



## NEW JERSEY STATE BAR ASSOCIATION

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January 11, 2023

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

Re: Supreme Court's October 27, 2022 Order – Virtual and In-Person Court Events

Dear Judge Grant:

Thank you for your letter of December 29, 2022 related to concerns the New Jersey State Bar Association raised about virtual and in-person court events in our correspondence of December 21, 2022.

You indicated in your response that the examples provided did not have sufficient detail to allow analysis of the issues raised in the letter. The examples provided in our letter (which is attached here for convenience) are from the: criminal part in Monmouth County; and family parts in Hudson, Mercer Middlesex, Morris and Union counties.

The examples we provided would seem to all fall under paragraph 4(a) of the order, which covers “routine case management conferences” and “routine motion arguments, which the order indicates should “continue to be conducted virtually” “absent an individualized reason to proceed in person based on the facts and circumstances of the case.” For the matters we describe, however, more costly time-consuming, in-person appearances have been required.

Additional examples continue to be reported by attorneys around the state that speak to issues facing not just lawyers, but litigants on both sides of matters. Family law practitioners in Union, Middlesex, Morris, Hudson and Mercer counties are describing situations where they are being required to travel to court for in-person appearances for routine conferences, contrary to the Order. Their time with the judge can be 5 to 10 minutes, but when adding travel and waiting time, a routine matter of under 15 minutes can take upwards of 3 hours, which is ultimately time charged to the client. This is not efficient and does not support access to justice for litigants.

Rather than spending a few hundred dollars for a brief, virtual conference, clients are looking at fees in the thousands of dollars.

More examples of the confusion about the option for virtual court appearances have cropped up since I last wrote to you about this issue. In Hudson County, where there is literally no parking available, an in-person appearance was required for a proceeding that lasted less than 10 minutes. In another particularly egregious case in Mercer County, a lawyer sat waiting in a courtroom from 11 a.m. until 3 p.m., resulting in a fee well in excess of what the client would have been charged for a short virtual appearance.

We were advised of a case in Camden County just yesterday where there was a three-day plenary hearing scheduled in a Family Part matter. The first two days were conducted virtually. The judge decided to hold the last day in person, even though the judge was only going to be available for 90 minutes. One of the attorneys advised the judge that they had recently suffered an injury to her foot, leaving their foot in a boot cast and necessitating the use of a cane to walk. The client was located in Georgia and had just tested positive for COVID. After requiring proof of the litigant's positive COVID test, the judge gave a reprieve to the litigant and agreed to let them appear virtually; however, the attorney was still ordered to appear in person. When the attorney again advocated to be allowed to appear virtually based on their injury, their difficulty getting around and noting a lack of courthouse parking, the judge denied the request and suggested they find parking on the street. Under these circumstances, it seems reasonable that the third day of the hearing could have been conducted virtually, like the first two.

Furthermore, while we recognize that under the Court's October 27 Order, paragraph 3(d), landlord/tenant matters are listed for in-person appearances, we are hopeful that this is something the Judiciary is still evaluating.

A practitioner shared with us that recently in landlord/tenant court in Mercer County upwards of 60 cases were on the docket. Between 15 and 20 defendants did not appear, likely resulting in a default being entered against them. When landlord/tenant proceedings happened exclusively online it was reported that very few defendants failed to appear. They had access to a smart phone and did not have to make arrangements with employers or caregivers to accommodate the court proceedings. The issue of access is also one for landlords, as many report they must schedule time for multiple court appearances for each matter, which presents logistical hurdles for those parties, too.

For the individual lawyer in Mercer County, they were scheduled to address two trials and a mediation, but due to the extended wait for the landlord/tenant matter, they were only able to address one matter. As I have said before in this letter, which bears repeating, having lawyers waiting for hours in a packed court room ultimately costs the litigant more than if the matter were handled efficiently on a virtual platform. I raise this example as a way to illustrate that

Hon. Glenn A. Grant

January 11, 2023

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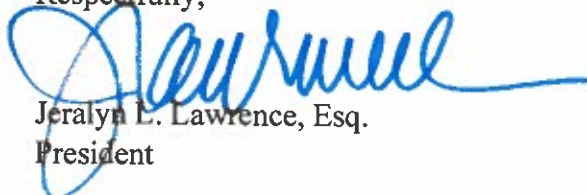
reverting to in-person proceedings can result in hardships for every single party in the matter, reducing access to justice for all.

During your pandemic listening tour, you mentioned that once the eviction moratorium was lifted and cases are able to be heard and tried, it would be important to evaluate the effectiveness of the virtual settlement hearings that were conducted during the pandemic that successfully resolved many disputes without the need for a court appearance. If the NJSBA or our members can assist as the Judiciary evaluates the effectiveness of continued virtual proceedings in landlord/tenant matters, we are committed to helping in any way that we can.

Your December 29 letter mentioned training sessions for the Judiciary regarding implementation of the various elements of the October 27 Order, and we are hopeful that those sessions will create more uniformity in how proceedings are conducted throughout the state. We respectfully suggest that it might be helpful to remind Assignment Judges that routine, brief matters can and should be efficiently handled – for the Judiciary, the litigants and the attorneys – on a virtual platform.

Access to justice and the ability of the legal system to work efficiently and justly for every person who comes into contact with it is at the core of our mission. The NJSBA remains your committed partner in ensuring the doors of the physical or virtual courthouse remain open to all people and businesses that seek to resolve their disputes through our justice system. We appreciate your willingness to hear from us and the opportunity to share what our members are experiencing around the state. We will continue to collect and share examples of how the October 27 Order is being implemented, with a goal of providing the Judiciary with a transparent stream of information that can be used to analyze the effectiveness of the various formats for court proceedings.

Respectfully,



Jeralyn L. Lawrence, Esq.  
President

cc: Angela C. Scheck, NJSBA Executive Director  
Steven D. Bonville, Chief of Staff, Administrative Office of the Courts



## 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.

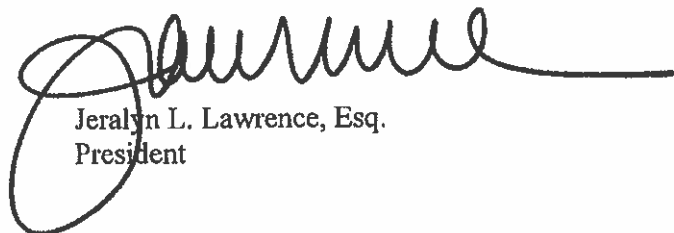
**MUNICIPAL:** Practitioners who handle municipal court matters have reported that many courts around the state have essentially reverted to pre-pandemic practices, replete with large courtroom cattle calls that require attorneys and litigants to appear in person for the vast majority of events, including 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 first part of the name.

Jeralyn L. Lawrence, Esq.  
President