations is being handled in courtrooms throughout the state.

We were gratified that the Oct. 27 order restored in-person events as the default option for criminal trials while preserving virtual options for many other more routine matters across the docket, especially following our prior discussions with the Judiciary indicating that the vast majority of appearances would remain virtual. The efficiencies of virtual hearings have been a meaningful addition to the legal system's ability to provide access to justice for all. They have also, importantly, allowed attorneys to serve more clients, serve them more affordably and serve them with less stress on their wellbeing, an issue of critical importance. In fact, a recent survey of New Jersey lawyers commissioned by the NJSBA and University of Utah revealed that many attorneys feel pushed to the limits and 72% of respondents wanted to see an increase in virtual proceedings as a way to manage those stressors.

With nearly two months of experience from the outset of the Oct. 27 order, we are concerned about the apparent uneven implementation of the order given information that our members have shared from criminal, family, civil and municipal matters. Some examples are listed below. We hope these inconsistencies from judge-to-judge and vicinage-to-vicinage can be addressed with further clarification, guidance and direction from the Judiciary about allowing virtual proceedings.

**CRIMINAL:** The notice says that post-indictment arraignments, pretrial and other conferences will proceed in person but may also be conducted virtually. By some accounts, matters such as pre-trial indictments should default to virtual proceedings.

As one practitioner reported, with pre-trial indictments now in-person roughly 20-25% of defendants are not appearing, resulting in the issuance of bench warrants. During the pandemic there were virtually zero “no shows” when the proceedings were virtual.

**FAMILY:** Family practitioners report numerous instances where parties are being mandated to come to court for proceedings when a virtual option would have been more efficient. In one uncontested divorce involving parties of modest means, all parties were required to come to court even though the matter was settled with signed agreements ahead of time. The proceeding lasted no more than 10 minutes but cost the litigants roughly \$1,500 in fees to account for attorney time. A virtual appearance would have cost less for the litigants. In another case involving a *pro se* litigant who had filed six orders to show cause in two months, an attorney shared that the court declined a request to handle the motions virtually. After four hours of waiting, the matter was heard, and the client faced a \$5,000 bill. Had the matter been handled virtually the time and cost would have been radically reduced. Eventually the attorney had to withdraw from the case because the client could no longer afford representation. Additional examples that echo the same themes are too numerous to list, including the requirement that practitioners appear in-person to request something as simple and straightforward as an adjournment.

**CIVIL:** In the civil arena, our members report that many courts have returned to in-person proceedings, rather than evaluating whether virtual may be a better option. In some special civil and landlord-tenant matters, in-person proceedings have proven to be a hardship to litigants, compromising the promise of access to justice. Litigants who must arrange childcare, have low-paying jobs and little paid time off or use public transportation are now frequently defaulting -- not because they don't care about their legal issues, but because there are too many physical barriers to appearing in court. In cases like this, a virtual option should be the default as it could deliver efficiency for the court and would inevitably be less onerous for the clients.

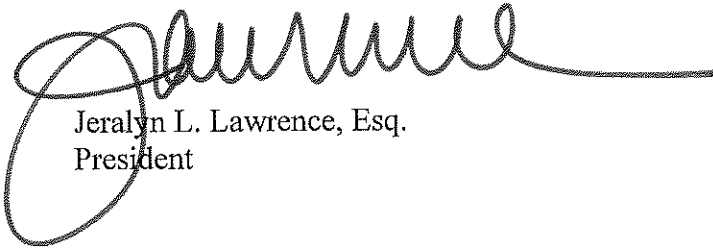
**MUNICIPAL:** Practitioners who handle municipal court matters have reported that many courts around the state have essentially reverted to pre-pandemic practices, replete with large courtroom cattle calls that require attorneys and litigants to appear in person for the vast majority of events, including those where the parties are jointly seeking reasonable adjournments to get reports, videos, lab results or sending a matter to an expert. These sorts of brief discovery conferences could be handled swiftly via a virtual platform, but instead require the travel and time to appear in person to put the request on the record. Other practitioners have reported that practices vary widely from county to county, with certain counties requiring all represented matters to be handled in person; while others require in-person appearances for DWI cases, regardless of the stage of the matter and whether the parties are prepared to move forward. And another attorney reported a client plead guilty after several required in-person court appearances just so they would not have to take more time off work.

These are just a few of the examples our members have shared in an effort to demonstrate that the Oct. 27 order requires clarifications to ensure uniformity in its application and a common-sense approach to dispensing justice, especially as we enter the winter months and the number of instances of RSV, influenza and COVID are causing a “tridemic.”

The virtual innovations that the pandemic required the judicial system and the legal community to make had a tangible impact on the ability of the public to access the justice system. In addition, attorneys were able to represent clients at more affordable rates for many, and the lives of attorneys, which as a profession suffers from high rates of depression and substance abuse, was improved from the efficiencies of virtual court proceedings. As we all continue to emerge from the pandemic and evaluate how society has changed, we urge you to provide specific protocols and clearer direction to judges about what matters should continue to proceed virtually absent specific reasons otherwise. These kinds of updates to judges, court administrators and legal community will ensure the courts are serving the public, the legal community and universal goal of justice.

The NJSBA stands ready to assist you in these efforts in any way it can.

Respectfully,

A handwritten signature in black ink, appearing to read "J. Lawrence", with a large, stylized initial "J" that loops around the start of the name.

Jeralyn L. Lawrence, Esq.  
President