



## NEW JERSEY STATE BAR ASSOCIATION

JERALYN L. LAWRENCE, PRESIDENT  
Lawrence Law LLC  
776 Mountain Boulevard, Suite 202  
Watchung, NJ 07069  
908-645-1000 • FAX: 908-645-1001  
jlawrence@lawlawfirm.com

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Hon. Glenn A. Grant, J.A.D.  
Administrative Director of the Courts  
Hughes Justice Complex  
25 West Market Street  
Trenton, NJ 08625

Re: Trial Date Certainty

Dear Judge Grant:

Thank you for your March 14, 2023, letter addressing, among other issues, the lack of meaningful trial date certainty in civil cases. We appreciate the discussion at our meeting earlier this month, and your reaching out to the Conference of Civil Presiding Judges about the issue. I write to more fully illustrate the basis for the New Jersey State Bar Association's concerns, provide specific examples that you can share with the presiding judges, and outline the NJSBA's recommendations for consideration.

The start of a jury trial is the culmination of a year or more of written discovery, depositions, witness interviews, settlement talks and negotiation. The weeks leading up to that first day of trial are a flurry of document organization, witness scheduling, exhibit preparation and client handholding. When the scheduled trial day is imminent, but then is adjourned on the cusp of starting it is costly for litigants and challenging for the attorneys who must prepare again when the trial is ultimately scheduled. The NJSBA asks that the Judiciary consider taking steps to increase scheduling transparency and provide more trial date certainty to litigants and their counsel.

Our members advise of numerous instances where civil trials were scheduled, but either could not be confirmed or were adjourned at the last minute, often within days of the start date, resulting in wasted time and expense, difficult decision-making, and unnecessary professional and personal schedule adjustments. Please consider these examples:

In Bergen County, two trial dates were assigned for a CEPA case, December 2021 and then May 2022. It was clear the first trial date was not realistic, as the courts were still observing Covid protocols. Yet, as the May date approached, there was no commitment from the Court about whether the case would be sent out to trial. This placed the attorneys in a bind. Settlement discussions were occurring yet because the case was subject to potential fee shifting, trial preparation would drive up the fees and make the case less likely to settle. The attorneys were

faced with a Hobson's choice: prepare for trial and incur needless fees and costs, or risk not being prepared for trial. Although this particular case ultimately settled, it illustrates that, while there is a perception the specter of a trial will advance settlement, in fee-shifting cases, that can be a difficult and stressful gamble that may actually interfere with settlement.

Similarly, in Union County, a 2018 docket number had three trial dates scheduled, with the most recent calendared for Jan. 9, 2023. At an unsuccessful settlement conference in November, the attorneys were advised to contact the Court in late December to determine if the Jan. 9 date would go forward, although they were also advised it was unlikely because there were only two civil trial judges available. This, too, was a fee-shifting case, so the attorneys were left with the same difficult choice of preparing for trial, which would drive up the costs and fees, or risk being unprepared. In this case, the trial date has been moved to March and, in the interim, the parties have agreed to mediation.

In Somerset County, a trial date was set in a case that involved a witness who would need to travel from India. Counsel requested a date-certain for trial, but the request was denied. A request for adjournment with the consent of all parties was met with an instruction to file a motion, without any indication of whether the upcoming trial date was a real one. The attorney was again faced with the difficult choice of incurring more expense on behalf of the client by preparing the motion papers or gambling that the trial would not move forward. Ultimately, the motion was filed and granted, but only after the client was charged for the time spent preparing it.

In another matter, a trial was scheduled to begin in Passaic County the same day that one of the attorneys had a trip planned to visit a college-aged child during family weekend at the university. The trial judge refused to adjourn the trial date, so the trip was cancelled. When the case did not settle as the trial date approached, the trial was ultimately adjourned.

To help ensure that attorneys, litigants and witnesses can make adequate and necessary preparations for actual trial dates, the NJSBA recommends that the Judiciary take steps to provide more transparency with regard to trial dates, and ensure those steps are followed uniformly in each vicinage. To start, the NJSBA recommends that:

- (1) the Court develop a standard of giving 60 days' notice of a date-certain for trial, assign a trial judge and have that judge hold a pre-trial conference 30 days in advance to set appropriate time frames for *in limine* motions, pre-trial exchange, jury selection, opening statements and then taking of testimony;
- (2) in each vicinage, the Court provide a weekly list of trials in the order in which they are likely to be called, to allow attorneys the ability to consult with each other to gauge when their case will realistically be called; and
- (3) the Court post a running list of anticipated trial dates corresponding with groups of docket numbers by year (for example, Docket #500-550 for 2018 will be ready for trial in xx months).

Our members advise of similar frustrations with motion hearings. As an example, one attorney reported that, on a substantive motion in Passaic County, the attorney was told the day prior that there would be oral argument, despite having called several times that week to see if the judge

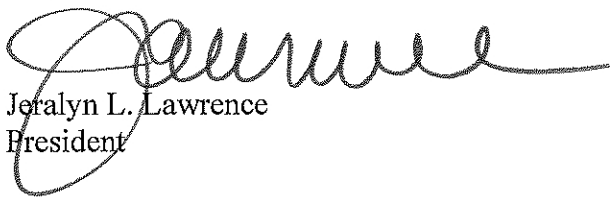
intended to have argument. The attorney had three other motions scheduled for the same day and had to quickly engage another attorney to cover one.

At a time when more and more studies pointing out the increased and detrimental impact stress is having on the profession, last minute notice from the Court is a significant source of stress for attorneys that could likely be avoided with simple steps. The NJSBA recommends, as with trial dates, that a timeframe be established for notice of oral argument in motions, particularly dispositive motions, so attorneys can adequately prepare and present their client's best case at the time of argument.

We recognize the tremendous strain judges are under in the current climate, given the trial backlog due to the pandemic and the high number of vacancies. However, we believe the recommendations above will help everyone to be better prepared and more efficient, all to the benefit of the true users of the court system: the litigants whose cases are at issue.

On behalf of the NJSBA, thank you for your consideration in addressing these important matters. The NJSBA is ready and willing to provide any additional information or assistance that may be needed.

Respectfully,



Jeralyn L. Lawrence  
President

cc: Timothy F. McGoughran, Esq., NJSBA President-Elect  
Angela C. Scheck, NJSBA Executive Director